



THE SCHOOL DISTRICT OF
PALM BEACH COUNTY, FLORIDA

OFFICE OF INSPECTOR GENERAL
3318 FOREST HILL BLVD., C-306
WEST PALM BEACH, FL 33406
(561) 434-7335 FAX: (561) 434-8652
www.palmbeachschools.org
Hotline: 855-561-1010


TERESA MICHAEL, CIG, CIGI, CFE
INSPECTOR GENERAL

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MEMORANDUM

TO: Honorable Chair and Members of the School Board
Michael Burke, Superintendent
Chair and Members of the Audit Committee

FROM: Teresa Michael, Inspector General 

DATE: February 14, 2022

SUBJECT: Transmittal of Final Investigative Report:
20-0012-I Employee Retaliation

Attached please find a copy of the Palm Beach County School District Office of Inspector General (OIG) Final Report of OIG Case 20-0012-I related to alleged Employee Retaliation. On January 15, 2020, the Office of Inspector General (OIG) received a written complaint from attorneys Allison Duffie and Fred Schwartz on behalf of Human Resources (HR) Manager Robert Pinkos. The complaint alleged that Chief of Human Resources, Dr. Gonzalo La Cava, and Director of Employee and Labor Relations, Vicki Evans-Paré, retaliated against Mr. Pinkos for making a protected disclosure under Florida's Whistle-blower's Act, and for recusing himself from an ELR investigation into Dr. William Latson. Mr. Pinkos alleged that the retaliation included actions taken against him by Dr. La Cava and Ms. Evans-Paré.

During the investigation, the OIG developed additional allegations against Dr. La Cava and Ms. Evans-Paré. The Allegations are as follows:

Allegation 1:

It is alleged that Ms. Evans-Paré and Dr. La Cava retaliated against Mr. Pinkos in violation of the Whistle-blower's Act by asking him to use personal leave for attending a Hispanic Education Coalition (HEC) awards luncheon.

Allegation 2:

It is alleged that Ms. Evans-Paré and Dr. La Cava retaliated against Mr. Pinkos in violation of the Whistle-blower's Act by issuing him a memorandum for Failure to Fulfill Job Responsibilities/Insubordination.

Allegation 2a:

It is alleged that Ms. Evans-Paré and Dr. La Cava took adverse personnel action in violation of Board Policy against Mr. Pinkos by issuing him a memorandum for Failure to Fulfill Job Responsibilities/Insubordination because he recused himself from the Latson investigation.

Allegation 3:

It is alleged that Ms. Evans-Paré and Dr. La Cava retaliated against Mr. Pinkos in violation of the Whistle-blower's Act by transferring him from the Fulton Holland Educational Services Center (FHESC) to the South Regional Superintendent's Office.

Allegation 3a:

It is alleged that Ms. Evans-Paré and Dr. La Cava took adverse personnel action in violation of Board Policy against Mr. Pinkos by transferring him from the FHESC to the South Regional Superintendent's Office because he recused himself from the Latson investigation.

The OIG investigation concluded that Allegations 1, 2, 2a, 3, and 3a were unsubstantiated as they pertain to Dr. La Cava. Allegations 1, 2, and 3 were unsubstantiated as they relate to Ms. Evans-Paré, however Allegation 2a and 3 a were substantiated as they pertain to Ms. Evans-Paré. The investigative findings of the allegations will be discussed in detailed in the report.

In accordance with *School Board Policy 1.092.9.b.iv.*, on January 6, 2022, the draft of this investigation was provided to Dr. La Cava and Ms. Evans-Paré for a response. Dr. La Cava and Ms. Evans-Paré submitted response on January 28, 2022. The OIG is unable to attach the response from Dr. La Cava due to confidentiality provisions in Florida Statutes. The response from Ms. Evans-Paré is attached in its entirety

The findings of this report were referred to Superintendent Michael Burke for action deemed appropriate.

c.c.

Shawntoyia Bernard, Legal Counsel
Randy Law, OIG Audit Director
Robert Bliss, OIG Compliance Officer



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MICHAEL J. BURKE, SUPERINTENDENT

MEMORANDUM

TO: Office of Inspector General Report Distribution List

FROM: Teresa Michael, Inspector General 

DATE: February 14, 2022

SUBJECT: CORRECTION to Final Investigative Report
20-0012-I Employee Retaliation

A scrivener's error appears on page 3 of the above-referenced report in the section labeled "BACKGROUND: INDIVIDUALS & ENTITIES COVERED IN THIS REPORT."

The report incorrectly identifies District employees Edward Tierney and Katrina Todd as employees of the School Police. Neither Mr. Tierney nor Ms. Todd work for the School District Police.

Their respective backgrounds should state the following:

"Mr. Tierney has been employed by the School District for 19 years."

"Ms. Todd has been employed by the School District for over 21 years."

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OIG FINAL REPORT OF INVESTIGATION
EMPLOYEE RETALIATION

INTRODUCTION & SYNOPSIS

On January 15, 2020, the Office of Inspector General (OIG) received a written complaint (**Exhibit 1**) from attorneys Allison Duffie and Fred Schwartz on behalf of Human Resources (HR) Manager Robert Pinkos. The complaint alleged that Chief of Human Resources, Dr. Gonzalo La Cava, and Director of Employee and Labor Relations, Vicki Evans-Paré, retaliated against Mr. Pinkos for making a protected disclosure under Florida's Whistle-blower's Act and for recusing himself from an ELR investigation into Dr. William Latson. Mr. Pinkos alleged that the retaliation included actions taken against him by Dr. La Cava and Ms. Evans-Paré.

The allegations include:

Allegation 1:

Ms. Evans-Paré and Dr. La Cava retaliated against Mr. Pinkos in violation of the Whistle-blower's Act by asking him to use personal leave for attending a Hispanic Education Coalition (HEC) awards luncheon.

Allegation 2:

Ms. Evans-Paré and Dr. La Cava retaliated against Mr. Pinkos in violation of the Whistle-blower's Act by issuing him a memorandum for Failure to Fulfill Job Responsibilities/Insubordination.

Allegation 2a:

Ms. Evans-Paré and Dr. La Cava took adverse personnel action in violation of Board Policy against Mr. Pinkos by issuing him a memorandum for Failure to Fulfill Job Responsibilities/Insubordination because he recused himself from the Latson investigation.

Allegation 3:

Ms. Evans-Paré and Dr. La Cava retaliated against Mr. Pinkos in violation of the Whistle-blower's Act by transferring him from the Fulton Holland Educational Services Center (FHESC) to the South Regional Superintendent's Office.

Allegation 3a:

Ms. Evans-Paré and Dr. La Cava took adverse personnel action in violation of Board Policy against Mr. Pinkos by transferring him from the FHESC to the South Regional Superintendent's Office because he recused himself from the Latson investigation.

Mr. Pinkos alleged that Ms. Evans-Paré would not have taken these actions without Dr. La Cava's approval.

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Allegations 2a and 3a were developed by the OIG after reviewing the legal opinion of Florida labor and employment lawyer Arthur T. Schofield.¹

The OIG investigation concluded that the Allegations 1, 2, and 3 were **unsubstantiated** and Allegations 2a and 3a were **substantiated** as to Ms. Evans-Paré only. The investigative findings of the allegations and each individual action will be discussed in detail later in this report.

OIG JURISDICTIONAL AUTHORITY

School Board Policy 1.092 provides for the Inspector General to receive and consider complaints, and conduct, supervise, or coordinate such inquiries, investigations, or reviews, as the Inspector General deems appropriate.

BACKGROUND: INDIVIDUALS & ENTITIES COVERED IN THIS REPORT

Robert Pinkos, Human Resources Manager

Mr. Pinkos was employed by the School District for 35 years. He served as a teacher for 16 years, a recruiter for the School District for 4 years, and as a HR Manager for over 13 years. Mr. Pinkos was supervised by Director of Employee and Labor Relations (ELR)² – (currently known as the Office of Professional Standards) Vicki Evans-Paré for approximately two years.

Dr. Gonzalo La Cava, Chief of Human Resources

Dr. La Cava has been employed by the School District for approximately five and one-half years as the Chief of Human Resources and is Vicki Evans-Paré's direct supervisor.

Vicki Evans-Paré, Director, Esq. Employee and Labor Relations

Ms. Evans-Paré has been employed by the School District for almost 19 years. For the first 16 years in the District she defended employment and grievance cases. She has served as the ELR Director for almost three years and reports to Dr. La Cava.

Germaine English, Human Resources Manager, Employee and Labor Relations

Ms. English has been employed by the School District for almost four years. She is assigned to ELR as the EEO Coordinator.

Brenda Johnson, Former Human Resources Manager, Employee and Labor Relations

Ms. Johnson was employed by the School District for over 16 years. She was assigned to ELR as a Human Resources Manager since 2016 and resigned effective January 9, 2021.

¹ The OIG contracted with outside counsel to maintain independence and because the original legal counsel assigned to the OIG resigned from her position during the investigation.

² Currently the Director of Office of Professional Standards, Ms. Evans-Paré simultaneously was Director of Employee and Labor Relations during the relevant portions of this investigation. The departmental identifiers ELR and OPS will be used synonymously throughout the report.

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Frank Kitzerow, Former Chief of School Police

Chief Kitzerow served as the Chief of School Police from July 2, 2018, until May 1, 2021.

Michele Lockhart, Sergeant, School Police

Sgt. Lockhart has been employed by the School District Police for eight years. She has served as a Sergeant for one month. She is in charge of the Behavioral Services Unit that conducts threat assessments throughout the School District.

Mark Mitchell, Director, Compensation and Employee Information Services

Mr. Mitchell has been employed by the School District for 16 years. He has served as the Director of Compensation and Employee Information Services for almost the entire 16 years. Mr. Mitchell served as the Chief Officer of Administration for six months.

Edward Tierney, Deputy Superintendent

Mr. Tierney has been employed by the School District Police for 19 years. As of July 1, 2021, he has served as the Deputy Superintendent/Chief of Schools. He served as the Chief of Staff for over two years before accepting his current position. Mr. Tierney was an Instructional Superintendent before accepting the position of Chief of Staff.

Katrina Todd, Purchasing Technician

Ms. Todd has been employed by the School District Police for over 21 years. She currently serves as a Purchasing Technician.

RELEVANT GOVERNING AUTHORITIES

- School Board Policy 1.013 – Responsibilities of School District Personnel and Staff
- School Board Policy 3.02 – Code of Ethics
- School Board Policy 3.10 – Conditions of Employment with the District
- School Board Policy 3.28 – Whistleblower Protection Policy
- School Board Policy 3.31 – Grievance Procedure for Employees
- School Board Policy 1.092 – Inspector General

DOCUMENTS REVIEWED

- Complaint Letter
- Pertinent District emails between July 1, 2019 and January 15, 2020
- Memorandum for Failure to Fulfill Job Responsibilities/Insubordination
- Letter transferring Mr. Pinkos to the South Regional Superintendent's Office
- Mr. Pinkos' Job Description
- Legal Opinion provided by labor and employment lawyer Arthur T. Schofield
- Guidelines for Investigations from the Florida Department of Education Office of Personnel Practices Services

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- Society for Human Resource Management Module 11 – Keeping the Independence in Internal Investigations
- Judicial Canon of Ethics
- Pinellas County Inspector General’s Report #2021-27

CASE INITIATION & INVESTIGATIVE METHODOLOGY

The investigation was initiated based on a complaint from Attorney Allison Duffie on behalf of Human Resources Manager Robert Pinkos. The complaint alleged that Chief of Human Resources Dr. Gonzalo La Cava and Director of Employee and Labor Relations (ELR) Vicki Evans-Paré retaliated against Mr. Pinkos for recusing himself from an ELR investigation into Dr. William Latson. Mr. Pinkos alleged that the retaliation included actions taken against him by Dr. La Cava and Ms. Evans-Paré.

During the investigation, the OIG interviewed Human Resources Manager Robert Pinkos, Human Resources Manager Germaine English, Human Resources Manager Brenda Johnson, School Police Sergeant Michele Lockhart, then Chief of Staff Edward Tierney, Director of Compensation and Employee Information Services Mark Mitchell, then School Police Chief Frank Kitzerow, Purchasing Technician Katrina Todd, Chief of Human Resources Gonzalo La Cava, and ELR Director, Vicki Evans-Paré. The OIG reviewed applicable District policies and bulletins, PeopleSoft employee records, and relevant emails of the parties involved.

This investigation was conducted in compliance with the *Quality Standards for Investigations, Principles and Standards for Offices of Inspector General*, promulgated by the Association of Inspectors General.

BACKGROUND: TIMELINE OF EVENTS

The impetus for this complaint dates to July 5, 2019, when the Palm Beach Post published an article concerning Dr. William Latson’s refusal to call the Holocaust a fact. Subsequent to this article, ELR commenced an investigation and assigned it to Mr. Pinkos. The investigation assignment led to Pinkos’ voluntary recusal, arguments between Mr. Pinkos and Ms. Vicki Evans-Paré, a parking lot confrontation between Mr. Pinkos and Dr. La Cava, and the eventual transfer of Mr. Pinkos to the District’s South Region Office. The actions of alleged retaliation detailed in this investigation occurred between the July 5, 2019, posting of the article and November 19, 2019.

July 5, 2019 – The Palm Beach Post published an article entitled "Spanish River High’s Principal Refused to Call the Holocaust a Fact." Mr. Pinkos and Ms. Evans-Paré informally discussed the article and Mr. Pinkos told Ms. Evans-Paré that in his opinion Dr. Latson should not be a principal.

July 8, 2019 (approximate date) – Mr. Pinkos expressed his opinion that Dr. Latson was not suitable to be a Principal “anywhere in the country.”

August 1, 2019 – Mr. Pinkos met with Ms. Evans-Paré and she assigned him the Latson investigation.

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August 15, 2019 – Mr. Pinkos met with Ms. Evans-Paré and expressed his concerns with the narrow focus/scope of the investigation. Pinkos’ concerns regarded potential misconduct of administrators (former District Superintendent Donald Fennoy and Former Deputy Superintendent/Chief of Schools Keith Oswald) that knew about Latson’s Holocaust-related email exchanges for over a year and never reported Dr. Latson’s misconduct to Human Resources.

August 15, 2019 - Ms. Evans-Paré held staff meeting to explain to staff when and for what reasons they may recuse themselves from investigations.

August 19, 2019 – Mr. Pinkos met with Ms. Evans-Paré in her office and gave notice of his recusal from the Latson investigation. Ms. Evans-Paré and Mr. Pinkos have a heated exchange where Ms. Evans Paré repeatedly used the term “bullshit”³ in response to Mr. Pinkos’ recusal.

October 11, 2019 – Mr. Pinkos attended the Hispanic Education Coalition (HEC) awards luncheon. Dr. La Cava expressed concern to Ms. Evans-Paré that Mr. Pinkos and Mr. Jose Fred attended the luncheon instead of working on their investigations. Ms. Evans-Paré was not aware that Mr. Pinkos and Mr. Fred attended the luncheon, as they had not requested her permission to attend.

October 16, 2019 – Ms. Evans-Paré directed Mr. Pinkos and Mr. Fred to use personal leave time for attending the HEC luncheon.

October 18, 2019 – Mr. Pinkos requested a meeting with Dr. La Cava regarding Ms. Evans-Paré’s directive that Mr. Pinkos use personal leave for attending the HEC luncheon. Mr. Pinkos also wanted to discuss Ms. Evans-Paré’s decision to not open an investigation into how District administration staff handled the initial Latson complaint in 2018.

November 6, 2019 – Mr. Pinkos received a calendar invite for a 30-minute meeting with Dr. La Cava and Ms. Evans-Paré on November 8, 2019. Mr. Pinkos emailed Dr. La Cava and asked for longer than 30 minutes and requested to audio record the meeting. Dr. La Cava cancelled the meeting due to a cited scheduling conflict and directed Mr. Pinkos to meet with Evans-Pare.

November 8, 2019 – Mr. Pinkos confronted Dr. La Cava in the parking lot. After an “aggressive” exchange between Mr. Pinkos and Dr. La Cava, Dr. La Cava felt threatened and notified school police. Immediately following the confrontation, Dr. La Cava assigned a personnel investigation to ELR EEO Coordinator Germaine English. Ms. English commenced personnel investigation and school police initiated a threat assessment of Mr. Pinkos.

November 12, 2019 – Ms. Evans-Paré sent an email to Mr. Pinkos saying he did not need to use personal leave for attending the HEC luncheon, but he would need her prior permission to attend any future events and a statement of how the event was related to his work.

³ The parties disagree as to the number of times Evans-Pare used the term “bullshit.” Evans-Pare stated it was only twice and Pinkos indicated in his complaint it was eight times in quick succession.

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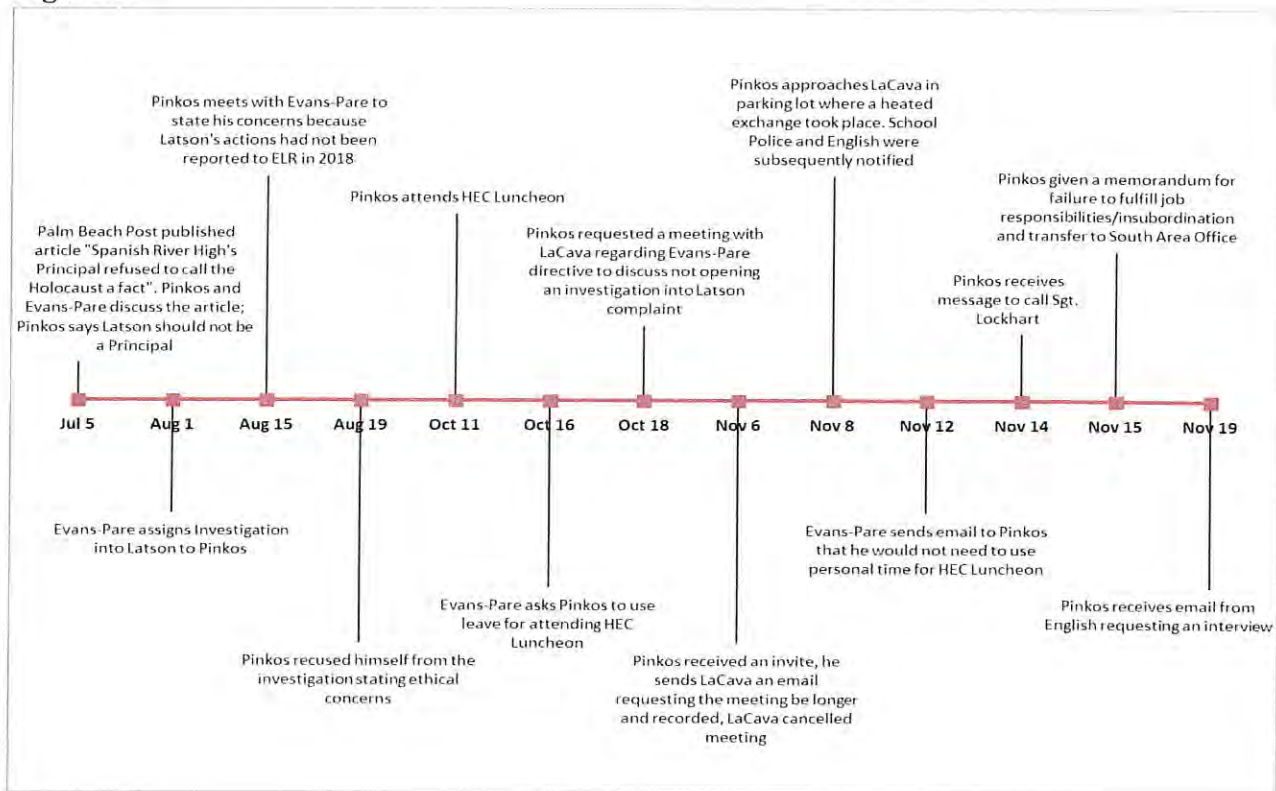
November 14, 2019 – Mr. Pinkos received a call from Sergeant Lockhart of school police where she requested to meet with Mr. Pinkos. Although not disclosed during the call, Sergeant Lockhart wanted to meet with Mr. Pinkos to complete the threat assessment. Mr. Pinkos indicated that since he did not know the reason for the meeting and desired legal representation, he would not meet with Sergeant Lockhart. **(NOTE: School Police never completed the threat assessment nor did they document the parking lot incident between Dr. La Cava and Mr. Pinkos in any police report.)**

November 15, 2019 – Ms. Evans-Paré issued Mr. Pinkos a memorandum for “Failure to Fulfill Job Responsibilities/Insubordination” for recusing himself from the Latson investigation and a job transfer notice to the South Region Superintendent’s Office due to the parking lot incident.

November 19, 2019 – Mr. Pinkos received a request to meet from Germaine English. Mr. Pinkos referred Ms. English to his attorney. The personnel investigation was subsequently reassigned to an outside law firm.

The actions are delineated in the following timeline (**Figure 1**).

Figure 1:



- School Board Policy 3.28.7 states, “**Protection from Adverse Personnel Action or Retaliation.** This policy protects employees and other persons who disclose information on their own volition in a written and signed complaint with the Inspector General; who initiate a complaint through the Inspector General's Hotline; who are requested to

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participate in an investigation, hearing or other inquiry conducted by the Superintendent, School Board, state agency or federal government; who refuse to participate in any adverse action prohibited by this policy; or, who file a written complaint to their supervisors.”

- School Board Policy 3.28.7.a further states, **“Investigation of Employees’ Complaints.** *An employee, whistleblower who believes that she or he has been retaliated against or had adverse action taken against him or her shall file a written complaint with the Office of Inspector General within thirty (30) working days of the alleged retaliation. Any complaint of adverse personnel action or retaliation will be promptly investigated by the Office of Inspector General and receipt of same shall be acknowledged within five (5) business days. If the employee’s allegations of adverse personnel action or retaliation are substantiated, appropriate corrective measures shall be taken by the Superintendent, Board or Department Head.”*
- School Board Policy 3.02.5.a. – Code of Ethics states, **“Actions Prohibited.** *The School Board, its employees and agents, are prohibited from taking retaliatory action or adverse personnel action against any employee who reports violations or discloses information under this policy.”* (Emphasis added.)
- School Board Policy 1.092.6.a. states, in relevant part, **“Employee Responsibilities.** *All employees of the District shall be responsible for reporting to the Office of Inspector General an observed, known, or suspected fraud, waste, abuse or wrongdoing to include ethical misconduct. No officer or employee of the Board or District shall threaten, discipline or retaliate against an employee; or intimidate or coerce an employee because the employee has acted in good faith, in accordance with the requirements of this policy...”*

INVESTIGATIVE FINDINGS⁴

Allegation 1:

Chief of Human Resources Dr. Gonzalo La Cava and Director of Employee and Labor Relations Vicki Evans-Paré retaliated against Mr. Pinkos for making a protected disclosure under the Whistle-blower’s Act and recusing himself from an ELR investigation into Dr. William Latson by asking him to use personal leave for attending a Hispanic Education Coalition (HEC) awards luncheon.

Allegation 1 – Unsubstantiated.

The OIG investigation concluded the allegation was unsubstantiated. The OIG determined there was insufficient evidence to prove that Chief of Human Resources, Dr. Gonzalo La Cava, and Director of Employee and Labor Relations (ELR), Vicki Evans-Paré, retaliated against Mr. Pinkos for recusing himself from an ELR investigation into Dr. William Latson by asking him to use personal leave for attending a Hispanic Education Coalition (HEC) awards luncheon.

⁴ The OIG findings were determined using the standards that appear on the final page of this report.

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The OIG could not substantiate Allegation 1, namely the allegation of retaliation against Mr. Pinkos in violation of the Whistle-blower's Act, because the elements required to establish retaliation under the Whistle-blower's Act were not met based on the facts presented.

The following is a summary of testimonies from persons interviewed as indicated:

Human Resources Manager Robert Pinkos: Mr. Pinkos said when the Latson case became a media storm (July 2019) he and Ms. Evans-Paré discussed his belief that Dr. Latson should not be a principal at "any public school, not even in Anchorage, Alaska." Mr. Pinkos said Ms. Evans-Paré told him during this time that she would never assign the Latson case to him because he had such strong feelings about it. **(NOTE: Ms. Evans-Paré testified she did not tell Mr. Pinkos she would never assign him the Latson case).**

On August 1, 2019, Ms. Evans-Paré assigned Mr. Pinkos the investigation into Dr. Latson. He met with Ms. Evans-Paré and recused himself from the investigation on August 19, 2019, after trying to meet with her on August 15, 2019. Mr. Pinkos said when he recused himself Ms. Evans-Paré "went ballistic." Mr. Pinkos said Ms. Evans-Paré was very upset. She cursed at him. She screamed "Bullshit, bullshit, bullshit, bullshit" in a loud voice. Mr. Pinkos said he had never seen anyone act like that in an office setting. Mr. Pinkos said this occurred in her office between the two of them with the office door closed. Mr. Pinkos said Ms. Evans-Paré had previously asked Brenda Johnson to do the investigation, but she had recused herself from the investigation. Mr. Pinkos said he discussed the recusal with Ms. Johnson. Ms. Johnson told him she thought it was unethical and wrong because they were trying to find a reason to fire Dr. Latson and she was not going to be a part of that.

Mr. Pinkos said he attended the HEC awards luncheon on October 11, 2019. Mr. Pinkos said there were seventy other District employees at the luncheon where School Board Chair Frank Barbieri received an award. Mr. Pinkos explained that he attended the HEC awards luncheon every year for the past five years. He believed his attendance was job related because according to his job description, (which he read directly from during the interview), an HR manager "attends meetings at appropriate work locations to facilitate effective interpersonal communication regarding work-related policies and procedures.)" Mr. Pinkos added there were a large number of administrators at that meeting for him to interact with, and community outreach was an important part of his job. Mr. Pinkos said this outreach aligned with the School District's Vision and Mission Statements. According to Mr. Pinkos, the meeting was about scholarships for needy children so he was carrying out the essential functions of his position and the School District's Vision and Mission. Mr. Pinkos added that all previous directors encouraged him to attend the HEC luncheon and Ms. Evans-Paré stood alone in not wanting him to attend. Mr. Pinkos said he had never submitted a Temporary Duty Elsewhere (TDE) request for attending the HEC awards luncheon.

On October 16, 2019, Ms. Evans-Paré sent him an email asking him to complete a TDE for four hours of personal time for attending the HEC awards luncheon. Mr. Pinkos said when he received the initial email he went to her office to discuss the issue. Ms. Evans-Paré told him to turn in a TDE for one hour of personal time and he could use the second hour as his lunch break. Mr.

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Pinkos said he would not do so until he spoke to Dr. La Cava. On October 18, 2019, he sent an email to Dr. La Cava requesting a meeting when Mr. Pinkos returned from vacation on November 6, 2019. Dr. La Cava responded the same day saying he would have Ms. Evans-Paré schedule the meeting. Mr. Pinkos received a calendar invite to meet with Dr. La Cava, Ms. Evans-Paré, and Human Resources Manager Jose Fred on November 8, 2019. Mr. Pinkos said he was prepared “to get to the bottom of” Ms. Evans-Paré’s direction to request personal leave for attending the HEC awards luncheon and to report the August 19, 2019, misconduct by Ms. Evans-Paré.

On November 6, 2019, at 8:35 AM, Mr. Pinkos sent an email to Dr. La Cava. Mr. Pinkos requested the meeting time be increased to one hour from the scheduled half hour and further requested the meeting be audio recorded so an accurate transcript could be typed afterwards. Mr. Pinkos received a response from Dr. La Cava at 9:19 AM canceling the meeting citing a scheduling conflict. Dr. La Cava suggested Mr. Pinkos bring any grievances or concerns to his direct supervisor, Ms. Evans-Paré.

On November 6, 2019, at 11:40 AM, Mr. Pinkos emailed then Chief of Staff Edward Tierney and requested a meeting. Mr. Tierney did not respond. Ms. Evans-Paré eventually withdrew her request for Mr. Pinkos to complete a TDE for personal leave for attending the luncheon. Mr. Pinkos believed Mr. Tierney made the final decision to not require Mr. Pinkos use personal leave for his past attendance at the HEC awards luncheon. Mr. Pinkos said Board Member Marcia Andrews called him and told him that the issue regarding the TDE was resolved and he would soon receive something in writing. On November 12, 2019, he received an email from Ms. Evans-Paré that indicated she would not require Mr. Pinkos to submit a TDE request for the HEC awards luncheon. During the interview, Mr. Pinkos provided a written document detailing his complaint (**Exhibit 2**).

Human Resources Manager Brenda Johnson: Ms. Johnson said that she was aware Mr. Pinkos and Ms. Evans-Paré discussed the Latson investigation in early July 2019, but she was not privy to what they discussed. Ms. Johnson said she was on vacation between July 18 and July 29, 2019. Upon her return, Ms. Evans-Paré asked her to look at the information she (Evans-Paré) had gathered regarding Dr. Latson. Ms. Johnson said she reviewed the information and gave Ms. Evans-Paré feedback on what additional information might be needed. Ms. Johnson said when she returned from vacation Ms. Evans-Paré asked her to take over the Latson investigation. Ms. Johnson said she told Ms. Evans-Paré that she could not because of her workload and because she did not agree with Dr. Latson being investigated for not returning telephone calls. Ms. Johnson said that she told Ms. Evans-Paré that there were other principals that had done worse and they were not disciplined. She did not want to compromise her integrity by doing this investigation. Ms. Johnson said she did not “recuse” herself for “religious reasons” she just was not comfortable doing the investigation (**NOTE: This statement is contradictory to the statement of Ms. Evans-Paré who testified Ms. Johnson recused herself over a religious objection**). Ms. Johnson added that she did not feel comfortable with how the investigation was being handled and suggested the investigation be outsourced to an outside law firm. Ms. Johnson said Ms. Evans-Paré told her she would assign the investigation to Mr. Pinkos.

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Ms. Johnson said she recalled Mr. Pinkos and Ms. Evans-Paré had an argument in Ms. Evans-Paré's office, but she did not hear what they were saying. Ms. Johnson said they were both getting loud during the argument. Ms. Johnson did not recall the date of the argument.

Ms. Johnson said she recalled speaking to Mr. Pinkos on the telephone. Mr. Pinkos was very upset about the conversation he had with Ms. Evans-Paré where he recused himself from the Latson investigation. Ms. Johnson said she never told Mr. Pinkos she recused herself from the Latson investigation. Ms. Johnson said she told Mr. Pinkos that Ms. Evans-Paré asked her to look into the Latson case, but she told Ms. Evans-Paré she could not because of her workload and because of her concerns with the scope of the investigation.

Ms. Johnson said that the only information she had regarding Mr. Pinkos being directed to use personal leave for attending the HEC awards luncheon was that he and HR Manager Jose Fred came into the office looking for Ms. Evans-Paré because they were upset over an email they had received about submitting a TDE for attending the luncheon.

Then Chief of Staff Edward Tierney: Mr. Tierney said he is not in the supervisory chain-of-command or reporting structure for Mr. Pinkos. Mr. Tierney said he did not supervise Dr. La Cava. Mr. Tierney recalled he received an email from Mr. Pinkos that asked him to meet. Mr. Tierney did not respond because he was not able to hear an appeal of a decision made in HR because he was not in that chain of command. Mr. Tierney said he heard about the issue regarding Ms. Evans-Paré asking Mr. Pinkos to submit a TDE request for personal leave based on Pinkos' attendance at the HEC luncheon. Mr. Tierney said he was not involved in Ms. Evans-Paré's decision to make that request. Mr. Tierney said he was not involved in the decision to no longer request Mr. Pinkos submit a TDE for attending the HEC awards luncheon. Mr. Tierney added that he did not issue a directive to anyone regarding Mr. Pinkos attending the luncheon, and even if he wanted to, he did not have the authority to issue such a directive. Mr. Tierney stated he did not know if anyone issued such a directive.

Chief of Human Resources Dr. Gonzalo La Cava: Dr. La Cava stated he was not involved in the assigning of the Latson investigation to Mr. Pinkos, but he was familiar with the fact that Mr. Pinkos subsequently recused himself from the investigation. Dr. La Cava said Ms. Evans-Paré explained to him that according to federal guidelines for judges there were four instances where someone could recuse themselves from an investigation. Dr. La Cava could not recall what the four instances were, but did recall one was for religious reasons.

Dr. La Cava said Ms. Evans-Paré came to his office immediately after she and Mr. Pinkos had an exchange in her office when Mr. Pinkos recused himself. Ms. Evans-Paré told him that Mr. Pinkos recused himself and she admitted she "cussed a couple of times." Dr. La Cava said he asked her why she cursed and told her not to curse again. Ms. Evans-Paré told him she would never curse again and that she just "lost her mind a little bit" in regards to why Mr. Pinkos wanted to recuse himself. Dr. La Cava said he handled the issue regarding Ms. Evans-Paré cursing at Mr. Pinkos with Ms. Evans-Paré immediately.

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Dr. La Cava recalled attending the HEC awards luncheon. When he returned from the luncheon, he asked Ms. Evans-Paré if she knew that Mr. Pinkos and Mr. Fred attended the luncheon. Ms. Evans-Paré told him she did not know Mr. Pinkos and Mr. Fred had attended the luncheon. Dr. La Cava asked Ms. Evans-Paré if they had put in any type of leave to attend the luncheon, to which Ms. Evans-Paré responded they had not. Dr. La Cava said that Ms. Evans-Paré asked Mr. Pinkos and Mr. Fred to submit a TDE for the time they spent at the luncheon. Dr. La Cava said Ms. Evans-Paré told him Mr. Pinkos said he was not going to do a TDE because he had been allowed to go to the luncheon in the past. Dr. La Cava said his big issue was they (HR Managers) were constantly behind in their investigations and he questioned why were they attending the luncheon and not finishing their investigations. Dr. La Cava said he asked Ms. Evans-Paré to look into the issue.

Dr. La Cava said Ms. Evans-Paré learned other School District employees not at the chief level attended the luncheon and she doubted the other non-chief level employees submitted TDE requests. In turn, Ms. Evans-Paré decided to withdraw her directive for a TDE request from her staff members that attended the luncheon. **(NOTE: Ms. Evans-Paré made this determination six days after the parking lot incident and three days before issuing Mr. Pinkos a memorandum and transferring him. Dr. La Cava said he and Ms. Evans-Paré determined they would not require HR staff complete TDE request for attending the luncheon.)** Dr. La Cava said he informed then Superintendent Donald Fennoy and former Chief of Staff Edward Tierney about the issue. Dr. La Cava advised they (Fennoy and Tierney) too were trying to determine if staff members attended on their own without supervisor approval. Dr. La Cava recalled that Mr. Pinkos requested a meeting with him via email to talk about the situation with Ms. Evans-Paré. The meeting was scheduled for November 8, 2019, with Mr. Pinkos, Ms. Evans-Paré, and himself. Dr. La Cava said he canceled the meeting because the Superintendent scheduled an emergency meeting. Dr. La Cava said he was willing to have the meeting because Mr. Pinkos had questions about the luncheon issue and Dr. La Cava knew about what had occurred between Ms. Evans-Paré and Mr. Pinkos. Dr. La Cava said Mr. Pinkos asked for the meeting to be longer than originally scheduled and asked for the meeting to be recorded. Dr. La Cava said he was opposed to recording meetings and told Mr. Pinkos that he should meet with his direct supervisor, Ms. Evans-Paré. Dr. La Cava said Mr. Pinkos never filed a formal complaint with him against Ms. Evans-Paré.

Director of Employee and Labor Relations Vicki Evans-Paré: Ms. Evans-Paré said that in July 2019, she had a conversation with Mr. Pinkos where he stated he felt the District should not have anyone like Dr. Latson working for it. Ms. Evans-Paré told Mr. Pinkos that the Palm Beach Post did not always get their information correct and it was not an issue for ELR because they (ELR) had not been asked to investigate any issues surrounding the information the Palm Beach Post had printed. Mr. Pinkos told Evans-Paré he and other HR Managers believed Dr. Latson was “antisemitic.”

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Ms. Evans-Paré said she never told Mr. Pinkos she would not assign a Latson investigation to him if they (ELR) received one. Ms. Evans-Paré said she would never tell anyone anything like that, because she could not know what circumstances might arise.

Ms. Evans-Paré said that in the beginning of August 2019, she assigned an investigation involving Dr. Latson to Mr. Pinkos. She set the parameters of the investigation. She indicated she looked into the information ELR had thus far and she was aware of the situations that had occurred after July 2019, when Keith Oswald was trying to reach Dr. Latson. Ms. Evans-Paré said she looked at the case from her legal background and determined that “right or wrong the Area Regional Office handled it the way they handled it.” She noted they (Regional Office) did not give Dr. Latson any type of “conference notes”.

Ms. Evans-Paré added that because they (Regional Office) “handled it” ELR could not go back and investigate the 2018 email situation between Dr. Latson and a parent. Ms. Evans-Paré determined they (ELR) needed to investigate Dr. Latson’s actions *after* the story made the newspaper and advised that the Superintendent’s main issue was that Dr. Latson was nonresponsive when Mr. Oswald attempted to get ahold of him. Ms. Evans-Paré said after the article hit the newspaper it was known that Dr. Latson was going on vacation, but there was a question as to whether Dr. Latson had completed a TDE leave request form documenting he was going on vacation. Ms. Evans-Paré said there was a spreadsheet in the Regional Office showing Dr. Latson was going on vacation, but it was unknown if he had asked for the time off. Ms. Evans-Paré explained that she gave Mr. Pinkos the investigation parameters based on her “10 years of experience defending these types of cases for the District, six years of experience of working these types of cases on the grievance level, and now almost two years as the Director of ELR.”⁵ The parameters were the TDE issue, did Dr. Latson violate policies or procedures by sending out an email to staff about his removal, and whether he violated policies or procedures by not responding to the Regional Office at a time of crisis. Ms. Evans-Paré said she could not recall how ELR received the investigation, but believes the request came from the Superintendent, Mr. Oswald, or Dr. La Cava.

Ms. Evans-Paré said she initially discussed assigning the case to Brenda Johnson with Ms. Johnson. Ms. Evans-Paré said Ms. Johnson told her she could not work the case because she had “a religious objection” **(NOTE: This statement in contradictory to the statement of Ms. Johnson who repeatedly and unequivocally testified she did not “recuse” herself for “religious reasons” she just was not comfortable doing the investigation based on workload and ethical concerns regarding the scope of the investigation where Latson was being investigated for not returning phone calls when other Principals had committed more serious misconduct and nothing happened to them. Ms. Johnson suggested outsourcing the work to a neutral party.)** Ms. Evans-Paré said she did not question Ms. Johnson’s religious beliefs so she called HR Manager Daron Davis. Mr. Davis had just been assigned a huge investigation so he could not take the case. Ms. Evans-Paré agreed that Mr. Davis could not take on the case because

⁵ As of the March 18, 2020 OIG interview

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of his other investigation. She then looked at which HR Manager was assigned to the area of the school and found it was Mr. Pinkos. Based on this reason she assigned the case to Mr. Pinkos. Mr. Pinkos told Ms. Evans-Paré he did not want to do the investigation, but made no other objection when he was assigned the investigation. Mr. Pinkos took the Latson case on August 1, 2019.

Ms. Evans-Paré said that at the time Ms. Johnson made her “religious objection”, Ms. Evans-Paré considered Johnson’s objection a recusal. **(Note: Ms. Johnson disputes this because she was never formally assigned the investigation therefore she did not recuse herself.)** Ms. Evans-Paré said that she was new to the position when Ms. Johnson made her religious objection and she had never dealt with this type of issue before.⁶ Ms. Evans-Paré said she looked up how a judge can recuse himself. She looked up the “Judicial Cannon of Ethics”⁷ and came up with a definition that she shared with her staff on August 15, 2019. Ms. Evans-Paré said she recalled the standard for an HR investigator’s recusal would require a significant personal connection to the accused or a key witness in the case.⁸ **(NOTE: The Florida Department of Education Office of Professional Practices Services’ “Guidelines for Investigations,” states “Independence/Objectivity: The person(s) investigating or reviewing the misconduct should be an impartial an unbiased party. If the person(s) assigned to the investigation is unable to be objective or may not be considered as someone who can be impartial, it is recommended that the investigation be reassigned to an impartial party.)”** Ms. Evans-Paré said that looking back she should not have accepted Ms. Johnson’s religious objection as a reason not to take the case.

Ms. Evans-Paré said that on or about August 19, 2019, Mr. Pinkos came to her office with a yellow sheet of paper and started reading from the paper. Ms. Evans-Paré said she was sitting behind her desk listening to Mr. Pinkos read reasons why he was not going to do the Latson investigation. Ms. Evans-Paré could not recall everything Mr. Pinkos said because she was in disbelief that one of her employees was in her office telling her he was not going to do his job. Ms. Evans-Paré said the basic reason Mr. Pinkos gave was that his wife worked for Mr. Keith Oswald. Ms. Evans-Paré

⁶ ELR did not have policies in place regarding investigations and recusals/independence prior to Ms. Evans-Pare taking the position almost four years ago. As of the publication of this report it still does not have such policies in place.

⁷ Presumably Ms. Evans-Paré’s researched either the Florida Code of Judicial Conduct, the Code of Conduct for United States Judges, or the American Bar Association’s Model Code of Judicial Ethics. However, none of these authorities are legally applicable to Human Resources Managers conducting internal investigations. The Florida Department of Education and the Society of Human Resource Management both have more applicable standards.

⁸ Curiously, the standard Evans-Paré developed did not address the standard for disqualification (recusal) based on a judge’s lack of impartiality, including the foundational requirement that a judge “...shall disqualify himself or herself in a *proceeding in which the judge’s impartiality might reasonably be questioned*, including but not limited to instances where the judge has a personal bias or prejudice concerning a party...” See Florida Code of Judicial Conduct at Canon 3E.(1)(a), the Code of Conduct for United States Judges at Canon 3(C)(1)(a), or the American Bar Association’s Model Code of Judicial Ethics at Canon 2 Rule 2.11(A)(1)

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said that was not a significant personal connection as they had discussed in the previous August 15, 2019, staff meeting because Mr. Oswald was not a subject of the investigation. Ms. Evans-Paré told Mr. Pinkos that if he discovered any violations by any other staff he needed to write her a memo and she would assign an investigation or ask for an outside investigation if the information merited investigation. Ms. Evans-Paré admitted that she loudly told Mr. Pinkos, "This is bullshit, this is bullshit Bob!" Ms. Evans-Paré said that after the meeting with Mr. Pinkos she went to Dr. La Cava and told him that she had lost her temper and had said "bullshit" to Mr. Pinkos two times. Dr. La Cava asked her if she was ever going to do it again. Ms. Evans-Paré said she would not and that she was mortified by what she said and asked Dr. La Cava to write her up. Dr. La Cava decided not to write her up. Ms. Evans-Paré said she apologized to Mr. Pinkos.

Ms. Evans-Paré said she was not in fear during the first meeting with Mr. Pinkos, but became afraid of him later that day at a second meeting when Mr. Pinkos came back into her office holding a case file. Ms. Evans-Paré was standing when Mr. Pinkos arrived because Mr. Pinkos had gotten so angry during the first meeting. Mr. Pinkos asked if they could talk now that they had both calmed down. Ms. Evans-Paré told him she had not calmed down because he told her he was refusing to do his job. Mr. Pinkos started to be "heated" again and walked around her desk towards her. Ms. Evans-Paré said Mr. Pinkos was physically within a foot from her and "screaming" at her. She told him he needed to back away from her. Mr. Pinkos walked away and stood outside her office door. He asked if that was far enough, to which she replied it was. Ms. Evans-Paré said she was shaken up by the encounter and had to leave the building and went home to calm down. Ms. Evans-Paré said Mr. Pinkos scared her when he got in her face.

Ms. Evans-Paré said she ultimately did the Latson investigation herself. She issued a report that was reviewed by the District's legal team and by outside counsel, attorney Tom Gonzalez. Evans-Paré said Gonzalez advised her the scope of the ELR investigation of Dr. Latson was "perfect" because if they (ELR) had gone back further there might have been "double jeopardy issues."

Ms. Evans-Paré said she had a meeting with Dr. La Cava where he asked her why her staff was at the HEC awards luncheon if they were under the gun to complete cases within 60 days. Dr. La Cava told her that HR Managers Jose Fred and Mr. Pinkos were at the luncheon all afternoon. Ms. Evans-Paré had no idea they attended the luncheon. Ms. Evans-Paré contacted Mr. Fred and Mr. Pinkos and told them she did not have a TDE request for either of them to attend the HEC luncheon. She stated she could not approve a TDE request after the fact so she told them they had to use personal leave to cover the time they were at the luncheon beyond their lunch hour. Ms. Evans-Paré directed them to use personal leave because their office was under the gun to finish cases and she had two of her investigators sitting at a luncheon that did not relate to their work.⁹

Mr. Pinkos was angry at the directive because he said the HEC luncheon was part of his job. Mr. Pinkos requested a meeting with Dr. La Cava. Dr. La Cava asked Evans-Paré what the meeting was about that Mr. Pinkos requested. She told Dr. La Cava Mr. Pinkos and Mr. Fred were upset

⁹ It should be noted that policy violations/concerns should be based on the violation alone and not whether the employee is current on work assignments.

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with her directive to use personal leave because they attended the HEC luncheon. Dr. La Cava told her to schedule the meeting for the last half of their next one-hour meeting. Ms. Evans-Paré said her meeting with Dr. La Cava and the meeting with Mr. Fred and Mr. Pinkos was also canceled.

Mr. Pinkos then sent an email saying he noticed the original meeting was for only half an hour, but he needed a full hour and he wanted to record the meeting. Mr. Evans-Paré said Dr. La Cava at this point told her he was staying out of it and told her that since Mr. Pinkos was one of her managers she needed to resolve the issue.

Ms. Evans-Paré said ultimately, Mr. Fred and Mr. Pinkos did not have to use personal leave. Ms. Evans-Paré said that her directive for them to use personal leave to attend the HEC luncheon had nothing to do with Mr. Pinkos' recusal or refusal to do the Latson investigation. She made the request because she did not know where her employees were.

OIG Comments:

- Mr. Pinkos clearly had a stated bias against Dr. Latson. He told Ms. Evans-Paré that he and other HR Managers thought Dr. Latson was “antisemitic” and questioned his ability to serve as a principal within the School District or even “Anchorage, Alaska.”
- Ms. Evans-Paré admittedly yelled either “This is bullshit, this is bullshit Bob!” or “Bullshit, bullshit, bullshit, bullshit, bullshit, bullshit, bullshit, bullshit, bullshit!” when Mr. Pinkos asked to recuse himself from the Latson case.
- Ms. Evans-Paré relied on the “Canons of Judicial Ethics”¹⁰ to determine when it was appropriate for someone to recuse themselves from an investigation. These canons apply to jurists and have no relationship to HR Managers conducting internal investigations.
- A Google search revealed a June 2016 article titled “*Keeping the Independence in Internal Investigations*” published by the Society for Human Resource Management (SHRM) that stated, “*The employer should ensure that the individual who conducts the investigation will objectively gather and consider the relevant facts.*” (Exhibit 10). The SHRM article provided more applicable guidance to HR professionals. Following this guidance, Mr. Pinkos clearly had a bias against Dr. Latson and his recusal was appropriate.
- The OIG reviewed the Florida Department of Education Office of Professional Practices Services’ “*Guidelines for Investigations*” that stated, “***Independence/Objectivity: The person(s) investigating or reviewing the misconduct should be an impartial an unbiased party. If the person(s) assigned to the investigation is unable to be objective or may not be considered as someone who can be impartial, it is recommended that the investigation be reassigned to an impartial party.***” (Exhibit 11)
- Ms. Evans-Paré testified during her interview with the OIG that she “*set the parameters of the investigation because she had looked into the information they had thus far and she*

¹⁰ See Florida Code of Judicial Conduct, Code of Conduct for United States Judges, or American Bar Association’s Model Code of Judicial Ethics, *supra* note 5

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was aware of the situations that had occurred after July 2019, when Mr. Keith Oswald was trying to reach Dr. Latson. Ms. Evans-Paré said she looked at the case from her legal background and determined that “right or wrong the Area Regional Office handled it the way they handled it” they did not give Dr. Latson any type of conference notes. Ms. Evans-Paré added that they handled it and ELR could not go back and investigate the 2018 email situation between Dr. Latson and a parent.” Additionally, Evans-Paré stated she, “ultimately did the investigation herself and issued a report that was reviewed by the District’s legal team and by outside counsel. The outside counsel (Tom Gonzalez) said the scope of the investigation was perfect because if they had gone back further there might have been double jeopardy issues.”

- According to the Pinellas County Office of Inspector General report, “*Vicki Evans-Paré (Evans-Paré), the Director of HR ELR, who conducted the investigation...indicated during the interview that when Fennoy asked her to investigate Latson, she determined she could not investigate the incidents that occurred in April 2018, as too much time had passed. Evans-Paré cited FS Section 1012.31 subparagraph 2 (b)1, “No such materials may be placed in a personnel file unless they have been reduced to writing within 45 days, exclusive of the summer vacation period, of the school system administration becoming aware of the facts reflected in the materials.” (Exhibit 12)*
- Ms. Evans-Paré provided two distinct explanations in two separate interviews as to why she did not fully investigate the Latson matter.
Explanation 1: The Regional Office “handled it like they handled it” and ELR could not “go back and investigate.” In support of this reason she added that outside legal counsel opined the scope was perfect because if they had gone back further there might have been double jeopardy issues.
Explanation 2: Florida Statute section 1012.31(2)(b)1 detailing the 45-day timeframe for reducing work performance materials to writing before placing them in an employee’s file prohibited her from investigating the April 2018 incidents involving Dr. Latson.
- Both explanations, while not mutually exclusive, are incongruent with the facts of the Latson case and Ms. Evans-Paré actions regarding Mr. Pinkos. Regarding her inability to investigate Dr. Latson, Evans-Paré stated “they (Regional Office) did not give Dr. Latson any type of conference notes.” In making this acknowledgement, Ms. Evans-Paré demonstrated she was aware that there was no prior documented “coaching” (or discipline) of Dr. Latson before the November 2019 investigation. Additionally, even if it was established that some other undocumented disciplinary action occurred, such activity would only preclude the District from taking further *disciplinary action* against Dr. Latson. Indeed, double jeopardy does not preclude HR from engaging in fact finding as the defense of double jeopardy in employment law scenarios does not prohibit investigations. Nor did Ms. Evans-Paré similarly apply the purported prohibition on investigations pursuant to section 1012.31(2)(b)1, Fla. Stat. to Mr. Pinkos’ recusal as discussed in Allegations 2 and 2a, *infra*.

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Allegation 1 Findings:

- Mr. Pinkos and Mr. Fred attended the October 11, 2019, HEC luncheon.
- Dr. La Cava questioned Ms. Evans-Paré as to why her staff attended the HEC luncheon when they were behind in their assignments.
- Ms. Evans-Paré was not aware Mr. Pinkos and Mr. Fred attended the HEC luncheon.
- Mr. Pinkos and Mr. Fred did not complete TDE requests and obtain permission from Ms. Evans-Paré to attend the luncheon.
- Ms. Evans-Paré directed that both employees use personal leave for attending the HEC luncheon.
- Ms. Evans-Paré issued her directive regarding the TDE request subsequent to being questioned by her supervisor about her staff's attendance and almost two months after Mr. Pinkos recused himself from the Latson investigation.
- Mr. Pinkos and Mr. Fred were ultimately not required to use personal leave for attending the HEC luncheon.
- Mr. Pinkos had not made a protected disclosure¹¹ of his own volition in a written signed complaint with the Inspector General prior to Ms. Evans-Paré's directive to take annual leave for attending the HEC Luncheon as required under Florida Statute section 112.3187 and Board Policy 3.28.
- Mr. Pinkos did not suffer any adverse employment action.

Allegation 2:

Chief of Human Resources Dr. Gonzalo La Cava and Director of Employee and Labor Relations Vicki Evans-Paré retaliated against Mr. Pinkos for making a protected disclosure under the Whistle-blower's Act and recusing himself from an ELR investigation into Dr. William Latson by issuing him a memorandum for Failure to Fulfill Job Responsibilities/Insubordination.

Allegation 2 – Unsubstantiated.

The OIG investigation concluded the allegation was unsubstantiated. The OIG determined there was insufficient evidence to show that Chief of Human Resources Dr. Gonzalo La Cava and ELR Director Vicki Evans-Paré retaliated against Mr. Pinkos for recusing himself from an ELR

¹¹ Florida Statute sections 112.3187 5(a-b) state, "NATURE OF INFORMATION DISCLOSED. —The information disclosed under this section must include:

(a) Any violation or suspected violation of any federal, state, or local law, rule, or regulation committed by an employee or agent of an agency or independent contractor which creates and presents a substantial and specific danger to the public's health, safety, or welfare.

(b) Any act or suspected act of gross mismanagement, malfeasance, misfeasance, gross waste of public funds, suspected or actual Medicaid fraud or abuse, or gross neglect of duty committed by an employee or agent of an agency or independent contractor."

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investigation into Dr. William Latson by issuing him a memorandum for Failure to Fulfill Job Responsibilities/Insubordination.

The OIG could not substantiate Allegation 2, namely the allegation of retaliation against Mr. Pinkos in violation of the Whistle-blower's Act, because the elements required to establish retaliation under the Whistle-blower's Act were not met based on the facts presented.

Allegation 2a:

Chief of Human Resources Dr. Gonzalo La Cava and ELR Director Vicki Evans-Paré took adverse personnel action against Mr. Pinkos by issuing him a memorandum for Failure to Fulfill Job Responsibilities/Insubordination because he recused himself from the Latson investigation.

Allegation 2a – Unsubstantiated as to Dr. La Cava/Substantiated as to Ms. Evans-Paré.

The OIG investigation concluded the allegation was substantiated as to Ms. Evan-Paré. The OIG determined that there was sufficient evidence to show ELR Director Vicki Evans-Paré took adverse personnel action against Mr. Pinkos by issuing him a memorandum for Failure to Fulfill Job Responsibilities/Insubordination because he recused himself from the Latson investigation.

The following is a summary of testimonies from persons interviewed as indicated:

Human Resources Manager Robert Pinkos: Mr. Pinkos said that on November 15, 2019, Mr. Pinkos met with Compensation Director Mark Mitchell and Ms. Evans-Paré. Mr. Pinkos was handed two documents. The first document was a memorandum labeled Failure to Fulfill Job Responsibilities/Insubordination (**Exhibit 3**) and the second document was a letter reassigning him to the South Regional Superintendent's Office (**Exhibit 4**) effective Wednesday, November 20, 2019. Mr. Pinkos signed for receipt of the memorandum. The memorandum was issued to him nearly three months¹² after he had recused himself from the Latson investigation. Mr. Pinkos said that documenting an employee months after the supervisor became aware of an area of concern is an "unacceptable HR practice and a clear violation of due process."

Human Resources Manager Brenda Johnson: Ms. Johnson reviewed the memorandum Ms. Evans-Paré gave Mr. Pinkos regarding his failure to complete his duties and insubordination. The OIG asked Ms. Johnson if the memorandum constituted a form of discipline. Ms. Johnson said that it did not and advised the memorandum was job "coaching" where a supervisor gives an employee a directive, but it is not considered formal discipline. Ms. Johnson said formal discipline starts with a verbal reprimand and proceeds to written reprimand, suspension, or termination. According to Ms. Johnson, formal discipline requires the employee be provided a predetermination hearing prior to formal discipline being taken, and this did not happen with Mr. Pinkos.

¹² Ms. Evans-Paré selectively misapplied section 1012.31(2)(b)1 regarding the 45-day timeframe to reduce facts to writing before placing them in an employee's personnel file as a prohibition on her ability to investigate and discipline Dr. Latson's conduct from April 2018, but did not apply the same prohibition to Mr. Pinkos.

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Director of Compensation and Employee Information Services Mark Mitchell: Mr. Mitchell said he was present when Ms. Evans-Paré presented Mr. Pinkos with a memorandum documenting him for insubordination. Mr. Mitchell said he did not have anything to do with drafting the memorandum. Mr. Mitchell said he saw the letter, but did not read it. Mr. Mitchell said he happened to be in Dr. La Cava's office on the day the letter was presented to Mr. Pinkos and Dr. La Cava and Ms. Evans-Paré asked him to sit in the meeting as a witness. Mr. Mitchell agreed to sit in on the meeting.

Chief of Human Resources Dr. Gonzalo La Cava: Dr. La Cava said he does not recall seeing the memorandum, but it was his understanding that the memorandum was like conference notes to remind Mr. Pinkos that he was an investigator and needed to complete the investigations she assigned to him. Dr. La Cava said the memorandum was not formal discipline. The OIG provided a copy of the memorandum to Dr. La Cava for review. Dr. La Cava said he was not involved in drafting or presenting the memorandum and he viewed it for the first time during the OIG interview.

Director of Employee and Labor Relations Vicki Evans-Paré: Ms. Evans-Paré recalled issuing Mr. Pinkos a memorandum in the presence of Mark Mitchell on November 15, 2019. Ms. Evans-Paré said the memorandum was not a form of discipline. The memorandum was conference notes. Ms. Evans-Paré said the memorandum took until November 2019 to be issued because she was busy with the Latson investigation ("doing Bob's (Pinkos') job") among her other duties. Ms. Evans-Paré said the memorandum stated her expectations of Mr. Pinkos and that he could not just decide to not do his job. Ms. Evans-Paré explained that Progressive Discipline¹³ starts with a verbal reprimand with a written notation, written reprimand, suspension, and termination. Evans-Paré indicated anything other than those four consequences were "coaching." Ms. Evans-Paré explained that the memorandum did not go into Mr. Pinkos' personnel file¹⁴ and it was not an adverse employment action. However, the memorandum was public record that she kept in her office to use when completing future performance appraisals.

The OIG contracted with labor and employment lawyer Arthur T. Schofield to complete a legal review (**Exhibit 8**) of the information obtained regarding Allegation 2 during this investigation.¹⁵ Mr. Schofield's legal opinion stated:

"The memorandum issued by Ms. Evan-Pare references Mr. Pinkos' "Failure to Fulfill Job Responsibilities/Insubordination": It memorializes events that occurred in August 2019, concludes that Mr. Pinkos "refused to perform an investigation, after [his] supervisor instructed [him] to do so and places Mr. Pinkos on notice of expectations of future assigned

¹³ The OIG did not find any policy detailing progressive discipline for District employees not working under a collective bargaining agreement.

¹⁴ According to Florida Statute 1012.31(4) "[t]he term "personnel file," as used in this section, means all records, information, data, or materials maintained by a public school system, in any form or retrieval system whatsoever, with respect to any of its employees, which is uniquely applicable to that employee whether maintained in one or more locations."

¹⁵ The OIG contracted with outside counsel to maintain independence and because the original legal counsel assigned to the OIG resigned from her position during the investigation.

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tasks. It was explained that this memorandum will not be part of Mr. Pinkos' personnel file but would be considered "coaching" and used in his performance appraisal.

It is the opinion of the undersigned that the memorandum is an "adverse personnel action." Section 112.3187(3)(c) of Florida's Public Whistleblower's Act defines "adverse personnel action" to mean: the discharge, suspension, transfer, or demotion of any employee or the withholding of bonuses, the reduction in salary or benefits, or any other adverse action taken against an employee within the terms and conditions of employment by an agency or independent contractor. § 112.3187(3)(c), Fla. Stat. (2013) (emphasis added).

In determining what constitutes an adverse employment action, Florida courts have followed federal precedent under Title VII of the Civil Rights Act of 1964. In Burlington N & Santa Fe Ry. Co. v. White, 548 U.S. 53, 71 (2006) the United States Supreme Court addressed what constitutes an "adverse employment action" in the context of a claim for retaliation. The plaintiff, a forklift operator who complained of sexual harassment by her immediate supervisor, was removed from her indoor job as forklift operator and reassigned to outdoor duty as a track laborer. She was also suspended without pay for thirty-seven days but eventually reinstated with back pay.

The question considered by the Supreme Court was whether these employment actions-transfer and suspension-amounted to forbidden retaliatory actions. The Court said: The anti-retaliation provision protects an individual not from all retaliation, but from retaliation that produces an injury or harm. As we have explained, the Courts of Appeals have used differing language to describe the level of seriousness to which this harm must rise before it becomes actionable retaliation. In our view, a plaintiff must show that a reasonable employee would have found the challenged action materially adverse, "which in this context means it well might have 'dissuaded a reasonable worker from making or supporting a charge of discrimination.'"

While this memorandum is not part of Mr. Pinkos' personnel file, it is a public record labeling him as being "insubordinate" accessible to any member of the public, news media outlets, and potential future employers of Mr. Pinkos. It will also be used in completing Mr. Pinkos' performance appraisal. It is unknown what, if any, impact the memorandum may have on that appraisal, but in light of the ruling in Burlington the question is whether a memorandum - one accessible to all labeling someone insubordinate and that could impact a performance appraisal -would "dissuade a reasonable worker from making [a complaint]."

It is the opinion of the undersigned that this memorandum may very well dissuade a reasonable employee from complaining."

Allegation 2 Findings:

- On November 15, 2019, Ms. Evans-Paré issued Mr. Pinkos a memorandum for Failure to Fulfill Job Responsibilities/Insubordination.

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- Dr. La Cava, Ms. Evans-Paré, and Ms. Brenda Johnson said the memorandum was not discipline and the memorandum was conference notes or employee coaching. However, Ms. Evans-Paré said she would use the memorandum when completing Mr. Pinkos' performance appraisal.
- Ms. Evans-Paré stated the memorandum was not placed into Mr. Pinkos' personnel file but the memorandum was a public record that was available to any member of the public upon request.
- Attorney Arthur Schofield opined during a telephone conference with the OIG that Mr. Pinkos' initial complaint that he was retaliated against for making a protected disclosure/Whistle-blower complaint was not valid.

Allegation 2a Findings:

Based on the information obtained, the OIG determined Ms. Evans-Paré took adverse personnel action against Mr. Pinkos in violation of Board Policy 3.02.5.a as a result of Mr. Pinkos' voluntary recusal from the Latson investigation.

Specifically:

- On November 15, 2019, Ms. Evans-Paré issued Mr. Pinkos a memorandum for Failure to Fulfill Job Responsibilities/Insubordination, however Ms. Evans-Paré previously allowed Ms. Johnson to recuse herself from the Latson investigation and did not issue a memorandum to Ms. Johnson for the same offense. Ms. Evans-Paré treated the employees' recusals differently and the treatment of Mr. Pinkos for his recusal was disparate.
- This adverse personnel action was taken against Mr. Pinkos two months and 27 days (88 days total) after the documented offenses, but only one week after the November 8, 2019, parking lot incident with Dr. La Cava.
- Ms. Evans-Paré misapplied Florida Statute section 1012.31(2)(b)1 when she claimed it prohibited her from *investigating* Dr. Latson, and ignored the same 45-day requirement when she issued a delayed memorandum to Mr. Pinkos that would later become both a public record and part of his personnel file as defined in section 1012.31(4), Fla. Stat.
- Dr. La Cava failed to take any action against Ms. Evans-Paré for her unprofessional conduct, including repeated use of the word "bullshit" towards Mr. Pinkos. The failure occurred even after Ms. Evans-Paré told Dr. La Cava to write her up. Dr. La Cava simply asked if she was going to ever do it again and Ms. Evans-Paré said she would not.
- Mr. Pinkos was issued a Failure to Fulfill Job Responsibilities/Insubordination memorandum when he recused himself pursuant to Evans-Paré's narrowly-tailored standard of a "*direct, personal and significant personal involvement with the accused or a critical witness*" that first disclosed to HR staff on August 15, 2019, by citing his wife's role as a subordinate of Mr. Oswald.
- According to the standards set by the Society for Human Resource Management (SHRM), the Association of Workplace Investigators (AWI), and even the "Judicial Canon of Ethics"

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Evans-Paré ostensibly crafted the recusal standard from, Mr. Pinkos' recusal was proper based on his bias and ethical concerns affecting his impartiality as an investigator.¹⁶

- Ms. Evans-Paré testified to the OIG the memorandum took until November 15, 2019, to be issued because she was busy with the Latson investigation among her other duties. However, Ms. Evans-Paré was able to find the time to write the memorandum, write the transfer order, and issue both documents to Mr. Pinkos within five working days of Mr. Pinkos and Dr. La Cava's parking lot incident.
- Ms. Evans-Paré further indicated that after consideration she would not have accepted Ms. Johnson's religious objection as a reason not to take the case.
- Based on Mr. Schofield's legal opinion it is clear that Mr. Pinkos suffered adverse employment action because the memorandum labels him as insubordinate, is public record, and could impact his performance appraisal.

Allegation 3:

Chief of Human Resources Dr. Gonzalo La Cava and Director of Employee and Labor Relations Vicki Evans-Paré retaliated against Mr. Pinkos for making a protected disclosure under the Whistle-blower's Act and recusing himself from an ELR investigation into Dr. William Latson, by transferring him from the Fulton Holland Educational Services Center (FHESC) to the South Regional Superintendent's Office.

Allegation 3 – Unsubstantiated.

The OIG investigation concluded the allegation was unsubstantiated. The OIG determined that there was insufficient evidence to show that Chief of Human Resources Dr. Gonzalo La Cava and ELR Director Vicki Evans-Paré retaliated against Mr. Pinkos for recusing himself from an ELR investigation into Dr. William Latson by transferring him from the Fulton Holland Educational Services Center (FHESC) to the South Regional Superintendent's Office.

The OIG could not substantiate Allegation 3, namely the allegation of retaliation against Mr. Pinkos in violation of the Whistle-blower's Act, because the elements required to establish retaliation under the Whistle-blower's Act were not met based on the facts presented.

Allegation 3a:

Chief of Human Resources Dr. Gonzalo La Cava and Director of Employee and Labor Relations Vicki Evans-Paré took adverse personnel action against Mr. Pinkos by transferring him from the FHESC to the South Regional Superintendent's Office because he recused himself from the Latson investigation.

¹⁶ Investigators' fairness and impartiality is paramount not only for the legitimacy of investigations but as fact witnesses in subsequent proceedings. Should Mr. Pinkos have continued with the investigation without recusal and his recorded biases were later exposed during a trial or adversarial administrative hearing, such a revelation would have negatively impacted not only his credibility as an investigator of the Latson matter, but the legitimacy of the entire investigation.

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Allegation – Unsubstantiated as to Dr. La Cava/Substantiated as to Ms. Evans-Paré.

The following is a summary of testimonies from persons interviewed as indicated:

Human Resources Manager Robert Pinkos: Mr. Pinkos said that on November 8, 2019, at or about 8:20 AM, he parked his car in Fulton-Holland Educational Services Center (FHESC) parking lot and was on his way to enter the building. As he approached the door to the building, he noticed Dr. La Cava as he exited his car. Dr. La Cava's parking spot was directly opposite the entry door to FHESC. Mr. Pinkos said he walked by his car as La Cava was getting out and asked if he was going to meet with him. Dr. La Cava responded, "I'm not going to meet with you." Dr. La Cava then told Mr. Pinkos to "meet with Vicki." Mr. Pinkos responded, "I already met with Vicki. Vicki is the problem. That is why I need to meet with you. Isn't that your job to meet with me?" Dr. La Cava responded, "I'm not going to meet with you," as he pointed his finger at Mr. Pinkos. Mr. Pinkos replied, "Don't wag your finger at me." Dr. La Cava looked at his finger, presumably unaware of his gesturing, and lowered his hand. Mr. Pinkos noticed Certification Analyst Jackie Richardson walking into FHESC. Mr. Pinkos said he nodded to her. Mr. Pinkos said he recognized that his voice was showing the frustration he felt. At this point, Dr. La Cava went to the back door of his car (driver's side) and said, "Don't confront me again at my car." Mr. Pinkos replied, "We both need to take a step back." Dr. La Cava then stated, "I'm going to hold back from saying what I'm thinking." At this point, Mr. Pinkos walked away and entered Fulton Holland.

Mr. Pinkos said that Ms. Evans-Paré was "vindictive" when she told him on November 15, 2019, that it would be his last day working at FHESC even though the transfer letter stated that his transfer would begin on November 20, 2019. (**Exhibit 4**)

Mr. Pinkos said he was the only HR Manager assigned to ELR that did not work at FHESC. Mr. Pinkos added his identification card had been deactivated for entry into FHESC. Mr. Pinkos said the deactivation was a further attempt to humiliate him because if he ever goes to FHESC he cannot walk in the building without going through security at the front desk. Mr. Pinkos said he was transferred and denied a meeting where he was going to report the misconduct of Ms. Evans-Paré. Mr. Pinkos said he never had the opportunity to officially report the harassment he was enduring. Mr. Pinkos said that his involuntary transfer to Boca Raton is a direct and proximate adverse employment action stemming from his engagement in good faith reporting and disclosure of wrongful conduct at the highest levels of the District, and he has clearly suffered from reprisal.

On November 14, 2019, one week after the parking lot incident with Dr. La Cava and one day before he was transferred to the South Region Office, Mr. Pinkos received a voicemail from HR Manager Mary Powers to call School Police Sargent Lockhart. Mr. Pinkos said that in his duties as an HR Manager, he frequently worked with the police. Mr. Pinkos said he called Sergeant Lockhart and it became clear she was not calling for his assistance on a particular case. Sergeant Lockhart said there were no allegations against Mr. Pinkos, but she still wanted to speak with him at her office at Turning Points. Mr. Pinkos informed her that he would not speak with her without representation and Sergeant Lockhart never called back. Mr. Pinkos' phone conversation with Sergeant Lockhart gave him cause for concern and he suspected Dr. La Cava was behind the call.

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Mr. Pinkos said it was odd for him to get a call from a police officer he did not know and one from Turning Points, a school he does not serve. Sergeant Lockhart would only tell Mr. Pinkos that it was a safety issue. Mr. Pinkos said he had little doubt that this was yet one more incident of harassment devised by Dr. La Cava to intimidate him. Mr. Pinkos said he believed that using the school police, as a conduit to harass him, was an abuse of his civil rights.

Mr. Pinkos said that on November 19, 2019, he received an email from HR Manager Germaine English requesting to meet with him because she was investigating complaints made by employees against him. Mr. Pinkos said he retained counsel and advised Ms. English to coordinate with his attorney for the interview. Mr. Pinkos said that after he retained an attorney the School District retained outside counsel to investigate him.

Human Resources Manager Brenda Johnson: Ms. Johnson said that Mr. Pinkos was currently assigned to the South Area. Ms. Johnson said Mr. Pinkos was one of two HR Managers that was not housed at FHESC. Mr. Pinkos was housed in FHESC until he was recently relocated to the South Area. Ms. Johnson said she was not involved in Mr. Pinkos being transferred to the South Area.

Director of Compensation and Employee Information Services Mark Mitchell: Mr. Mitchell said that he was present when Ms. Evans-Paré presented Mr. Pinkos with a letter reassigning him to the South Region Office. Mr. Mitchell said he did not have anything to do with drafting the letter. Mr. Mitchell said he saw the letter, but did not read it. Mr. Mitchell said he happened to be in Dr. La Cava's office on the day the letter was presented to Mr. Pinkos and Dr. La Cava and Ms. Evans-Paré asked him to sit in the meeting as a witness. Mr. Mitchell agreed to sit in on the meeting. Mr. Mitchell added that at one-point Ms. Evans-Paré stepped out to make copies of the letter for Mr. Pinkos. Mr. Pinkos told Mr. Mitchell "I think this is a good solution" regarding the transfer to the South Region Office.

Sergeant Michele Lockhart: Sergeant (Sgt.) Lockhart said that she recalled calling Mr. Pinkos on November 14, 2019. She spoke with him briefly over the telephone. Sgt. Lockhart said she called him to schedule an appointment so she could speak to him regarding some matters and concerns, but she was not specific with him as to what the matters and concerns were. Sgt. Lockhart assured Mr. Pinkos that the matter was not criminal and she just wanted to ask him about an incident that was concerning and she wanted to get his point of view. Sgt. Lockhart said the incident was regarding Mr. Pinkos raising his voice at another employee and being aggressive towards the other employee, but she did not specifically tell Mr. Pinkos that this was the reason for her request to meet with him. Sgt. Lockhart wanted to get his side of the story. Sgt. Lockhart said the other employee was Dr. La Cava. Sgt. Lockhart said Chief Kitzerow directed her to look into the incident. Chief Kitzerow told her Dr. La Cava expressed some concern about the incident and he needed her to make sure there were no safety issues or threatening concerns. Sgt. Lockhart said her job in the Behavioral Services Unit was to make sure everyone was safe and felt like they were not in harm's way so she was asked to make sure that was the case. Mr. Pinkos said he was not comfortable speaking to her without legal representation. Sgt. Lockhart said that was the extent

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of her conversation and she has not had any further contact with Mr. Pinkos. Sgt. Lockhart informed Chief Kitzerow of the conversation she had with Mr. Pinkos. A week later Chief Kitzerow informed her that Mr. Pinkos would most likely be moved to another location. Sgt. Lockhart said that this type of assignment was typical for her because she was tasked with completing threat assessments throughout the entire School District. Sgt. Lockhart said she did not write a report, nor did she complete the threat assessment and she took no further action on the matter.

Human Resources Manager Germaine English: Ms. English said that she recalled that on November 15, 2019, she told Mr. Pinkos that Ms. Evans-Paré wanted to meet with him. Ms. English said that Ms. Evans-Paré wanted to talk to Mr. Pinkos about re-assigning him to the south location. Ms. English said she did not take any part in Mr. Pinkos being reassigned to the south location. Ms. English added that Ms. Evans-Paré told her that Mr. Pinkos was being reassigned to the south location because of the investigation related to the incident between Mr. Pinkos and Dr. La Cava.

Ms. English recalled sending an email to Mr. Pinkos on November 19, 2019, asking Mr. Pinkos to schedule an interview regarding an investigation she was conducting. Ms. English said her investigation was about the incident between Mr. Pinkos and Dr. La Cava and an incident between Mr. Pinkos and Ms. Evans-Paré.

On November 8, 2019, Dr. La Cava and Ms. Evans-Paré told her about the alleged incident between Mr. Pinkos and Dr. La Cava, which was the same day the incident occurred. Ms. English said she obtained sworn statements from Dr. La Cava, Katrina Todd, and Jacquelyn Richardson. Dr. La Cava reported, “On 11/8/2019, *I parked my vehicle in my assigned spot between 8:35 and 8:45 and upon opening my driver side door, Mr. Bob Pinkos immediately came between my open door and myself and initiated a very animated and aggressive conversation while I was seated in my vehicle*” (**Quoting Exhibit 5.**)

Ms. Todd reported, “*When I arrive today at Fulton-Holland Education Service Center (FHESC), I noticed a man standing at Dr. La Cava's car blocking his ability to exit his vehicle. I slowed down as I approached the building because I was not sure but it appears to be heated conversation. I then entered the building and ran into Jackie from the Certification Department. I stopped to speak to her and told her that there was an employee being aggressive outside.*” (**Quoting Exhibit 6.**)

Jacquelyn Richardson reported, “*I was walking through the atrium outside of A-152 when Katrina Todd entered the building this morning. Katrina said that someone was fighting (verbal) & it looked like it was going to get aggressive. She was obvious concerned and I inquired as to whether we needed to call the police*” (**Quoting Exhibit 7.**)

Ms. English said she never interviewed Mr. Pinkos because he told her legal counsel represented him and the case was subsequently moved to an outside counsel for investigation. (**NOTE: This is consistent with Mr. Pinkos' statement that his investigation was assigned to an outside law**

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firm (Gunster Law Firm (Exhibit 14¹⁷)) after he advised Ms. English that he had retained legal counsel). Ms. English said Dr. La Cava and Ms. Evans-Paré assigned the investigation to her because she did not work closely with Mr. Pinkos and they wanted someone who would be objective.

(NOTE: The Pinellas County Inspector General's (Exhibit 12) report documented "There was a Conflict of Interest Related to HR Investigations." Subsequent to that report, on December 13, 2021, Ms. Evans-Paré wrote to the Pinellas County Inspector General (Exhibit 13) because she found "inaccuracies" in their report, specifically Ms. Evans-Paré wrote, "Second, the section "There Was a Conflict of Interest Related to HR Investigations" explored on page 14, is based on a false assumption. Germaine English did not investigate the altercation between Pinkos and a superior staff member. Ms. English merely took statements from two eyewitnesses immediately after the incident to preserve their recollections. Ms. English was selected because she performed a different function than Mr. Pinkos, and worked in a different wing on a different floor of the building. The investigation into the incident was conducted by an outside law firm (Gunster Law Firm). It is my understanding that your office was supplied with a copy of the investigative report." The information written by Ms. Evans-Paré's in the letter lacks credulity and is contradicted by the testimony of Dr. La Cava and Ms. English. Additionally, if Ms. English was not assigned the investigations she would not have interviewed witnesses and ultimately attempted to interview the subject of the investigation (Mr. Pinkos), which is typically the final step in an investigation. The investigation was clearly assigned to Ms. English and then re-assigned to the Gunster Law Firm after Mr. Pinkos retained legal counsel.)

Ms. English said she interviewed Katrina Todd and Jacquelyn Richardson because Dr. La Cava told her they were potential witnesses to the incident. Katrina Todd told Ms. English she saw the incident and described it as a heated conversation then told Ms. Richardson that Mr. Pinkos was aggressive. Ms. Richardson told Ms. English that Ms. Todd told her there was somebody fighting verbally and it looked like the situation was going to get aggressive.

Chief of Human Resources Dr. Gonzalo La Cava: Dr. La Cava said that on November 8, 2019, he pulled into his assigned parking spot in the parking lot at FHESC and when he opened his car door he looked up and Mr. Pinkos was standing over him. Dr. La Cava said he thought to himself "this might be the end of my life" because Mr. Pinkos was loud, aggressive, and he felt threatened and

¹⁷ The Gunster Law Firm Report of Investigation is included for informational purposes only. The OIG did not give the report itself evidentiary weight because not only was the purpose and scope of the report different from the OIG investigation, but because the report states on page 2 in footnote 2, "This Report and the information contained herein is not transmitted as 'fact' because the undersigned investigators have no personal knowledge regarding the events that occurred on the morning of November 8, 2019. Rather, what is included in this Report is a summary of the statements of the witnesses, and our opinions and conclusions regarding the information we received during the investigation process. Part of this Report includes our opinions based on our assessment of the witnesses' credibility and the existence of corroborative witness statements and other evidence." (Emphasis added.) The OIG gave appropriate weight to the sworn statements contained in the Gunster report as well as sworn statements taken during the course of the OIG investigation.

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in danger because of Mr. Pinkos' aggressiveness. Mr. Pinkos told him he needed to meet with him. Dr. La Cava told Mr. Pinkos that he needed to meet with Ms. Evans-Paré. Dr. La Cava said Mr. Pinkos walked around to the front of his car and allowed Dr. La Cava to exit his vehicle. Dr. La Cava said Mr. Pinkos was loud and aggressive so he told Mr. Pinkos that he could not talk to him like that. Mr. Pinkos told Dr. La Cava that he gets emotional about things like this. Dr. La Cava said he decided not to discuss anything anymore and just watched his hands looking to see if Mr. Pinkos was going to react in a violent manner. Mr. Pinkos walked away.

Dr. La Cava said he felt threatened by the confrontation so he contacted Police Chief Frank Kitzerow the same day. **(NOTE: This statement conflicts with that of Chief Kitzerow, who said he sought out Dr. La Cava after hearing about the incident.)** Chief Kitzerow told La Cava they might want to do a threat assessment of Mr. Pinkos. Chief Kitzerow assigned a female detective from the Behavioral Assessment unit to do a threat assessment. Dr. La Cava said Mr. Pinkos refused to meet with the detective.

Dr. La Cava said that Ms. Evans-Paré decided to transfer Mr. Pinkos to the South area at this time because school police were not able to complete a threat assessment after the November 8, 2020, parking lot confrontation. Dr. La Cava said the transfer was made to make sure everyone felt comfortable coming to work. Dr. La Cava said he believed the transfer was only until the completion of the investigation **(NOTE: This contradicts Ms. Evans-Paré's testimony that the transfer was permanent.)** Dr. La Cava said the transfer was done because he felt threatened and in no way was it to "get Bob."

Dr. La Cava said he saw a woman walk by after his confrontation with Mr. Pinkos and decided to get her name (Jackie Robinson) because she may have to provide a statement about what had just occurred because he was going to turn this over to someone. Dr. La Cava said he called Germaine English and explained what had just occurred. Ms. English told him she would investigate the matter. Dr. La Cava said that Ms. English was assigned the investigation, but after consulting with the legal department, the investigation was sent out to a law firm to investigate.

Director of Employee and Labor Relations Vicki Evans-Paré: Ms. Evans-Paré said on November 8, 2019, Dr. La Cava called her into his office. Dr. La Cava told her that he was parking his car and when he opened the car door there was a man standing in his door. The man yelled at him and blocked him from exiting. Dr. La Cava told her he did not initially realize who the man was, but then recognized it was Mr. Pinkos. Dr. La Cava also told her Mr. Pinkos was pacing, red in the face, and screaming, "How dare you not meet with me, who do you think you are!" Ms. Evans-Paré said Dr. La Cava was visibly shaken by the incident. Ms. Evans-Paré contacted school police to see if there were any cameras that recorded the incident. Ms. Evans-Paré said there were no cameras. According to Ms. Evans-Paré, Chief Kitzerow was concerned for the safety of Dr. La Cava because of the incident. Chief Kitzerow assigned an officer from the threat assessment team to look into the incident. Sergeant Lockhart contacted her and completed an hour-long interview. Ms. Evans-Paré said that school police did not complete the threat assessment because Mr. Pinkos refused to meet with Sergeant Lockhart. Ms. Evans-Paré said that the decision to get school police

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involved had nothing to do with Mr. Pinkos recusing himself from the Latson investigation or with his attempts to meet with Dr. La Cava to complain about her.

Ms. Evans-Paré said she decided to transfer Mr. Pinkos to the south area because of safety concerns. She did not feel comfortable having Mr. Pinkos in the building with her after the incident with Dr. La Cava and the arguments they had in her office. Ms. Evans-Paré said she is afraid of Mr. Pinkos. Ms. Evans-Paré said the transfer is permanent (**NOTE: This statement is contradictory to Dr. La Cava's statement.**) Ms. Evans-Paré explained that she asked him to leave the District Headquarters on November 15, 2019,¹⁸ even though the transfer was effective on November 20, 2019, because he was going on vacation and she wanted him to be set up for work on the day he returned from vacation. Ms. Evans-Paré said she in no way intended to demean or embarrass Mr. Pinkos by having him leave on November 15, 2019, she just wanted to make sure he was set up when he returned from the vacation. Had he not been going on vacation the next day she would not have asked him to move his stuff that day. Ms. Evans-Paré said she did not transfer Mr. Pinkos to the South Area because he recused himself from or refused to do the Latson investigation and wanted to file a complaint against her with Dr. La Cava. The transfer was a safety issue and at the time of the transfer, the investigation and threat assessment had not been completed. Ms. Evans-Paré said that Mr. Pinkos still kept the same duties and responsibilities as he had while working at the District Headquarters. Ms. Evans-Paré said Mr. Pinkos had not suffered any negative employment action because of his transfer.¹⁹ Ms. Evans-Paré added that Mr. Pinkos' identification card was deactivated in regards to entry into FHESC at the recommendation of Chief Kitzerow, because he was being transferred for safety issues and management needed to know whenever he was in the building.

She and Dr. La Cava decided to assign Germaine English to start the investigation, but "figured it would have to be sent out." (**Note: This statement is contradicted by Dr. La Cava's and Ms. English's testimony. Ms. English was assigned the investigation and completed it to the point of trying to schedule an interview with the subject of the investigation (Mr. Pinkos), which is typically the final step in an investigation. Ms. English called Mr. Pinkos on November 19, 2021, which was 11 days after the incident and her being assigned the investigation and four days after his transfer. The investigation was clearly assigned to Ms. English and then re-assigned to the Gunster Law Firm after Mr. Pinkos retained legal counsel.**) She assigned Ms. English immediately because Dr. La Cava had the names of witnesses that needed to be interviewed quickly before word spread through the building. Ms. Evans-Paré said the decision to get Ms. English involved had nothing to do with Mr. Pinkos recusing himself from the Latson investigation or with his attempts to meet with Dr. La Cava to complain about her. Ms. Evans-Paré said they made those decisions because it was a safety issue. Ms. Evans-Paré said the

¹⁸ This was one week after the parking lot incident.

¹⁹ Labor and employment lawyer Arthur Schofield indicated, "It is the opinion of the undersigned that the change of duty is an "adverse employment action." Even before the ruling in *Burlington*, at least one court in Florida found that a transfer resulting in a longer commute to and from work constitutes an "adverse employment action." See Exhibit 8 at page 4.

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investigation was ultimately sent outside the School District to a law firm to ensure it was done without an actual or perceived bias.

Purchasing Technician Katrina Todd: Ms. Todd said that she recalled seeing one man (Mr. Pinkos) standing over another man (Dr. La Cava) sitting in his car in the parking lot not allowing the second man to get out of his car. Ms. Todd said the man outside the car was yelling and standing over Dr. La Cava. Ms. Todd said she was concerned there may be a physical confrontation or that something bad was going to happen. Ms. Todd described Mr. Pinkos' behavior as aggressive behavior.

Police Chief Frank Kitzerow: Chief Kitzerow stated that in November 2019, there was some type of confrontation in the parking lot at the School District. The incident came to his attention in a couple of ways. Chief Kitzerow said the confrontation was so loud that some employees could hear it in the building and it sounded like it was escalating. Chief Kitzerow said a couple of employees came to him and said they heard the confrontation. Chief Kitzerow recalled that his administrative assistant (Kristin Burke) told him about the incident, but he did not know if she heard it, or whether she was inside or outside the building. Chief Kitzerow went to the parking lot, but the incident had ended by the time he arrived. Based on the information he received that Dr. La Cava and another person (he did not know the identity of at the time) were involved, he contacted Dr. La Cava to find out what had occurred.

Chief Kitzerow said he looked into the incident through "an official police perspective" because he did not know what had happened in the parking lot. Through his conversation with Dr. La Cava and witness accounts, he found that Dr. La Cava was getting out of his vehicle when another person confronted him. Chief Kitzerow did not know the specifics of what was said during the altercation. Chief Kitzerow asked Dr. La Cava if he felt safe. Dr. La Cava said he was not sure so Chief Kitzerow assigned his behavioral services detective (Sgt. Lockhart) to follow up with Dr. La Cava to complete a threat assessment and recommended that based on the confrontation that these two employees not work in the same area together until they could find out exactly what was going on. Chief Kitzerow made this recommendation to avoid an escalation into violence. Chief Kitzerow said Mr. Pinkos' transfer was done at his recommendation. **(Note: Mr. Pinkos worked in FHESC in close proximity to Dr. La Cava for one week before the decision was made to transfer him.)** The OIG asked Chief Kitzerow why Sgt. Lockhart did not complete the threat assessment and write a report. Chief Kitzerow stated Sgt. Lockhart should have written a report and he would look into it and provide a copy of her report if he located the report.

On September 2, 2020, the OIG followed up via email with Chief Kitzerow regarding the threat assessment report. Chief Kitzerow responded: "*It is my understanding that the detective did not make an official report on this case. By way of this email, I am copying the Division Commander, Captain Michael Waites on our correspondence so that he can confirm that no police report was written in this matter.*" Captain Michael Waites responded by saying: "*No report was prepared as Mr. Pinkos declined to meet and speak with the Detective.*"

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The OIG contracted with attorney Arthur T. Schofield to complete a legal review of the information obtained during this investigation (**Exhibit 8**). Mr. Schofield's legal opinion stated:

"The change of duty moved Mr. Pinkos' work from 3300 Forest Hill Boulevard, West Palm Beach, to 1790 N.W. Spanish River Boulevard, Boca Raton. According to the letter addressed to Mr. Pinkos, he resides at 902 Whipporwill Trail, West Palm Beach Florida. Prior to the change of duty Mr. Pinkos' commute to work was 15 minutes (30-minute round trip) traveling 7.4 miles; the change increased the commute to 37 minutes (1-hour 14-minute round trip) traveling 31.3 miles. Also, prior to the change of duty Mr. Pinkos was able to travel secondary roads. With the change of location Mr. Pinkos will have to travel Interstate 95 or the Florida Turnpike, incurring tolls.

It is the opinion of the undersigned that the change of duty is an "adverse employment action." Even before the ruling in Burlington, at least one court in Florida found that a transfer resulting in a longer commute to and from work constitutes an "adverse employment action."

In Gibbons v. State Pub. Emps. Relations Comm'n, 702 So. 2d 536 (Fla. 2d DCA 1997), an employee filed an Unfair Labor Practice charge alleging that his employer retaliated against him for union activity by transferring him to an office more than fifty miles away from his present office. Id. at 536. Relying on federal case law, the Second District said: [P]roof of a prima facie case of retaliation requires a showing that: 1) the plaintiff was engaged in protected activity; 2) the plaintiff was thereafter subjected by his employer to an adverse employment action; and 3) there is a causal link between the protected activity and the adverse employment action.

In Gibbons, the court found that the employee had sufficiently alleged prima facie showing of unlawful retaliation based solely on a longer commute.

It is the opinion of the undersigned that this change of duty station may very well dissuade a reasonable employee from complaining."

Allegation 3 Findings:

Regarding the Transfer to the South Area:

- On November 8, 2019, Mr. Pinkos confronted Dr. La Cava in the FHESC parking lot that caused Dr. La Cava and Ms. Evans-Paré to feel unsafe with Mr. Pinkos working in the building.
- Ms. Evans-Paré transferred Mr. Pinkos one week after the parking lot incident Mr. Pinkos initiated towards Dr. La Cava and 88 days after he recused himself from the Latson investigation.
- Mr. Pinkos refused to be interviewed without counsel for Sergeant Lockhart's threat assessment.
- School police did not complete the threat assessment.

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- Mr. Pinkos was transferred for “safety reasons” at the recommendation of Chief Kitzerow.
- Mr. Pinkos’ job duties and responsibilities remained the same.
- Based on Mr. Schofield’s legal opinion Mr. Pinkos suffered adverse employment action by being forced to commute for a longer distance while incurring additional financial costs.
- However, the OIG determined Mr. Pinkos did not suffer from retaliation per the Whistle-blower statute, because Mr. Pinkos had not made a protected disclosure of his own volition in a written signed complaint with the Inspector General prior to Ms. Evans-Paré’s issuing him the transfer as required by Florida Statute section 112.3187 and Board Policy 3.28.

Regarding being investigated by school police

- After the parking lot incident, Chief Kitzerow was concerned and assigned Sergeant Lockhart, a member from his Behavioral Assessment Unit, to complete a threat assessment of Mr. Pinkos.
- Sergeant Lockhart did not contact Mr. Pinkos until six days after the parking lot incident.
- Mr. Pinkos refused to speak with Sergeant Lockhart without counsel present.
- School Police did not complete the threat assessment.
- School Police never initiated an investigation against Mr. Pinkos.
- School police neither documented the threat assessment, nor issued a report that made a final determination as to whether Mr. Pinkos was actually a threat to Dr. La Cava, Ms. Evans-Paré, or any other District employee.
- School police created no records that necessitated Mr. Pinkos’ transfer.

Regarding being investigated by Germaine English

- Dr. La Cava and Ms. Evans-Paré contacted Germaine English contemporaneously to the parking lot incident and almost three months after he recused himself from the Latson investigation.
- The initiating of a personnel investigation based on Mr. Pinkos’ actions appear to be an appropriate action that would have been initiated against any District employee who behaved as Mr. Pinkos allegedly behaved. However, a conflict of interest could be present when an employee is assigned to investigate another employee within their same department. That conflict was further pronounced when one of the subjects of the investigation (Dr. La Cava) was the investigator’s (Ms. English) executive supervisor.

Allegation 3a Findings:

Based on the information obtained, the OIG concluded Ms. Evans-Paré took adverse personnel action against Mr. Pinkos. Specifically:

- On November 15, 2019, Ms. Evans-Paré issued Mr. Pinkos a letter completing a transfer to the South Area Superintendent’s Office to be effective on November 20, 2019.
- Mr. Pinkos was transferred at the recommendation of Chief Kitzerow and because Dr. La Cava and Ms. Evans-Paré did not feel safe working close to him.

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- Dr. La Cava stated the transfer was temporary until the school finished their investigation, but Ms. Evans-Paré said the transfer was permanent.
- Whether temporary or permanent this action was taken without the assigned threat assessment being completed pursuant to the School District's Threat Assessment Guide (**Exhibit 9**).
- School Police did not contact Mr. Pinkos to complete the threat assessment until six days after the parking lot incident.
- School Police never completed the threat assessment nor did they document the parking lot incident in a police report.
- Mr. Pinkos' transfer caused Mr. Pinkos' expenses and commute time to increase due to the additional travel necessary to travel to and from work.
- The reason provided for Mr. Pinkos' transfer, which were, the feelings of fear of working with Mr. Pinkos on the part of Dr. La Cava and Ms. Evans-Paré are not supported by actions taken after the incident. Specifically:
 - Mr. Pinkos worked in the FHESC from November 8 through November 15, 2019, without any additional incidents.
 - During this time, his office was approximately 25-30 feet from Dr. La Cava's.
 - Mr. Pinkos did not appear to have been much of a safety or security threat as school police ultimately did not complete the threat assessment.
 - School police never initiated an investigation against Mr. Pinkos
 - The parking lot incident was never documented by school police in any police reports.

Legal Review by OIG Counsel:

The following report was reviewed for legal sufficiency to determine if the facts presented met the requisite evidentiary standard to substantiate Allegations 2a and 3a.

It is well-settled law that a "preponderance" of the evidence is defined as "the greater weight of the evidence," or evidence that "more likely than not" tends to prove a certain proposition. See *Gross v. Lyons*, 763 So. 2d 276, 280 (Fla. 2000) (citing *American Tobacco Co. v. State*, 697 So.2d 1249, 1254 (Fla. 4th DCA 1997) (quoting *Bourjaily v. United States*, 483 U.S. 171, 175, 107 S.Ct. 2775, 97 L.Ed.2d 144 (1987))).

Black's Law Dictionary defines preponderance of the evidence as, "[t]he greater weight of the evidence, not necessarily established by the greater number of witnesses testifying to a fact but by evidence that has the most convincing force; superior evidentiary weight that, though not sufficient to free the mind wholly from all reasonable doubt, is still sufficient to incline a fair and impartial mind to one side of the issue rather than the other..." Quoting, *in part*, PREPONDERANCE OF THE EVIDENCE, Black's Law Dictionary (11th ed. 2019).

Considering the totality of circumstances regarding the events reported herein and the independent legal opinion of employment lawyer Arthur Schofield, the instant investigation report contains sufficient factual evidence to conclude Dr. La Cava and Ms. Evans- Paré violated Board Policy

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3.02.5.a by taking adverse personnel action against Mr. Pinkos. The adverse personnel action was manifested in the November 15, 2019, memorandum and the accompanying transfer to the South Superintendent's Regional Office.

The greater weight of the evidence demonstrates that Mr. Pinkos' voluntary recusal from the Latson investigation was supported by: (1) his expressed bias toward Dr. Latson, (2) Mr. Pinkos' opinions regarding the District's prior actions (or lack thereof) regarding Dr. Latson's conduct, and (3) Mr. Pinkos' reasonable ethical concerns discovered during his good-faith attempt to investigate Dr. Latson as directed. Noteworthy is the fact Mr. Pinkos' recusal was only initiated after Ms. Evans-Paré instructed HR staff on the basis for recusal.

The evidence contained in the report reveals Mr. Pinkos' recusal set into motion a series of events that ultimately caused Evans-Paré to issue a severely delayed memorandum addressing Mr. Pinkos' purported failure to perform job duties and insubordination. When compared to the latitude Evans-Paré granted to HR Manager Brenda Johnson to recuse herself (for reasons Johnson disputed) from the Latson case, a review of her actions not only raises credibility issues for Ms. Evans-Paré, but renders her treatment of Mr. Pinkos via the delayed memorandum even more disparate.

A critical review of the circumstances surrounding the November 8, 2019, confrontation between Mr. Pinkos and Dr. La Cava support the allegation that although Mr. Pinkos behaved aggressively when he yelled at Dr. La Cava in the parking lot, the more persuasive and convincing force and effect of the entire evidence in the report demonstrates the expressed "safety issue", ostensibly justifying Mr. Pinkos' transfer, appears pretextual.

Although testimony from Ms. Evans-Paré, Dr. La Cava, and Chief Kitzerow himself stated Pinkos' transfer was recommended by Chief Kitzerow, that fact alone is not dispositive. Scant evidence exists to prove Mr. Pinkos' transfer was executed to maintain workplace safety by eliminating a legitimate threat. The greater weight of the evidence belies the notion Evans-Paré transferred Mr. Pinkos due to safety concerns premised only on violence prevention. This evidence includes the timing and manner of the transfer notice²⁰ as well as other surrounding circumstances including: (1) multiple witnesses' testimony – none of which indicated Mr. Pinkos acted violently or threatened violence, (2) the delayed of initiation and non-completion of a threat assessment, (3) School Police's lack of any substantive, documented evidence that Mr. Pinkos was, in fact, a threat or safety concern, and (4) Mr. Pinkos' continued work in an office mere feet away from Dr. La Cava for a week following the incident.

Based on the existing legal authority and in light of the fact Mr. Pinkos was not subject to mandatory progressive discipline pursuant to a collective bargaining agreement or otherwise, the

²⁰ On November 15, 2019, Evans-Paré provided the transfer letter to Mr. Pinkos. This was seven days after the parking lot confrontation, however she required him vacate the FHESC that day which was *five days earlier* than the scheduled November 20, 2019, transfer date indicated in the letter. The transfer letter and inconsistent transfer directive was coupled with a memorandum for failure to fulfill job responsibilities and insubordination for his voluntary recusal from the Latson investigation that occurred nearly 3 months prior.

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greater weight of the evidence suggests that Ms. Evans-Paré's memorandum, while labeled "conference notes" or "coaching" effectively constituted employee discipline. Any classification of the memorandum as non-disciplinary conference notes rather than a written reprimand (or a verbal reprimand with written notation delayed 88 days), despite existing as a public record labeling Mr. Pinkos' recusal a "failure to perform" created for use in future employee appraisals, appears a phantom distinction. Labels notwithstanding, the facts illustrate the memorandum and simultaneous transfer directive executed five days earlier than the indicated transfer date, constituted adverse personnel action that negatively affected Mr. Pinkos and could potentially deter other HR employees from recusing themselves from investigations or reporting ethics violations.

INVESTIGATION CONCLUSION

The OIG concluded that Allegation 1, Allegation 2, and Allegation 3 were **unsubstantiated**. The OIG investigation established the following:

- Mr. Pinkos never filed a written and signed complaint against Ms. Evans-Paré with her supervisor, the Inspector General, or any member of District Management prior to any of the alleged retaliatory actions taken by Ms. Evans-Paré or Dr. La Cava.
- Mr. Pinkos could not be retaliated against for making a protected disclosure since he never made a protected disclosure prior to any of the alleged retaliatory actions taken by Ms. Evans-Paré and/or Dr. La Cava.
- On January 15, 2020, Mr. Pinkos submitted a complaint via his attorneys to the OIG.
- The OIG determined Mr. Pinkos did not suffer from retaliation because Mr. Pinkos had not made a protected disclosure of his own volition in a written signed complaint with the Inspector General prior to any of Ms. Evans-Paré's actions as required by Florida Statute section 112.3187 and Board Policy 3.28.
- The Florida Whistle-blower's Act's intent is to prevent agencies or independent contractors from taking retaliatory action against an employee who reports to an appropriate agency violation of law on the part of a public employer or independent contractor that create a substantial and specific danger to the public's health, safety, or welfare. It is further the intent of the Legislature to prevent agencies or independent contractors from taking retaliatory action against any person who discloses information to an appropriate agency alleging improper use of governmental office, gross waste of funds, or any other abuse or gross neglect of duty on the part of an agency, public officer, or employee. See §112.3187(2), Fla. Stat.
- The OIG reviewed the allegations in the complaint submitted by Attorney Allison Duffie on behalf Mr. Pinkos to determine if Mr. Pinkos' complaint met the statutory threshold for him to be considered a Whistle-blower.
- The OIG determined that allegations in Mr. Pinkos' complaint did not meet the statutory threshold for him to be provided Whistle-Blower status.

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- The Whistle-blower's Act does not allow for a complainant to claim retaliation for making a protected disclosure when the alleged retaliation took place before the protected disclosure was made.
- School Board Policy 3.28.7 states, "**Protection from Adverse Personnel Action or Retaliation.** *This policy protects employees and other persons who disclose information on their own volition in a written and signed complaint with the Inspector General; who initiate a complaint through the Inspector General's Hotline; who are requested to participate in an investigation, hearing or other inquiry conducted by the Superintendent, School Board, state agency or federal government; who refuse to participate in any adverse action prohibited by this policy; or, who file a written complaint to their supervisors.*"
- School Board Policy 3.28.7.a states, "**Investigation of Employees' Complaints.** *An employee, whistleblower who believes that she or he has been retaliated against or had adverse action taken against him or her shall file a written complaint with the Office of Inspector General within thirty (30) working days of the alleged retaliation. Any complaint of adverse personnel action or retaliation will be promptly investigated by the Office of Inspector General and receipt of same shall be acknowledged within five (5) business days. If the employee's allegations of adverse personnel action or retaliation are substantiated, appropriate corrective measures shall be taken by the Superintendent, Board or Department Head.*"

The OIG concluded that Allegation 2a, and Allegation 3a as to Ms. Evans-Paré were **substantiated**. The OIG investigation established the following:

- School District Policy 3.02.5.a. states,

"School Board Policy 3.02 - Code of Ethics:

5. Actions Prohibited

- a. *The School Board, its employees and agents, are prohibited from taking retaliatory action or adverse personnel action against any employee who reports violations or discloses information under this policy. (Emphasis added.)*

Had there been a valid concern regarding Mr. Pinkos, prudent actions may have included:

1. Immediately sending Mr. Pinkos home to work remotely,
2. A timely threat assessment be completed and not at the option of Mr. Pinkos. If the assessment could not immediately be completed the school police would have additional time as Mr. Pinkos would not be working in the building, and

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3. If the incident was serious and a threat was evident, school police and building security should have been notified as Mr. Pinkos' wife would still have unrestricted access to the building.

Based on the information obtained, Ms. Evans-Paré took adverse personnel action against Mr. Pinkos. Specifically:

- On November 15, 2019, Ms. Evans-Paré issued Mr. Pinkos a memorandum for "Failure to Fulfill Job Responsibilities/Insubordination" and a transfer to the South Area Superintendent's Office. The memorandum became a public record and was intended to be used in Mr. Pinkos' future performance appraisals.
- Ms. Evans-Paré allowed Ms. Johnson to recuse herself from the Latson investigation and did not issue a memorandum to Ms. Johnson that alleged failure to fulfill job responsibilities and insubordination.
- Ms. Evans-Paré treated Mr. Pinkos' and Ms. Johnson's recusals differently and the treatment of the employees was disparate.
- This adverse personnel action was taken against Mr. Pinkos nearly three months (88 days) after the documented offenses, and one week after the parking lot incident with Dr. La Cava.

RECOMMENDATIONS

During the course of this investigation, the OIG learned that the School District does not have a policy regarding Progressive Discipline and/or Discipline for administrators.

The OIG recommends the Superintendent review the actions of Ms. Evans-Paré in regards to violating School District Policy 3.02 5. a and take any action deemed appropriate.

The OIG recommends that the Superintendent or his designee create a policy regarding Progressive Discipline and/or Discipline for employees that are not subject to mandatory Progressive Discipline pursuant to a collective bargaining agreement.

The OIG recommends that Dr. La Cava or his designee create a detailed policies and directives manual for HR Managers handling investigations for ELR to follow. The policies and directives should include how and when an HR Manager can and should recuse themselves when issues of independence or conflicts of interest arise in investigations. Additionally, it is recommended that Dr. La Cava seek to update the job descriptions of HR Managers to include the handling of personnel investigations.

The OIG further recommends that Chief Alexander ensure that all future assigned threat assessments are fully completed within the standards issue by School District Policy 5.1815, the Marjory Stoneman Douglas High School Public Safety Act, and the School District's Threat Assessment Guide, and further require a written report documenting the outcome of all threat assessments.

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AFFECTED PARTY NOTICE

In accordance with School Board Policy 1.092.9.b.iv, on January 6, 2022, Dr. Gonzalo La Cava and Ms. Vicki Evans-Paré were notified of the investigative findings and provided with an opportunity to submit a written response by February 4, 2022.

The OIG received responses from Dr. La Cava and Ms. Evans-Paré on January 28, 2022. The OIG is unable to attach the response from Dr. La Cava due to confidentiality provisions in Florida Statutes. The rebuttal from Ms. Evans-Paré is attached in its entirety (**Exhibit 16**).

OIG RESPONSE TO MS. EVANS-PARÉ'S REBUTTAL

To clarify authority and legal sufficiency arguments raised in Ms. Evans-Paré's rebuttal to the draft investigative report, the OIG provides the following responses.

Regarding Ms. Evans-Paré's assertion the OIG lacks jurisdictional authority to investigate violations of School Board Policy 3.02 – Code of Ethics

OIG RESPONSE: The April 7, 2021 amendments to Board Policy 1.092 did not expand OIG authority. Instead, the amended policy required District employees to **report** specific ethical violations to the OIG. (See 1.092.6.a – Employee Responsibilities.)

The District OIG has the express authority, duty, and responsibility to investigate any abuse, wrongdoing, or misconduct in the form of School Board Policy violations. (See Policy 1.092.5.a.i-ii.) These responsibilities and duties exist regardless of which District department was assigned to maintain and update the policies alleged to have been violated.

Regarding Ms. Evans-Paré's assertion the OIG investigation ended when the former IG and former Counsel to the IG determined the initial complaint did not meet Whistle-blower requirements.

OIG RESPONSE: The former IG and Counsel to the IG determined Mr. Pinkos' allegation, as reported, was not a "protected disclosure" as defined by Florida's Whistle-blower Act, and therefore a Whistle-blower Investigation was not appropriate. However, the former IG and former Counsel to the IG further determined the allegation warranted a non-whistle-blower investigation. The investigation remained active from receipt of the initial complaint until publication of the instant report.

Regarding Ms. Evans-Paré's assertion Mr. Pinkos didn't make a protected disclosure until his January 15, 2020, complaint to the OIG and therefore any actions Ms. Evans-Paré took before that date could not constitute an adverse personnel action in violation of Policy 3.02.5.a.

OIG RESPONSE: Ms. Evans-Paré's rebuttal repeatedly conflates and misapplies the law and the OIG's findings regarding prohibited retaliation under section 112.3187, Fla. Stat. and adverse personnel action prohibited under Board Policy 3.02.5.a. These are separate allegations with unique elements and considerations. Accordingly, the OIG applied and analyzed the respective authorities for each allegation.

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Based on the facts presented, the OIG could not substantiate the allegation that Evan-Paré retaliated against Mr. Pinkos in violation of section 112.3187, Fla. Stat. However, sufficient evidence existed to substantiate allegations 2a and 3a regarding Ms. Evans-Paré's violation of Policy 3.02.5.a. based on adverse personnel action.

The undisputed facts demonstrated Mr. Pinkos disclosed information to Evans-Paré in the form of Mr. Pinkos' ethics-based concerns regarding: (1) the scope of the Latson investigation, (2) identification of District administrators' potentially unethical conduct learned of during his limited investigation of Dr. Latson, and (3) a prospective conflict of interest based on his wife's role as one of the identified administrator's subordinates. Mr. Pinkos disclosed this information to Ms. Evan-Paré in varying degrees on both August 15, 2019 and August 19, 2019. The latter disclosure included his recusal from the Latson investigation. During these disclosures, Ms. Evan-Paré was both Mr. Pinkos' direct supervisor and the correct channel for this information as Director of OPS.²¹ After receiving Mr. Pinkos' disclosures and in direct response thereto, Ms. Evan-Paré took adverse personnel action in the form of her November 15, 2019 memorandum and transfer letter.

Stated differently, Mr. Pinkos reported information regarding violations of Policy 3.02 to his supervisor, Ms. Evans-Paré, on August 15, 2019, and again on August 19, 2019. In direct, albeit delayed, response to this information, Ms. Evans-Paré took adverse personnel action against Mr. Pinkos on November 15, 2019, in violation of Policy 3.02.5.a.

OIG ACTIONS IN RESPONSE TO DR. LA CAVA AND MS. EVANS-PARÉ'S REBUTTAL

Based on information received the OIG contacted Ms. Evans-Paré via email for some clarification. Ms. Evans-Paré replied to the OIG. The questions and answer (**Exhibit 15**) are quoted below in their entirety.

"Given that the events in question occurred more than 2 years ago, I can only base my answers on my recollection and our usual practices.

Q1. How involved was Dr. La Cava in the decision to provide the memorandum to Robert Pinkos regarding Failure to Fulfill Job Responsibilities/Insubordination?

A1. As a Director, I may have discussed the issue with Dr. La Cava; however, I may have only mentioned it in passing. He was not involved in the drafting or substance of the memo. I do recall that when I mentioned I was providing Mr. Pinkos with a memo, he suggested that I utilize Mark Mitchell as a witness and not my secretary.

Q2. Did Dr. La Cava approve the issuing of the memorandum before it was issued?

²¹ See District Policy 3.02.4.a – Procedures for Reporting Ethical Violations and Misconduct

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A2. As a Director, I did not need the approval of my supervisor to provide directives, coaching, or even lower level discipline to an employee in my department. I do not recall asking for his approval in this case or any other times I have provided direction to employees.

Q3. If he was not involved did you issue the memorandum unilaterally?

A3. I am unclear as to your use of the word "unilaterally". It would seem that you are implying that I did not have the authority to direct the employees under my supervision. I provided Mr. Pinkos with the memo to address his refusal to perform an essential function of his job in contradiction to standards that I had set forth to all the HR managers in August 2019. I was not directed to do so by anyone. As a Director, I needed to address what I considered to be performance concerns with an employee.

Q4. How involved was Dr. La Cava in the decision to transfer Robert Pinkos to the South Area?

A4. At the recommendation of Chief Kitzerow, we transferred Robert Pinkos from FHESC. I consulted with Dr. Licata (Regional Superintendent) as to whether he had any concerns with housing Mr. Pinkos at the South Regional Offices. He voiced no concerns and was actually interested in having the HR manager for the South Region closer to the schools he served. (It is important to realize that moving the HR managers into the field was discussed with myself, Edwine Michel and Dr. La Cava soon after Mr. Michel was hired as the Director of Recruitment. Due to spacing issues, we contemplated moving the HR managers and HR partners into the areas they served.) I know that Dr. La Cava was informed but I have no independent recollection at this time as to whether he had any input into the decision. What I do recall was that due to the assault in the parking lot by Mr. Pinkos, Dr. La Cava attempted to remove himself from the situation to the extent he could.

Q5. Did Dr. La Cava approve of Robert Pinkos' transfer to the south area?

A5. I do not recall requesting approval from Dr. La Cava to move Mr. Pinkos to the Regional Offices. I know that he was advised. After Chief Kitzerow recommended that Mr. Pinkos be moved out of FHESC, the only logical choice at the time was the South Region as all of Mr. Pinkos' portfolio of schools were in that area. At the time (pre-pandemic), remote work was not an option. Additionally, as stated above, Dr. La Cava attempted to remove himself from any involvement with Mr. Pinkos.

Q6. If he was not involved or did not approve of the transfer did you transfer him unilaterally?

A6. Again, I am unclear as to the choice of the word "unilaterally". It would seem that you are implying that I made the decision without input or advice from anyone. I was not acting unilaterally in that the decision was based upon the advice of law enforcement."

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Based on the clarification received from Ms. Evans-Paré, the OIG has determined that as it pertains to Dr. La Cava, the findings for Allegations 2A and 3A have been changed from substantiated to **Unsubstantiated**. As it pertains to Ms. Evans-Paré the findings of Allegations 2A and 3A remain unchanged.


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Investigation Conducted by:

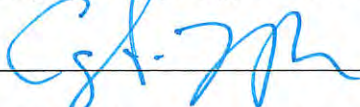
Oscar Restrepo, CIG, CIGI, CFE, Director of Investigations



2/14/2022
Date

Investigation Reviewed by:


Cary A. High, Esq., Counsel for Inspector General



2.14.22
Date

Investigation Approved by:

Teresa Michael, CIG, CIGI, CFE, Inspector General



2/14/22
Date

The evidentiary standard used by the School District of Palm Beach County OIG in determining whether the facts and claims asserted in the complaint were proven or disproven is based upon the preponderance of the evidence. Preponderance of the evidence is contrasted with “beyond a reasonable doubt,” which is the more severe test required to convict a criminal and “clear and convincing evidence,” a standard describing proof of a matter established to be substantially more likely than not to be true. OIG investigative findings classified as “substantiated” means there was sufficient evidence to justify a reasonable conclusion that the actions occurred and there was a violation of law, policy, rule, or contract to support the allegation. Investigative findings classified as “unfounded” means sufficient evidence to justify a reasonable conclusion that the actions did not occur and there was no violation of law, policy, rule, or contract to substantiate the allegation. Investigative findings classified as “unsubstantiated” means there was insufficient evidence to justify a reasonable conclusion that the actions did or did not occur and a violation of law, policy, rule, or contract to support the allegation could not be proven or disproven.

Activity #: 20-0012-I
OIG Staff: Oscar Restrepo
Date Rec'd: 01/15/20 Pages: 21
Rec'd: Allison Duffie
Redacted: Yes No N/A Req'd TBD
Exhibit/Reference #: 1

MEMORANDUM

To: Palm Beach County School District
Inspector General Lung Chiu

From: Allison B. Duffie, Esq.
Fred A. Schwartz, Esq.
Counsel for Robert Pinkos

Re: Whistleblower Complaint pursuant to Palm Beach County School Board
Policy 3.28

Date: January 15, 2020

Dear Mr. Chiu,

Please accept this correspondence as a formal Whistleblower Complaint being filed on behalf of Palm Beach County School District employee, Mr. Robert Pinkos. As a result of Mr. Pinkos's engagement in good faith reporting and disclosure of wrongful conduct, he has suffered from reprisal by adverse employment action.

On August 1, 2019, Mr. Pinkos met with Vicki Evans-Pare, Director of Employee and Labor Relations. At that time, Ms. Evans-Pare assigned Mr. Pinkos to the Dr. William Latson investigation.

Previously, as the story attained widespread media coverage, Ms. Evans-Pare and Mr. Pinkos had differing views regarding Dr. Latson's actions. Mr. Pinkos voiced that Dr. Latson should not be a principal anywhere for essentially being a Holocaust denier. Ms. Evans-Pare disagreed with him by stating Dr. Latson could be a principal elsewhere, just not at Spanish River High. Mr. Pinkos responded he should not be a principal anywhere, not even as far away as Anchorage, Alaska, and Ms. Evans-Pare stated that since he had such a strong opinion, Mr. Pinkos would not be assigned to the case investigating Dr. Latson.

Nevertheless, on the morning of August 1, Mr. Pinkos met with Ms. Evans-Pare and she assigned him the Latson case. He reminded Ms. Evans-Pare of her past comment that he would not be given the assignment, and requested he be allowed to recuse himself. Frustrated, Ms. Evans-Pare said, she "can't have another person recuse" because someone had already recused themselves and she needed Mr. Pinkos to take on the case.

Ms. Evans-Pare stated the investigation would be limited in scope, allowing Mr. Pinkos to only investigate 3 questions: (1) Did Dr. Latson submit PBSD form 0032 (Leave of Absence) for his absences of July 8, 9, 10, and 11, 2019? (2) Did Dr. Latson give notice

to his supervisor(s) via a Google Doc of his anticipated absences of July 8, 9, 10, and 11, 2019? (3) Did Dr. Latson effectively communicate with the Superintendent, Deputy Superintendent, Chief of Staff, their secretaries, as well as Regional Office staff et al from July 5-13, 2019?

Mr. Pinkos questioned Ms. Evans-Pare as to the narrow focus of the investigation and the obvious omission to comments attributed to Dr. Latson about the Holocaust. Ms. Evans-Pare then stated he would be like Robert Mueller by having limited investigative scope. Mr. Pinkos explained that constraining him to a limited scope made him uncomfortable, considering that investigations by their very nature often grow; in order to get a full understanding of an incident one should not restrict the scope of investigations. Dr. Latson's actions regarding his return of phone calls etc. was obviously related to the controversial Holocaust comments.

Mr. Pinkos reported that to his knowledge, no administrators reported to HR the wrongdoing of Dr. Latson's comments. Glenda Sheffield, Ian Saltzman, and Keith Oswald were top ranking administrators that didn't report the wrongdoing to HR as required by School Board Policy. It was his understanding that each of the aforementioned administrators knew about Dr. Latson's comments for about a year; yet none reported. Ms. Evans-Pare replied that those administrators chose to address the issues with Dr. Latson through training. Mr. Pinkos responded that training is not a substitute for their obligation to report. Clearly, at this point, it was clear that the investigation was not intended to collect all the available facts.

Mr. Pinkos expressed his concern that it appeared rather disingenuous that District administrators, who knew about Dr. Latson's comments for over a year and did not report the misconduct to HR, now were apparently filled with righteous indignation. Yet, no investigation into their actions were to be a part of an investigation regarding the deeply troubling comments about the Holocaust. Moreover, the comments attributed to Dr. Latson were not going to be looked at as part of the investigation.

Although Ms. Evans-Pare had already taken a statement from Keith Oswald, Deputy Superintendent of Schools, it was not notarized and contained grammatical errors. As such, Mr. Pinkos advised Ms. Evans-Pare that he would need to meet with Mr. Oswald to secure a notarized statement, and she then phoned the Deputy Superintendent's office and arranged for Mr. Pinkos to meet with Mr. Oswald later that day.

Mr. Pinkos met Mr. Oswald in his office. Mr. Oswald's statement was largely a timeline of communication he had with Dr. Latson from July 6 – July 10, 2019, including attachments of texts, email, and phone log. When Mr. Pinkos asked Mr. Oswald if he would like to provide more detail of his phone conversations with Dr. Latson, he declined and stated he became aware of Dr. Latson's Holocaust comments soon after the South Regional Office knew of the issue. Mr. Pinkos questioned Mr. Oswald as to why neither he nor anyone else reported the misconduct at the time they became aware. Mr. Oswald lamented there were a lot of things he wished he had done differently. Mr. Oswald stated he tried to work with Dr. Latson but when Dr. Latson didn't communicate with him in early

July 2019, the situation reached the point where he (Oswald) could no longer support Dr. Latson.

Mr. Oswald continued by explaining to Mr. Oswald that the study of the Holocaust was a State mandate but there was also an "opt-out" provision in State Statute that not many people knew about. Mr. Oswald stated that although he knew of the Holocaust comments for several months, it was incumbent upon the South Regional Superintendent, Dr. Ian Saltzman, to have notified HR of the wrongdoing.

In contrast to his statement, Mr. Pinkos explained that Instructional Superintendent Dr. Glenda Sheffield, and not Dr. Saltzman, was Dr. Latson's direct supervisor who had the primary responsibility to contact Mr. Pinkos. Importantly, Dr. Saltzman had recently retired from his position and, therefore, became a candidate to be a scapegoat. Mr. Pinkos advised Mr. Oswald that by overlooking Dr. Sheffield's responsibility and projecting that onto her supervisor was a ladder game that would likely lead back to him. After all, one would assume the highest-ranking administrator knowing of the wrongdoing would be the responsible party to notify HR.

As regional administrators know, Mr. Pinkos is typically contacted as the South Regional HR Manager when an employee commits an act of wrongdoing. Mr. Pinkos is known to document the wrongdoing and bring closure to the case, but he was not contacted by anyone regarding the William Latson email comments.

Also on August 1, Mr. Pinkos contacted IT Solutions Project Manager Rick Saturnini who confirmed there was no record of Dr. Latson submitting a leave of absence form in July 2019.

On August 2, South Regional Executive Secretary Nancy Villarreal emailed Mr. Pinkos a Google Doc entitled Schools Coverage South Region. The document indicates Dr. Latson entered "vacation" for July 8-11 and July 15-July 18.

On August 2, Mr. Pinkos met with Spanish River High School Administrative Assistant Lisa Core. Ms. Core provided a sworn statement that she had seen a hardcopy of Dr. Latson's leave form for his July absences.

On August 7, Ms. Evans-Pare emailed the representatives of Dr. Latson asking for any and all communication Dr. Latson had from July 5-13 with the Superintendent, Deputy Superintendent, Chief of Staff etc.

On or about August 13, Ms. Evans-Pare forwarded an email from Dr. Elfers, Dr. Latson's representative. The email included 3 attachments; *Elfers Ltr to Evans re her query on August 1, communication of Latson.doc, Final Latson timeline 8-12-19 pdf, Final Will Latson - phone, textlog. Pdf.*

On August 15, Mr. Pinkos met with Ms. Evans-Pare and handed her a hardcopy of a draft memorandum that indicated some of his areas of concern with the investigation. In part, the draft read:

Commencing an investigation was precipitated by the recommendation of the Superintendent to non-reappoint Dr. Latson. On July 11, 2019, the Superintendent recommended Dr. Latson's non-reappointment via a video recording. The recommendation was allegedly based on recently publicized accounts of Dr. Latson's April 2018 email exchange with a parent regarding the Holocaust. It is my understanding, District administrators from the South Regional office, Department of Teaching and Learning, and the Superintendent's staff, knew of Dr. Latson's comments for months prior to the email reaching the public domain through media.

At no point, to my knowledge, did any administrator report improper conduct to HR that the Superintendent would later deem worthy of a non-reappointment. Such conduct appears to run counter to School Board Policy 3.02 Code of Ethics (4.F.) which states each employee agrees and pledges to report improper conduct.

It is my understanding that to date; no investigation has been initiated that addresses how/when employees responded to their learning of Dr. Latson's wrongdoing. I recommend that such an investigation be considered and that an entity outside of the District is tasked with carrying it out.

Moreover, complications arise when the Deputy Superintendent and perhaps others are apparent complainants to Dr. Latson's alleged ineffective communication while at the same time allegedly being involved for not reporting misconduct to HR deemed to be at the level of a non-reappointment offense. This memorandum serves in part to satisfy your August 1, 2019 advisement to me to report areas outside the parameters of my investigation that likely deserve a thorough examination.

Regardless of the ultimate determination, please be advised of past cases when principals gave no notice of an absence and did not receive formal disciplinary action.

In response to the memo, Ms. Evans-Pare stated: "I don't see the connection between these two things. I don't look at it that way." Mr. Pinkos responded that he disagreed with her. Mr. Pinkos also explained to Ms. Evans-Pare that Dr. Elfers did not mention "opt-out" in his multi-paged defense of Dr. Latson and Mr. Pinkos took that as a red flag. Mr. Pinkos went on to explain Mr. Oswald reported to him about an alleged State Statute that few knew about that allowed students to opt out of Holocaust studies.

Mr. Pinkos advised Ms. Evans-Pare he had emailed Mr. Oswald asking him to copy and paste the citation and he hadn't replied. Ms. Evans-Pare advised me, "It probably doesn't

exist." Mr. Pinkos asked Ms. Evans-Pare, "So why would he tell me that?" Ms. Evans-Pare replied, "Don't think about it. Nothing to lose sleep over."

The conversation was obviously troubling. The Deputy Superintendent, who is also the complainant and formerly the Chief Academic Officer, reported to an HR Manager a falsehood, that given his qualification, he would know better. It continues that once brought to the attention of the Director of Employee Relations, she responds, "Don't think about it. Nothing to lose sleep over." It is disturbing.

Worthy investigators follow up on witnesses giving falsehoods and do not dismiss questionable and inaccurate testimony. To ignore falsehoods raises serious ethical concerns. At this point, Mr. Pinkos realized that the narrow scope of the investigation had significant ethical concerns that he could not reconcile.

Needless to say, research revealed that there is no opting out of the State mandate to participate in Holocaust studies. Below is an email exchange between Mr. Oswald and Mr. Pinkos. Mr. Oswald replied to his email nearly two weeks later when he knew Mr. Pinkos was no longer on the case.

On August 19, Mr. Pinkos met with Ms. Evans-Pare in her office to give notice of his recusal. He read the following statement:

On Thursday afternoon (8/15), I tried to meet with you to give notice that I had decided to recuse myself from the William Latson investigation but you were unavailable. On Friday afternoon, I left you voicemail.

I see the investigation as unethical, particularly given its limited scope that ignores the alleged wrongdoing of senior administrators, including Keith Oswald, my wife's supervisor. That relationship in and of itself is more than sufficient reason to recuse myself. It has become apparent to me that after 2 weeks investigating this case that the investigation cannot continue without expanding the scope.

If the scope were to be expanded, I would become a potential witness to an investigation I'm conducting; yet another reason for my recusal.

My moral compass, conscience, and sense of ethics does not allow me to continue.

Please keep in mind that in all my years working in this department investigating a wide range of employees and issues, I have never requested or been advised to recuse myself prior to this case. For me to take this action now, should give you some insight as to the graveness of my conviction and decision.

Ms. Evans-Pare became very upset, angry. Ms. Evans-Pare stood up from sitting behind her desk. Ms. Evans-Pare then began screaming at Mr. Pinkos at presumably the top of her voice, "Bullshit, Bullshit, Bullshit, Bullshit, Bullshit, Bullshit, Bullshit, Bullshit." Mr.

Pinkos had never heard anyone in an office-setting scream and curse so loudly. Watching Ms. Evans-Pare was akin to a child having a temper tantrum but only louder. Witnessing the Director of Employee and Labor Relations act in such an uncontrollable and unprofessional manner was deeply disturbing. It was embarrassing and insulting. Mr. Pinkos could not imagine how his colleagues sitting outside of her office door must have been affected.

Ms. Evans-Pare ended her tirade, Mr. Pinkos told her he did not appreciate her screaming and cursing at him and she offered a half-hearted apology. Mr. Pinkos reiterated that his conscience prevented him from continuing to work on the Latson file, and she directed him to turn it over to her. As he said the comment, Mr. Pinkos indicated towards his stomach. Mr. Pinkos left her office to retrieve the file and upon his return, he discovered she had locked herself into her office. When Ms. Evans-Pare came to the door, he followed her in and she mockingly said "You can't recuse yourself for a stomach ache." Ms. Evans-Pare's comment was referencing him minutes ago when he told her his conscience does not allow him to continue as he touched his gut.

Ms. Evans-Pare then said, "Get out my space," insinuating that Mr. Pinkos was too close when he handed her the file. He then stood by her office door and asked if she was comfortable where he was now standing. Again, the interaction with Ms. Evans-Pare was similar to witnessing a young child having a tantrum.

Because of the unprofessionalism and erratic behavior he witnessed, Mr. Pinkos memorialized some of what transpired on August 19 in an email to Ms. Evans-Pare:

Robert Pinkos <robert.pinkos@palmbeachschools.org>

**Aug 19,
2019,
3:31 PM**

Vicki,

Your memory is not quite correct regarding our discussion on August 1. As you may remember, you did not provide any directives to me. I told you that I wanted to recuse myself and I provided you reasons. You responded that you couldn't have anyone else to recuse themselves from this case.

I asked you exactly what you wanted me to investigate. I took notes at the meeting. I will see if I can find my notes. My memory varies from yours. You may remember I read my notes back to you as to what you wanted me to look at. I was trying to help you out, realizing you were in a bind.

I complained at the time that the scope of the investigation was too narrow as well as expressing other concerns.

I tried to please you and carry on with the investigation we had discussed. I kept you updated with my work although I continued to wrestle with the ethics. After we met this past Thursday, I realized I could not carry on. I dropped by your office Thursday afternoon to let you know but you were unavailable. I left you

voicemail on Friday to let you know, but to date you have not listened to my message.

I did not appreciate you screaming Bullshit over and over again at me when I told you of my decision today to recuse.

I did not appreciate you mocking me when I said my conscious (sic) does not allow me to continue as I touched my gut. You responded that I couldn't recuse myself because of a stomach ache.

I have never recused myself from any prior case.

Your email and some of what you said at today's meeting makes me suspect that you are considering documenting me for not carrying out my job duties.

Therefore, I'm asking you if for any reason, you are considering any action that would be adverse to me.

Bob

Bob Pinkos
HR Manager
Department of Employee & Labor Relations
Palm Beach Schools
Office: (561) 432-6372
Cell: (561) 644-1470

On August 20, Ms. Evans-Pare emailed Mr. Pinkos.

Vicki Evans-Pare <vicki.evans-pare@palmbeachschools.org>

**Tue, Aug 20, 2019 at
10:47 AM**

Bob,

I would like to open an investigation into the "alleged wrongdoing of senior administrators -- including Keith Oswald"; however, I do not have sufficient information to provide an outside investigator as to these allegations. Please provide a more detailed accounting of what information you uncovered including the names of the administrators and the wrongdoing attributable to each as soon as possible.

Thank you,

Vicki Evans-Paré, Esq.
Director of Employee and Labor Relations
vicki.evans-pare@palmbeachschools.org
(561) 434-8873 (PX48873)

On August 20, after receiving the email, Mr. Pinkos went to Ms. Evans-Pare's office and told her he was unsure if he could respond to the email since he had recused himself,

and didn't know if it would essentially be "unrecusing" himself. Mr. Pinkos offered to seek legal advice to make sure he wasn't putting himself into jeopardy, to which she agreed that seeking legal advice would be prudent.

Nevertheless, Ms. Evans-Pare was still noticeably upset. The Latson file documents that had given to her a day earlier were spread across her desk. Mr. Pinkos asked if she was okay, and she responded that she was "frustrated."

Mr. Pinkos asked Ms. Evans-Pare if anyone else had been recused from the case and she said "no". This response was contrary to what she told Mr. Pinkos on August 1st, that he was receiving the case as a result of an HR Manager having recused. Mr. Pinkos again asked, "No one?" and Ms. Evans-Pare then responded something akin to "Yes, someone else had recused for religious reasons." Ms. Evans-Pare went on to say that particular employee's recusal was confidential by law because it was for religious reasons.

Mr. Pinkos knew from conversations with HR Manager Brenda Johnson she had recused herself from the Latson case sometime before he was assigned the case, but not for religious reasons. Ms. Johnson reported to Mr. Pinkos that she told Ms. Evans-Pare she had recused herself because she thought that the focus of investigation was designed to find reasons to terminate and those reasons were illegitimate. In other words, Ms. Johnson's recusal was worded differently than Mr. Pinkos's recusal but both recusals were essentially the same; the scope of the investigation needed to be expanded. Per Ms. Johnson, unlike Mr. Pinkos, she was not directed to turn over to Ms. Evans-Pare a written statement explaining her recusal.

To reiterate, on August 20, Ms. Evans-Pare first denied no one had recused from the case and then admitted someone had recused but for religious reasons. In response to her update, Mr. Pinkos told Ms. Evans-Pare, "I don't trust you." After all, he knew better. Ms. Evans-Pare's lack of forthrightness began with promising Mr. Pinkos that he would not be assigned the Latson case and now she lacked truthfulness regarding a previous recusal.

Mr. Pinkos emailed Ms. Evans-Pare on August 20, at 1:16 PM:

Robert Pinkos <robert.pinkos@palmbeachschools.org>

Aug 20,
2019,
1:16
PM

to Vicki

Thank you for your email. I'll get back to you as soon as I can.

The evening of August 20, Mr. Pinkos received legal advice. Mr. Pinkos was advised to respond to Ms. Evans-Pare's email.

On August 21, he sent the following email:

Robert Pinkos <robert.pinkos@palmbeachschools.org>

Aug 21,
2019,
9:33 AM

to Vicki

Vicki,

As you know, I agree with your decision to bring the investigation to an outside investigator.

I did not investigate these issues so I cannot give you a detailed accounting. It's my belief that issues regarding Will Latson should be looked at in unison with District administrators that interacted with him. To do otherwise, I believe, would skew an understanding of how we got to this point.

It is my understanding, that no one reported Dr. Latson's conduct to HR prior to it becoming public. Not reporting suspected misconduct is part of the Code of Ethics. This ties in with effective communication.

Here are some employees I understand have knowledge of this issue and should be interviewed are: Glenda Sheffield, Ian Saltzman, Diana Federman, Maureen Carter, Keith Oswald. As the investigation is carried on, there may well be additional individuals that come up.

The complete paragraph which you quoted reads,

On Thursday afternoon (8/15), I tried to meet with you to give notice that I had decided to recuse myself from the William Latson investigation but you were unavailable. On Friday afternoon, I left you voicemail.

I see the investigation as unethical, particularly given its limited scope that ignores the alleged wrongdoing of senior administrators, including Keith Oswald, my wife's supervisor (underline added) That relationship in and of itself is more than sufficient reason to recuse myself. It has become apparent to me that after 2 weeks investigating this case that the investigation cannot continue without expanding the scope.

If the scope were to be expanded, I would become a potential witness to an investigation I'm conducting; yet another reason for my recusal.

My moral compass, conscious, and sense of ethics does not allow me to continue.

Please keep in mind that in all my years working in this department investigating a wide range of employees and issues, I have never requested or been advised to recuse myself prior to this case. For me to take this action now, should give you some insight as to the graveness of my conviction and decision.

I think an investigator should meet individually with employees. Here's a sample of questions. No doubt, an investigator would have more questions.

1. *When did you first learn of Dr. Latson's email with a parent regarding the Holocaust?*
2. *How did you learn of the email?*
3. *What specific knowledge of the email did you have prior to it becoming public?*
4. *What employees do you know that had knowledge of the email prior to it becoming covered by the media?*
5. *What did you do upon learning of the email?*
6. *Did you report the email to anyone? Why did you report the email to that/those individual(s)? What knowledge do you have as to any action taken by the individual(s)?*
7. *Do you think Dr. Latson's email comments regarding the Holocaust were appropriate? Explain.*
8. *Do you believe Dr. Latson's email contributed to the Superintendent's recommendation to terminate Dr. Latson? if so, as to what degree (major/minor etc). Explain.*
9. *Have you ever reported wrongdoing (alleged or otherwise) to HR? If so, how often? What generally did you report (i.e. insubordination, absenteeism, inappropriate language etc)?*
10. *Whom in HR did specifically (i.e. manager) did you report conduct you deemed inappropriate?*
11. *Has HR assisted you with documenting employees you report?*
12. *Explain how the severity Dr. Laton's conduct regarding the Holocaust compared to other issues you reported to HR?*
13. *Are you aware of SB Policy 3.02 that states to report improper conduct? What does that mean to you?*
14. *In retrospect, do you think at or about the time you learned of the incident(s) HR should have been contacted?*
15. *Do you think its a worthy endeavor by the District to look into how District personnel addressed the Latson email issue prior to it becoming public? Why?*

*Glad to help.
Bob*

The suggested questions provided to Ms. Evans-Pare by Mr. Pinkos had a particular focus. Senior District administrators would all certainly have reported employees in the past for wrongdoing for far less severe misconduct, so why wouldn't Dr. Latson's comments not be reported to HR? Administrators had a duty and responsibility to report Dr. Laston's Holocaust comments and they did not. By doing so, they violated School Board Policy and were complicit in how the issue unfolded a year later in the media. It also should be noted that Florida Administrative Code 1012.31, has specific time constraints for personnel investigative cases to reach completion. It is my understanding that at the time the Holocaust story reached the media, 1012.31 prevented an investigation of Dr. Latson's comments because administrators had known about the issue for so long that an investigation into those matters would be prohibited per 1012.31. Therefore, it became apparent to Mr. Pinkos and everyone else involved that the investigation was redirected to Dr. Latson's not returning recent phone calls etc. to Mr.

Oswald in part as a cover-up of improper actions at the highest levels of the District's administrators. Dr. Latson's termination based on not responding to a supervisor in a "timely" manner had/has a chilling effect on employees throughout the District and prevented a fuller inquiry as to the actions of others.

On October 16, at 2:19 PM, Mr. Pinkos received the following email from Ms. Evans-Pare:

It was brought to my attention that you attended the Hispanic luncheon for a half day on Friday. Please complete a leave slip for the hours you were gone. In the future, make sure that you request time off in advance.

Upon reading the email, Mr. Pinkos immediately made his way to Ms. Evans-Pare's office as he was deeply offended. He met with Ms. Evans-Pare and she explained that Dr. La Cava had notified her that Mr. Pinkos and another HR Manager, Jose Fred, were at the event. Mr. Pinkos explained that the Hispanic Education Coalition Awards was a two-hour program, not a half-day and he has participated in the event every year since its inception 5 years ago. No previous supervisor ever questioned his attendance, but rather encouraged it. The HEC Awards is a District sponsored event that provides tens of thousands of dollars in scholarships to students in need of assistance. The event is arguably the premier District sponsored event of the year and is attended by around 40 District administrators each year. Mr. Pinkos's attendance at the event is fulfilling his job responsibility and the District's mission.

At this year's event, Mr. Pinkos was sitting with Chairman of the Board Frank Barbieri who received an award for outstanding work for the Hispanic Community, Board member Marcia Andrews, Superintendent Dr. Donald Fennoy, Assistant Superintendent for Global Studies and Community Outreach Dr. Margarita Pinkos and the President of HEC, Dr. Joaquin Garcia.

Ms. Evans-Pare responded that Mr. Pinkos should have completed a leave form for personal time for his attendance at the event but not for a half a day as her email had stated, but only for one of the two hours. After all, it was a 2-hour event and one of the two hours would be covered by his daily scheduled lunch. Ms. Evans-Pare then stated she did not know where Mr. Pinkos was and that he is "like a teacher" and should have completed a leave form. Mr. Pinkos stated he is not a teacher, but an administrator that travels extensively throughout the county as part of his daily routine. Mr. Pinkos doubted any of the scores of administrators at the event completed a leave form. He then informed Ms. Evans-Pare that he told her personal secretary that he was attending the event. In addition, his calendar attested to his location had the HEC Awards entered as well. All supervisors throughout the District can access their subordinates' Google Calendars.

Ms. Evans-Pare still would not budge, insisting Mr. Pinkos take an hour of personal leave. Mr. Pinkos advised Ms. Evans-Pare that he would not do so until he spoke with Dr. La Cava as he would certainly understand.

Mr. Pinkos contacted Dr. La Cava's office soon thereafter to schedule a meeting. Dr. La Cava did not respond. The following day Mr. Pinkos saw Dr. La Cava in the atrium outside of their offices. He was on his phone so Mr. Pinkos gestured for him to call him and he nodded. When Dr. La Cava did not call, Mr. Pinkos sent him an email on October 18, which resulted in the following exchange.

Robert Pinkos <robert.pinkos@palmbeachschools.org>

**Fri, Oct
18,
12:26
PM**

to Gonzalo, Jose

Gonzalo,

I'll be in Spain for the next couple of weeks. Let's meet upon my return. I've blocked out Wednesday, November 6, on my calendar. Could you please send out a calendar invite for that date at a time of your choosing?

Jose Fred will also be attending. Same issue.

Thank you.

*Bob Pinkos
HR Manager*

Gonzalo La Cava <gonzalo.lacava@palmbeachschools.org>

**Oct 18,
2019,
12:32
PM**

to Vicki, Nickla, me, Jose

Bob,

I will have Vicki schedule this meeting to ensure that we are all on the same page regarding your concerns and expectations moving forward.

Thanks

**Gonzalo S. La Cava, Ed.D.
Chief of Human Resources**

Robert Pinkos <robert.pinkos@palmbeachschools.org>

**Oct 18,
2019,
12:34
PM**

to Gonzalo

And you will attend, right?

Gonzalo La Cava <gonzalo.lacava@palmbeachschools.org>

**Oct 18,
2019,
1:59 PM**

to me

Possibly

Based on the email exchange, Mr. Pinkos now began sensing that Dr. La Cava was trying to avoid him and that he was likely working with Ms. Evans-Pare to harass him by requiring a personal leave of absence for his attendance at the HEC Awards. The motive for the harassment was clearly his recusal from the Latson case, and refusal to rubber stamp a baseless investigation to circumvent the District's failure to properly and timely reprimand Dr. Latson. Mr. Pinkos understood that Ms. Evans-Pare's tantrum of August 19 was probably standing in the way for them (La Cava & Evans-Pare) to take disciplinary action against him for allegedly being insubordinate due to his recusal. He also understood that reporting Ms. Evans-Pare's misconduct at a meeting in the presence of Dr. La Cava gave cause for him (La Cava) to be reluctant to meet. It was also looking more likely that Ms. Evans-Pare's directive for Mr. Pinkos to put in for personal leave for a legitimate District sponsored event had its genesis with Dr. La Cava. Yet, another reason for apparent avoidance.

Upon his return from Spain, Mr. Pinkos received a calendar invite to meet on November 8, with Dr. La Cava, Ms. Evans-Pare, and Mr. Fred. He was now prepared to get to the bottom of the nonsense of directing him to put in for personal leave for attending the HEC Awards. Mr. Pinkos also planned to report the August 19th misconduct of Ms. Evans-Pare. This meeting needed to be accurately recorded. Therefore, Mr. Pinkos sent the following email on Wednesday, November 6, at 8:35 AM.

Robert Pinkos <robert.pinkos@palmbeachschools.org>

**Nov 6,
2019,
8:35 AM**

to Gonzalo, Vicki, Jose

Gonzolo & Vicki,

I noticed Friday's meeting is scheduled for 30 minutes (10:30-11:00). I'm not confident that 30 minutes will be enough time. Could you please allow for one hour (10:30-11:30)?

I'm also requesting the meeting be audio recorded so that an accurate transcript can be typed afterwards.

Thank you.

Bob Pinkos
HR Manager

Then the following email exchange followed.

Gonzalo La Cava <gonzalo.lacava@palmbeachschools.org>

**Nov 6,
2019,
9:19 AM**

to Nickla, me, Vicki, Jose

Mr. Pinkos,

The meeting you requested has been cancelled due to a scheduling conflict. I suggest that you immediately bring any grievances or concerns to your direct supervisor so that she can address immediately and provide you with guidance. Have a wonderful day!

**Gonzalo S. La Cava, Ed.D.
Chief of Human Resources**

Robert Pinkos <robert.pinkos@palmbeachschools.org>

**Nov 6,
2019,
10:27
AM**

to Edward, Gonzalo, Jose

Gonzalo,

The issue Jose and I have is with Vicki. Both Jose and I have met with her individually. That's part of the issue.

As her supervisor, we are again requesting to meet with you.

As I had advised you in the past, this issue is important and remains so. Jose and I need to be heard. I would hope you would accommodate the time.

By you canceling Friday's meeting, do you advise we take up this issue with the Chief of Staff?

Please advise.

*Thank you.
Bob*

Mr. Pinkos received no email reply from Dr. La Cava. Instead, he received the following email from Ms. Evans-Pare, 38 minutes after he asked Dr. LaCava, "By canceling Friday's meeting, do you advise we take up this issue with the Chief of Staff?"

Vicki Evans-Pare <vicki.evans-pare@palmbeachschools.org>

**Nov 6,
2019,
11:05
AM**

to me, Jose, Gonzalo

In this instance, due to the fact that I was not advised in advance that you wished to attend this luncheon, I am standing by my request that you use personal leave for the time missed. In the future, should you wish to attend a District sponsored or community event that is outside of but related to your daily work, I expect to be asked in advance; supplied an explanation of how it is tied to your job; and provided with a completed TDE under Policy 3.65 to account for the absence and to establish that you were working during that event for liability purposes.

*Vicki Evans-Paré, Esq.
Director of Employee and Labor Relations*

At 11:40, Mr. Pinkos emailed Ed Tierney, Chief of Staff so that he could address his concerns.

Robert Pinkos <robert.pinkos@palmbeachschools.org>

**Nov 6,
2019,
11:40
AM**

to Edward, Jose

Ed,

When can we meet?

Bob

Chief of Staff Tierney never replied to this email.

In summary, Mr. Pinkos would not be able to report Ms. Evans-Pare's wrongdoing to her supervisor, the Chief of HR, Dr. Gonzalo or to the Chief of Staff. Ms. Evans-Pare continued to direct Mr. Pinkos to put in for personal time for an event he should have attended as per his job duties, responsibilities etc.

Mr. Pinkos was trying to report the wrongdoing of an employee and District administrators were stonewalling his efforts.

It should be noted that around late October and early November, Dr. Margarita Pinkos, Board member Marcia Andrews, and Dr. Garcia were trying to work with administrative leadership to end the nonsense of Ms. Evans-Pare's directive to Mr. Fred and Mr. Pinkos to put in for personal time for attending the HEC Awards. Dr. Pinkos had several conversations with Mr. Tierney during this period.

Here, Mr. Fred, unfortunately is collateral damage. It was Mr. Pinkos that Dr. La Cava and Ms. Evans-Pare wanted to punish for his recusal from the Latson case.

On November 8, 2019, at or about 8:20 AM, Mr. Pinkos parked his car in Fulton-Holland Educational Services Center (FHESC) parking lot and was on his way to enter the building when he noticed Dr. La Cava exiting his car. Dr. La Cava's parking spot is directly opposite the entry door to FHESC.

Mr. Pinkos walked by his car as he was getting out and asked if he was going to meet with him. Dr. La Cava responded, "I'm not going to meet with you."

Dr. La Cava then told Mr. Pinkos, "Meet with 'Vicki.'"

Mr. Pinkos responded, "I already met with Vicki. Vicki is the problem. That's why I need to meet with you. Isn't that your job to meet with me?"

Dr. La Cava responded, "I'm not going to meet with you," as he pointed his finger at Mr. Pinkos.

Mr. Pinkos replied, "Don't wag your finger at me."

Dr. La Cava looked at his finger, presumably having been unaware of his gesturing, and then lowered his hand.

At this point, Dr. La Cava went to the back door of his car (driver's side) and said, "Don't confront me again at my car."

Mr. Pinkos replied, "We both need to take a step back."

Dr. La Cava then stated, "I'm going to hold back from saying what I'm thinking."

At this point, Mr. Pinkos walked away and entered FHESC.

Upon checking his email soon thereafter, Mr. Pinkos noticed the monthly breakfast celebration was occurring in Suite A-106. Noticeably absent was Ms. Evans-Pare. Ms. Evans-Pare appeared towards the end of the breakfast by entering through Dr. La Cava's suite. At this time, Mr. Pinkos was speaking with HR Manager Brenda Johnson regarding the reassignment of an employee, but immediately brought Ms. Evans-Pare into the conversation.

Based on information received by Mr. Pinkos, Chief of Staff Tierney was updating Assistant Superintendent Dr. Pinkos at this time as to the progress of dismissing Ms. Evans-Pare's personal leave requirement for the two administrators attending the HEC event. Based on Mr. Pinkos conversations with Dr. Pinkos, it is the understanding and supposition of Mr. Pinkos that when Dr. La Cava entered his office, he was met by the Chief of Staff Ed Tierney. Mr. Tierney advised Dr. Gonzalo to cease and desist from requiring just 2 administrators (Jose Fred and Mr. Pinkos) out of the scores that attended to submit a leave form for personal time. This issue now had apparently reached the Superintendent, the same Superintendent that Mr. Pinkos shared a table with at the HEC district-sponsored event.

Later that afternoon, Mr. Pinkos received a phone call from Board Member Marcia Andrews who confirmed that the HEC Awards issue had been settled, and Mr. Pinkos would not be required to submit for a leave of absence for personal time. Mr. Pinkos would receive no adverse action for attending the HEC awards. Mr. Pinkos questioned Marcia Andrews that he had not received anything in writing to confirm that the issue had been resolved and she stated he would receive something in writing sometime next week and, if not, to call her. Ms. Andrews was aware of my conversation with Dr. La Cava earlier in the day and advised me that it was a non-issue.

It's important to note that Dr. La Cava apparently does not value HEC for its annual scholarship event. At this year's event, he did not pay for his plate.

Recruitment & Retention Director Edwine Michel attended the event with Dr. La Cava. Sandra Arroyo, a HEC member, witnessed Dr. Gonzalo telling Mr. Michel, "Dessert looks good. Too bad you're not getting any. We're leaving." Dr. La Cava left before the scholarships were awarded.

On the afternoon of Monday, November 11, HR Manager Jose Fred received a phone call from Vicki Evans-Pare directing him to report to her by the close of the day. Mr. Fred reported the following.

Mr. Fred explained to Ms. Evans-Pare that he had attended the HEC Awards as part of his job as had done for the past 5 years with prior supervisors without objection and with their blessing. Jose Fred explained his job description and the District's mission statement as validation for his attendance. Mr. Fred told Ms. Evans-Pare that at his core she had offended him as an individual. This conversation was similar to one he had with Vicki Evans-Pare previously and that conversation did not persuade her to accept his professionalism to attend the HEC Awards.

Nevertheless, on November 12, Ms. Evans-Pare sent the following email:

From: Vicki Evans-Pare <vicki.evans-pare@palmbeachschools.org>
Date: November 12, 2019 at 4:22:11 PM EST
To: Jose Fred <jose.fred@palmbeachschools.org>, Robert Pinkos <robert.pinkos@palmbeachschools.org>

Cc: Gonzalo La Cava <gonzalo.lacava@palmbeachschools.org>
Subject: October 11th Luncheon - Leave Issue

Yesterday, I had further conversations with Jose regarding this issue. Based upon this discussion and as a one time accommodation, I will not require you to put in a leave of absence for the luncheon you attended on October 11th. In the future, should you wish to attend a District sponsored or community event that is outside of, but related to, your daily work, you are directed to request to attend in advance; supply an explanation of how it is tied to your job; and complete a TDE under Policy 3.65 to account for the absence and to establish that you were working during that event for liability purposes. If I do not agree that there is a nexus between the event and your job responsibilities, you will need to take personal leave to attend.

Regards,

Vicki Evans-Paré, Esq.
Director of Employee and Labor Relations

The staged meeting with Jose Fred merely served as a ruse so that Ms. Evans-Pare could save face. The issue had already been resolved in Mr. Fred and Mr. Pinko's favor by Board member Marcia Andrews and Chief of Staff Ed Tierney. This particular means of harassment had been shut down.

On Thursday, November 14, Mr. Pinkos received voicemail from HR Manager Mary Powers to call School Police Detective Lockhart. It should be noted that in his duties as an HR Manager, Mr. Pinkos frequently works with the police. However, once Mr. Pinkos called Detective Lockhart, it was clear she was not calling for his assistance on a particular case, but rather on a personal matter. Detective Lockhart said there were no allegations against Mr. Pinkos but she still wanted to speak with him at her office at Turning Points. Mr. Pinkos informed her that he would not speak with her without representation and Detective Lockhart never called back.

Mr. Pinkos's phone conversation with Detective Lockhart gave cause for concern and suspected this was something related to Dr. La Cava. It was odd for him to get a call from a detective he didn't know and one from Turning Points, a school he does not serve. Mr. Pinkos works at FHESC where School Police is headquartered. There is little doubt that this was yet one more incident of harassment devised by Dr. La Cava to intimidate Mr. Pinkos.

On Friday afternoon, November 15, EEO Coordinator Germaine Z. English came into Mr. Pinkos's office and stated, "Vicki wants to see you in her office." Upon his arrival in Ms. Evans-Pare's suite, Mr. Pinkos met Compensation Director Mark Mitchell sitting with Ms. Evans-Pare. Mr. Pinkos was handed two documents; Memorandum RE: Failure to Fulfill Job Responsibilities/Insubordination and a letter reassigning him to the South Regional

Office effective Wednesday, November 20. Mr. Pinkos signed for receipt of the memorandum for his recusal from the Latson case.

The memorandum documenting him for allegedly failing to fulfill job responsibilities and insubordination was issued to Mr. Pinkos nearly 3 months after he had recused himself (August 19). Documenting an employee months after the supervisor became aware of area of concern is an unacceptable HR practice. It is a clear violation of due process. That in and of itself is a historic form of harassment reminiscent of WW II concentration camp prisoners that had broken a rule and would be made to wait weeks not knowing when the inevitable discipline would be administered. In his case, however, it was not weeks but months, that Ms. Evans-Pare hung the discipline over his head.

Ms. Evans-Pare stated that today (11/15/19) would be his last day working at FHESC. Mr. Pinkos responded that he had a lot of cases and files he needed to button-up and it would be helpful to have his last day at FHESC be Tuesday, November 19. Mr. Pinkos explained that he was flying to Germany, on Wednesday, November 20, and that would coordinate well for my transition to the South Regional Office in Boca Raton. Ms. Evans-Pare responded that today (11/15/19) would be his last day working at FHESC.

The reassignment letter signed by Ms. Evans-Pare in part reads, "This letter is direction to and confirmation of your new job duty location at the South Regional Office, 1790 N.W. Spanish river Boulevard, Boca Raton 33431 beginning Wednesday, November 20, 2019. (Underlined for emphasis).

Mr. Pinkos was involuntarily removed from his work location that was 7 miles from his home to a location some 27 miles away. Mr. Pinkos mentioned to Mr. Mitchell and Ms. Evans-Pare that it will now cost him more to commute as his travel mileage reimbursement would be affected. Ms. Evans-Pare responded that he could still put in for mileage reimbursement, apparently not understanding how the move to Boca Raton as his main office work dramatically impact mileage calculations per policy. Mr. Pinkos was not offered any accommodation for the inconvenience and driving costs.

Mr. Pinkos departed the meeting by saying to Mr. Mitchell and Ms. Evans-Pare that he has 10 months before retirement and all he wants to do is work in peace and harmony.

Mr. Pinkos understood as a seasoned HR Manager that his reassignment letter with the effective date of his reassignment had to be at the direction of the Superintendent even though the letter was signed by Ms. Evans-Pare.

Ms. Evans-Pare was determined to humiliate Mr. Pinkos by having him return to his cubicle and rush to grab his belongings, 5 days earlier than the directive stated in the letter. Ms. Evans-Pare's conduct was clearly vindictive and an act of insubordination against directive presumably by the Superintendent. Within minutes, IT was hauling away his computer etc. Mr. Pinkos told my colleagues he had arranged a deal in order to save face. The level of humiliation inflicted upon Mr. Pinkos by the methodic harassment of

Ms. Evans-Pare and Dr. La Cava was now unbearable. Mr. Pinkos did his best to keep his dignity as his colleagues helped load his car.

Mr. Pinkos was now transferred. He was denied having the meeting he was due to report the misconduct of Ms. Evans-Pare. Mr. Pinkos never had the opportunity to officially report to the harassment he was enduring. That harassment, as it turns out, continued with Dr. La Cava.

On the day before Mr. Pinkos was scheduled to fly to Germany, November 19, he received the following email from Germaine Z. English.

Germaine English

**Nov 19,
2019,
8:23 AM**

to me

Good Morning Bob,

I am conducting an investigation into complaints made by employees in which you are the subject. I would like to interview you on Wednesday, November 20, 2019 in the afternoon in your office at the South Regional Office. I'm available from noon on tomorrow. Please let me know what time will work for you.

You can have representation at this meeting. If you would like to bring legal representation, please let me know so we can have the attorneys coordinate a time for this interview.

Thanking you in advance for your cooperation.

Apparently, Dr. La Cava did not want Mr. Pinkos to work in peace and harmony. The harassment continued even though he was now working in Boca Raton, far from FHESC.

It was at this time, Mr. Pinkos officially retained counsel.

Upon notice that he was represented by Fred A. Schwartz, the District retained outside counsel to "investigate" Mr. Pinkos.

It should also be known that Ms. Evans-Pare and Dr. La Cava have a history of mistreating employees. As recently as August 28, 2019, Administrative Assistant Clara Trammel, a Hispanic woman nearing retirement, received a \$15,000 settlement from an EEOC complaint that centered on the conduct of Dr. La Cava and Ms. Evans-Pare. Ms. Trammel was transferred from being under the supervision of both Dr. La Cava and Ms. Evans-Pare as she now works for the Department of Multicultural Education. Ms. Trammel reported to Mr. Pinkos that both Dr. La Cava and Ms. Evans-Pare were relentless in their mistreatment of her. Mr. Pinkos now has witnessed this first-hand.

In conclusion, Mr. Pinkos's involuntary transfer to Boca Raton is a direct and proximate adverse employment action stemming from his engagement in good faith reporting and disclosure of wrongful conduct at the highest levels of the District, and he has clearly suffered from reprisal.

At this juncture, a full and non-partisan investigation is warranted into the behavior of Ms. Evans-Pare and Dr. La Cava and the corresponding retaliation.

Please contact us should you need additional information.

Regards,

Allison B. Duffie, Esq. and Fred A. Schwartz, Esq.
Counsel for Robert Pinkos

Activity #: 20-0012-I
OIG Staff: Oscar Nastro
Date Rec'd: 2/24/20 Pages: 35
Rec'd: Robert Pinkos
Redacted: Yes No N/A Req'd TBD
Exhibit/Reference #: 2

February 24, 2020

MEMORANDUM

TO: The Office of Inspector General
FROM: Bob Pinkos, HR Manager
RE: Harassment, Retaliation, Malfeasance

This memorandum serves to summarize and document acts of malfeasance, harassment, and retaliation by senior administrators employed at the School District of Palm Beach County. The acts of wrongdoing are clearly violations of School Board Policy and the Principles of Professional Conduct for the Education Profession in Florida.

The Office of Inspector General initially received my Whistleblower Complaint pursuant to School Board Policy 3.28 on January 15, 2020. One month later, February 13, 2020 (postmark), the Office of Inspector General sent me a letter. I received a letter dated February 7, 2020, on February 18, 2020.

The letter in part reads, "The OIG reviewed both allegations for Whistleblower status. In regards to both allegations listed, we determined that your complaint DOES NOT meet the requirements for designation as a Whistleblower complaint. After a preliminary review of the reported issues we have determined that your allegations do not contain any violations or suspected violations of any federal, state, or local law, rule, or regulation, or Board policy or procedure, **which creates and presents a substantial and specific danger to the public's or students' health, safety, or welfare.** Additionally, we have determined that the allegations do not contain any specific acts of gross mismanagement, malfeasance or misfeasance."

The Inspector General's letter continued, "However in light of the information you allege of retaliation by District Administration, a non Whistleblower investigation into that allegation will be conducted by our office."

The Purpose and Intent of School Board Policy 3.28 – Whistleblower Protection Policy is to "protect an employee who engages in good faith reporting reprisal by adverse employment action or other retaliation as a result of having disclosed wrongful conduct, and to provide employees who believe they have been subject to reprisal or false allegations a fair process to seek relief from such acts."

School Board Policy 3.28 goes on to say, "The Inspector General shall determine any warranted investigation "shall be completed within ninety (90) days of receipt of the complaint."

At no time from January 15, 2020 to present (40 days) has the Office of Inspector General attempted to contact my attorneys or me to ascertain additional information that would have a bearing on the decision of the complaint to make a determination to meet the requirements of Whistleblower status.

It has taken the Office of Inspector General a month to send a letter to me and 40 days to meet with me.

The overriding questions are: why the Office of Inspector General has already used to date nearly half of the ninety days to complete an investigation and what would be the incentive after today's interview to make the necessary correction to designate me as a Whistleblower. After all, by doing so, the Office of Inspector General would only have fifty (50) days from today to complete and submit an investigative report. That clearly appears to be an incentive not to designate me as a Whistleblower.

Nevertheless, this memorandum and today's interview, will provide a sequential timeline identifying and explaining the acts of wrongdoing by Chief of Human Resources Gonzalo La Cava and Director of Employee and Labor Relations Vicki Evans-Pare retaliatory actions against me stemming from my recusal from the William Latson investigation.

An applicable citation from School Board Policy and/or the Principles of Professional Conduct for the Education Profession in Florida will accompany each act of wrongdoing so that it is clearly identifiable to a particular violation. By doing so, it will be indisputable that my complaint DOES meet the requirement of a Whistleblower complaint which contains violations of Board Policy, state law and rule (Florida Administrative Code), acts of gross mismanagement, managerial abuses, wrongful or arbitrary and capricious actions, including acts of malfeasance and misfeasance.

Lastly, although it is not a requirement that gross mismanagement needs to show a "substantial adverse economic impact," a distinct and likely possibility exists that Dr. Latson will sue the District for wrongful termination because of mismanagement of this case.

Being that the Inspector General's letter to me states it will, at this time, only investigate the retaliation by District administrators against me, this memorandum will be limited to solely that topic.

INCIDENT #1 NARRATIVE

On August 19, 2019, I met with Ms. Evans-Pare in her office to give notice of my recusal from the Latson case. I read aloud this statement:

On Thursday afternoon (8/15), I tried to meet with you to give notice that I had decided to recuse myself from the William Latson investigation but you were unavailable. On Friday afternoon, I left you voicemail.

I see the investigation as unethical, particularly given its limited scope that ignores the alleged wrongdoing of senior administrators, including Keith Oswald, my wife's supervisor. That relationship in and of itself is more than sufficient reason to recuse myself. It has become apparent to me that after 2 weeks investigating this case that the investigation cannot continue without expanding the scope.

If the scope were to be expanded, I would become a potential witness to an investigation I'm conducting; yet another reason for my recusal.

My moral compass, conscience, and sense of ethics does not allow me to continue.

Please keep in mind that in all my years working in this department investigating a wide range of employees and issues, I have never requested or been advised to recuse myself prior to this case. For me to take this action now, should give you some insight as to the graveness of my conviction and decision.

Ms. Evans-Pare became very upset, angry. Ms. Evans-Pare stood up from sitting behind her desk. Ms. Evans-Pare then began screaming at me at presumably the top of her voice, "Bullshit, Bullshit, Bullshit, Bullshit, Bullshit, Bullshit, Bullshit." I have never heard anyone in an office-setting scream and curse so loudly. Watching Ms. Evans-Pare was akin to a child having a temper tantrum but only louder. Witnessing the Director of Employee and Labor Relations act in such an uncontrollable and unprofessional manner deeply disturbed me. It was embarrassing and insulting to me. I cannot imagine how my colleagues sitting outside of her office door must have been affected.

As Ms. Evans-Pare began ending her tirade, I told her that I did not appreciate her screaming and cursing at me. Ms. Evans-Pare responded, "I'm sorry."

I replied, "I'm not that way." I reiterated that my conscience does not allow me to continue as I placed my hand on my stomach.

Ms. Evans-Pare then directed me to turn over the Latson investigative file to her. I left her office to return to my desk to retrieve the file. For understanding, Ms. Evans-Pare and I both work in FHESC but in two different suites.

Upon my return to Ms. Evans-Pare's office, I waited for her as she had now locked herself in her office. Ms. Evans-Pare came to the door and I followed her in. I handed her the file as she stood by her desk. Ms. Evans-Pare then said to me, "You can't recuse yourself for a stomach ache." Ms. Evans-Pare's mocking comment of me was referencing me minutes ago when I told her my conscience does not allow me to continue as I touched my gut.

Ms. Evans-Pare then said, "Get out my space," insinuating that I was too close to her when I handed her the file. I then stood by her office door and asked if she was comfortable where I was now standing. My interaction with Ms. Evans-Pare was like dealing with a young child having a tantrum.

I memorialized some of what transpired on August 19 on the afternoon of that day in an email to Ms. Evans-Pare:

Aug 19, 2019, 3:31 PM

Vicki,

Your memory is not quite correct regarding our discussion on August 1. As you may remember, you did not provide any directives to me. I told you that I wanted to recuse myself and I provided you reasons. You responded that you couldn't have anyone else to recuse themselves from this case.

I asked you exactly what you wanted me to investigate. I took notes at the meeting. I will see if I can find my notes. My memory varies from yours. You may remember I read my notes back to you as to what you wanted me to look at. I was trying to help you out, realizing you were in a bind.

I complained at the time that the scope of the investigation was too narrow as well as expressing other concerns.

I tried to please you and carry on with the investigation we had discussed. I kept you updated with my work although I continued to wrestle with the ethics. After we met this past Thursday, I realized I could not carry on. I dropped by your office Thursday afternoon to let you know but you were unavailable. I left you voicemail on Friday to let you know, but to date you have not listened to my message.

I did not appreciate you screaming Bullshit over and over again at me when I told you of my decision today to recuse.

I did not appreciate you mocking me when I said my conscious (sic) does not allow me to continue as I touched my gut. You responded that I couldn't recuse myself because of a stomach ache.

I have never recused myself from any prior case.

Your email and some of what you said at today's meeting makes me suspect that you are considering documenting me for not carrying out my job duties. Therefore, I'm asking you if for any reason, you are considering any action that would be adverse to me.

Bob

INCIDENT #1 ANALYSIS

Ms. Evans-Pare's conduct violated the **School Board's Code of Ethics 3.02 (4) Accountability and Compliance**, which states: Each employee agrees and pledges: (4)(a) *To provide the best example possible, striving to demonstrate excellence, integrity and responsibility in the workplace,* (4)(b) *To obey local, state and national laws, codes and regulations,* (4)(d) *To treat all students and individuals with respect and to strive to be fair in all*

matters, (4)(e) To create an environment of trust, respect and non-discrimination, by not permitting discriminatory, demeaning or harassing behavior of students or colleagues.

Ms. Evans-Pare's actions also violated, **School Board's Code of Ethics 3.02 (5)(I) Professional Conduct**, states, "We are committed to ensuring that our power and authority are used in an appropriate, positive manner that enhances the public interest and trust. Employees should demonstrate conduct that follows generally recognized professional standards. Unethical conduct is any conduct that impairs the ability to function professionally in his or her employment position or conduct that is detrimental to the health, welfare or discipline of students or the workplace."

In addition, Ms. Evans-Pare's conduct violated **School Board Policy 3.10 (6) Conditions of Employment with the District** which states: "The District requires its employees to carry out their responsibilities in accordance to School Board Policy 1.013 (as may be amended), their job descriptions and reasonable directives from their supervisors that do not pose an immediate serious hazard to health and safety or clearly violate established law or policy."

Further, the Ms. Evans-Pare's conduct is prohibited by **School Board Policy 1.013 Responsibilities of School District Personnel and Staff (1)** which states: "It shall be the responsibility of the personnel employed by the district school board to carry out their assigned duties in accordance with federal laws, rules, state statutes, state board of education rules, school board policy, superintendent's administrative directives and local school and area rules."

Ms. Evans-Pare's conduct violated **School Board Policy 3.19 – Policy Prohibiting Discrimination and Harassment**, which states, *The School Board is committed to maintaining a work and learning environment in which all individuals are treated with dignity and respect. All employees and applicants for employment of the School District of Palm Beach County, Florida, have the right to work in an environment free from discrimination and conduct which can be considered harassing or coercive...Supervisors and managers are responsible for assuring that no employee is subjected to conduct that constitutes discrimination, sexual harassment or any other form of harassment...Prompt and thorough investigation of the alleged incident will be conducted and appropriate action will be taken.*

School Board Policy 3.19 explains **Other Harassment (5)**, (a) *Harassment on the basis of any other protected characteristic is also strictly prohibited. This includes verbal or physical conduct that denigrates or shows hostility or aversion toward an individual because of his/her race, color, religion, sex, sexual orientation, gender identity or expression, national origin, age, disability, marital status, citizenship or any other characteristic protected by law and that: (i) Has the purpose or effect of creating an intimidating, hostile, or offensive work environment; (ii) Has the purpose or effect of unreasonably interfering with an individual's work or performance; (iii) Otherwise, adversely affects an individual's employment;*

INCIDENT #2 NARRATIVE

Unknown to me at the time, but upon receiving my email on August 19, 2019, (See INCIDENT #1), Ms. Evans-Pare emailed Chief of Human Resources Gonzalo La Cava, at 4:02 PM. Ms. Evans-Pare email reads:

This was what I received. And for the record, I only said "bullshit" twice - - which I fully acknowledge I shouldn't have done and did already apologized to Bob for doing so. I also was not mocking him about touching his gut. He said it made his stomach knot up to work on this case. My response was that you don't get to recuse yourself because the case makes you queasy. As I told them in a staff meeting last week, you may only recuse yourself if you have a "direct, personal and significant personal involvement with the accused or a critical witness.

At 4:06 PM (12/19/19), Dr. La Cava replied to Ms. Evans-Pare:

Vicki,

Let's speak when I get downstairs and document our conversation.

I was unaware of the aforementioned email exchange. I only became aware of the email exchange when the attorney representing William Latson, Tom Elfers, made a public records request and received the email. That email was forwarded to my attorney, Fred Schwartz. On January 19, 2020, I received the email exchange.

The significance of this email exchange and me not knowing about it cannot be overemphasized nor can it be minimized in any way. The Director of Employee and Labor Relations, Vicki Evans-Pare confesses to cursing at an employee to the Chief of Human Resources, Gonzalo La Cava.

It appears from Ms. Evans-Pare's opening line in her email (*This was what I received*), referenced my August 19, 3:31 PM email to her. Therefore, at 4:06 PM, Dr. La Cava was aware of my complaint that Ms. Evans-Pare screamed *Bullshit* over and over again at me and then she mocked me when I touched my gut when referring to my conscience.

I testified at Dr. Latson's February 5, 2020 hearing. At that time, I took receipt of a hand-dated (Aug. 19-20, 2019) typed document identified as exhibit 000397. Document 000397 appears to be a one-page statement from Ms. Evans-Pare to satisfy Dr. La Cava's to "document the conversation." Again, I was unaware of this document and only became aware of its existence on February 5, 2020.

At no time did Dr. La Cava meet his obligation to fulfill his job duties and responsibilities to initiate an investigation. Dr. La Cava had the responsibility to interview the victim/complainant (me). Dr. La Cava chose not to refer the case to a Human Resources Manager so that an investigation could take place. Dr. La Cava chose not to notify the Office of Inspector General to conduct an investigation.

Dr. La Cava, the Chief of Human Resources, chose to shield the wrongdoing of the Director of Employee and Labor Relations, Vicki Evans-Pare.

Simply put, Dr. La Cava covered-up Ms. Evans-Pare misconduct.

Dr. La Cava's goals became apparent. There would be no investigation. There would be no Pre-Determination Meeting. Dr. La Cava chose to treat Vicki Evans-Pare differently than any other of the 23,000 employees of the School District. Dr. La Cava decided to protect Ms. Evans-Pare from being the subject of disciplinary action.

Dr. La Cava actions of August 19, 2019 began a series of wrongful conduct on his part against me as he hid the fact that he knew the wrongdoing of his direct subordinate, Vicki Evans-Pare.

The conduct and subsequent conduct of Dr. La Cava were actions of malfeasance, harassment, and retaliation.

INCIDENT #2 ANALYSIS

Dr. La Cava's conduct violated the **School Board's Code of Ethics 3.02 (4) Accountability and Compliance**, which states: Each employee agrees and pledges: (4)(a) *To provide the best example possible, striving to demonstrate excellence, integrity and responsibility in the workplace,* (4)(b) *To obey local, state and national laws, codes and regulations,* (4)(d) *To treat all students and individuals with respect and to strive to be fair in all matters,* (4)(e) *To create an environment of trust, respect and non-discrimination, by not permitting discriminatory, demeaning or harassing behavior of students or colleagues.* (4)(f) *To take responsibility and be accountable for his or acts or omissions,* (4)(i) *To report improper conduct,* (4)(j) *To be efficient and effective in the delivery of job duties,* (4)(k) *To cooperate during any investigation or proceeding.*

Dr. La Cava's actions also violated, **School Board's Code of Ethics 3.02 (5)(l) Professional Conduct**, states, *"We are committed to ensuring that our power and authority are used in an appropriate, positive manner that enhances the public interest and trust. Employees should demonstrate conduct that follows generally recognized professional standards. Unethical conduct is any conduct that impairs the ability to function professionally in his or her employment position or conduct that is detrimental to the health, welfare or discipline of students or the workplace."*

In addition, Dr. La Cava's conduct violated **School Board Policy 3.10 (6) Conditions of Employment with the District** which states: *"The District requires its employees to carry out their responsibilities in accordance to School Board Policy 1.013 (as may be amended), their job descriptions and reasonable directives from their supervisors that do not pose an immediate serious hazard to health and safety or clearly violate established law or policy."*

Further, the Dr. La Cava's conduct is prohibited by **School Board Policy 1.013 Responsibilities of School District Personnel and Staff (1)** which states: *"It shall be the responsibility of the personnel employed by the district school board to carry out their assigned duties in accordance with federal laws, rules, state statutes, state board of education rules, school board policy, superintendent's administrative directives and local school and area rules."*

School Board Policy 3.28 – Whistleblower Protection Policy states, *It is the intent of this policy to protect an employee who engages in good faith reporting from reprisal by adverse employment action or other retaliation as a result of having disclosed wrongful conduct, and to provide employees who believe they have been subject to reprisal or false allegations a fair process to seek relief from such acts...*

"Employee" means any person hired by the School Board after completing the personnel procedures required by the School Board; or any person who performs services for the School Board under the direction and control of contracts with an Independent Contractor for wages or other remuneration.

"Adverse personnel action" means the discharge, suspension, transfer, demotion, reprimand, warning, withholding of bonuses, the reduction of salary or benefits, or any other adverse action taken against an employee within the terms and conditions of employment as provided herein.

"Protected disclosure", according to the Florida's Public Whistleblower's Act, is the good faith reporting of:

- i. Any violation or suspected violation of any federal, state, or local law, rule, or regulation, or Board policy or procedure, committed by an employee(s), agent(s) or an independent contractor(s) of the Board which creates and presents a substantial and specific danger to the public's or students' health, safety, or welfare; or*
- ii. Any act or suspected act of gross mismanagement, malfeasance, misfeasance, gross waste of public funds, suspected or actual Medicaid fraud or abuse, or gross neglect of duty committed by an employee, agent or independent contractor of the Board.*

"Gross mismanagement" means a continuous pattern of managerial abuses, wrongful or arbitrary and capricious actions, or fraudulent or criminal conduct which may have a substantial adverse economic impact.

"Whistleblower" means a person or entity making a protected disclosure. A whistleblower may be an employee, students, parents, vendors, contractors, applicants for employment, or the general public who makes a good faith report. The whistleblower's role is as a reporting party. Whistleblowers are not investigators or finders of fact, nor do they determine the appropriate corrective or remedial action that may be warranted.

In addition, Dr. La Cava, as a holder of a Florida Professional Educator Certificate, is bound to adhere to **6A-10.081 Principles of Professional Conduct for the Education Profession in Florida**. Dr. La Cava's conduct violated:

(1) Florida educators shall be guided by the following ethical principles:

(a) The educator values the worth and dignity of every person, the pursuit of truth, devotion to excellence, acquisition of knowledge, and the nurture of democratic citizenship. Essential to the achievement of these standards are the freedom to learn and to teach and the guarantee of equal opportunity for all.

(c) Aware of the importance of maintaining the respect and confidence of one's colleagues, of students, of parents, and of other members of the community, the educator strives to achieve and sustain the highest degree of ethical conduct.

(2) Florida educators shall comply with the following disciplinary principles. Violation of any of these principles shall subject the individual to revocation or suspension of the individual educator's certificate, or the other penalties as provided by law.

(c) Obligation to the profession of education requires that the individual:

1. Shall maintain honesty in all professional dealings.

4. Shall not engage in harassment or discriminatory conduct which unreasonably interferes with an individual's performance of professional or work responsibilities or with the orderly processes of education or which creates a hostile, intimidating, abusive, offensive, or oppressive environment; and, further, shall make reasonable effort to assure that each individual is protected from such harassment or discrimination.

14. Shall report to appropriate authorities any known allegation of a violation of the Florida School Code or State Board of Education Rules as defined in Section 1012.795(1), F.S.

15. Shall seek no reprisal against any individual who has reported any allegation of a violation of the Florida School Code or State Board of Education Rules as defined in Section 1012.795(1), F.S.

INCIDENTS #3 and #4 NARRATIVE:

On October 16, at 2:19 PM, I received the following email from Ms. Evans-Pare:

It was brought to my attention that you attended the Hispanic luncheon for a half day on Friday. Please complete a leave slip for the hours you were gone. In the future, make sure that you request time off in advance.

Upon reading the email I immediately made my way to Ms. Evans-Pare's office as I was deeply offended. I met with Ms. Evans-Pare and she explained that Dr. La Cava had notified her that I and another HR Manager, Jose Fred, were at the event. I explained that the Hispanic Education Coalition Awards was a two-hour program, not a half-day. I have participated in the event every year since its inception 5 years ago. No previous supervisor ever questioned my attendance, but in fact encouraged it. The HEC Awards is a District sponsored event that provides tens of thousands of dollars in scholarships to students in need of assistance. The event is arguably the

premier District sponsored event of the year and is attended by around 70 District administrators each year. My attendance at the event is fulfilling my job responsibility and the District's mission.

At this year's event, I was sitting with Chairman of the Board Frank Barbleri who received an award for outstanding work for the Hispanic Community, Board member Marcia Andrews, Superintendent Dr. Donald Fennoy, Assistant Superintendent for Global Studies and Community Outreach Dr. Margarita Pinkos and the President of HEC, Dr. Joaquin Garcia.

Ms. Evans-Pare responded that I should have completed a leave form for personal time for my attendance at the event but not for a half a day as her email had stated, but only for one of the two hours. After all, it was a 2-hour event and one of the two hours would be covered by my daily scheduled lunch.

Ms. Evans-Pare then stated she did not know where I was and that I'm "like a teacher" and should have completed a leave form. I stated I'm not a teacher, I'm an administrator that travels extensively throughout the county as part of my daily routine. I doubt if any of the scores of administrators at the event completed a leave form. I then informed Ms. Evans-Pare that I told her personal secretary that I was attending the event. My calendar attesting to my location had the HEC Awards entered as well. Supervisors throughout the District can access their subordinates' Google Calendars.

Ms. Evans-Pare would not budge, insisting I take an hour of personal leave. I advised Ms. Evans-Pare that I would not do so until I spoke with Dr. La Cava as he would certainly understand.

I contacted Dr. La Cava's office soon thereafter to schedule a meeting with him. Dr. La Cava did not respond. The following day I saw Dr. La Cava in the atrium outside of our offices. He was on his phone so I gestured for him to call me and he nodded.

But I did not hear from Dr. La Cava. Therefore, I sent him an email on October 18, which resulted in the following exchange.

Robert Pinkos <robert.pinkos@palmbeachschools.org>

*Fri, Oct
18, 12:26
PM*

to Gonzalo, Jose

Gonzalo,

I'll be in Spain for the next couple of weeks. Let's meet upon my return. I've blocked out Wednesday, November 6, on my calendar. Could you please send out a calendar invite for that date at a time of your choosing?

Jose Fred will also be attending. Same issue.

Thank you.

--

Bob Pinkos
HR Manager

Gonzalo La Cava <gonzalo.lacava@palmbeachschools.org>

Oct 18,
2019,
12:32 PM

to Vicki, Nickla, me, Jose

Bob,

I will have Vicki schedule this meeting to ensure that we are all on the same page regarding your concerns and expectations moving forward.

Thanks

Gonzalo S. La Cava, Ed.D.
Chief of Human Resources

Robert Pinkos <robert.pinkos@palmbeachschools.org>

Oct 18,
2019,
12:34 PM

to Gonzalo

And you will attend, right?

Gonzalo La Cava <gonzalo.lacava@palmbeachschools.org>

Oct 18,
2019,
1:59 PM

to me

Possibly

Based on the email exchange, I now began sensing that Dr. La Cava was trying to avoid me and that he was likely working in concert with Ms. Evans-Pare to harass me by requiring a personal leave of absence for my attendance at the HEC Awards. The motive for the harassment was likely my recusal from the Latson case. I understood that Ms. Evans-Pare's tantrum of August 19 was probably standing in the way for them (La Cava & Evans-Pare) to take disciplinary action against me for allegedly being insubordinate due to my recusal. I also

understood that reporting Ms. Evans-Pare's misconduct at a meeting in the presence of Dr. La Cava gave cause for him (La Cava) to be reluctant to meet. It was also looking more likely that Ms. Evans-Pare's directive for me to put in for personal leave for a legitimate District sponsored event had its genesis with Dr. La Cava. Yet, another reason for the apparent avoidance.

Again, keep in mind; I had no idea that Dr. La Cava was already aware of Ms. Evans-Pare's cursing and yelling at me. Now, undoubtedly, Dr. La Cava was being amused with me when he replied, "Possibly" when I asked, "And you will attend?"

Dr. La Cava was behind Ms. Evans-Pare directing me to take a half-day off for attending the Hispanic Education Coalition Awards Event. After all, according to Ms. Evans-Pare, it was Dr. La Cava that reported to her my presence at the HEC event.

Little did I know at the time but Dr. La Cava was toying with me when he responded, "Possibly." Dr. La Cava knew my two complaints about Ms. Evans-Pare now involved him. Dr. La Cava not only knew that Ms. Evans-Pare had yelled and cursed at me, he was behind covering it up. Moreover, it was Dr. La Cava that worked in unison with or at his direction, to have Ms. Evans-Pare demand that I take a half-day of personal time for an event that was completely and totally within my job responsibilities and duties.

Upon my return from Spain, I received a calendar invite to meet on November 8, with Dr. La Cava, Ms. Evans-Pare, and Mr. Fred. I was now prepared to get to the bottom of the nonsense of directing me to put in for personal leave for attending the HEC Awards. I also planned to report the August 19th misconduct of Ms. Evans-Pare. This meeting needed to be accurately recorded. Therefore, I sent the following email on Wednesday, November 6, at 8:35 AM.

Robert Pinkos <robert.pinkos@palmbeachschools.org>

*Nov 6,
2019, 8:35
AM*

to Gonzalo, Vicki, Jose

Gonzalo & Vicki,

I noticed Friday's meeting is scheduled for 30 minutes (10:30-11:00). I'm not confident that 30 minutes will be enough time. Could you please allow for one hour (10:30-11:30)?

I'm also requesting the meeting be audio recorded so that an accurate transcript can be typed afterwards.

Thank you.
Bob Pinkos
HR Manager

Then the following email exchange followed.

Gonzalo La Cava <gonzalo.lacava@palmbeachschools.org>

Nov 6,
2019, 9:19
AM

to Nickla, me, Vicki, Jose

Mr. Pinkos,

The meeting you requested has been cancelled due to a scheduling conflict. I suggest that you immediately bring any grievances or concerns to your direct supervisor so that she can address immediately and provide you with guidance. Have a wonderful day!

Gonzalo S. La Cava, Ed.D.
Chief of Human Resources

Robert Pinkos <robert.pinkos@palmbeachschools.org>

Nov 6,
2019,
10:27 AM

to Edward, Gonzalo, Jose

Gonzalo,

The issue Jose and I have is with Vicki. Both Jose and I have met with her individually. That's part of the issue.

As her supervisor, we are again requesting to meet with you.

As I had advised you in the past, this issue is important and remains so. Jose and I need to be heard. I would hope you would accommodate the time.

By you canceling Friday's meeting, do you advise we take up this issue with the Chief of Staff?

Please advise.

Thank you.
Bob

I received no email reply from Dr. La Cava. Instead, I received the following email from Ms. Evans-Pare, 38 minutes after I asked Dr. La Cava, "By canceling Friday's meeting, do you advise we take up this issue with the Chief of Staff?"

Vicki Evans-Pare <vicki.evans-pare@palmbeachschools.org>

*Nov 6,
2019,
11:05 AM*

to me, Jose, Gonzalo

In this instance, due to the fact that I was not advised in advance that you wished to attend this luncheon, I am standing by my request that you use personal leave for the time missed. In the future, should you wish to attend a District sponsored or community event that is outside of but related to your daily work, I expect to be asked in advance; supplied an explanation of how it is tied to your job; and provided with a completed TDE under Policy 3.65 to account for the absence and to establish that you were working during that event for liability purposes.

*Vicki Evans-Paré, Esq.
Director of Employee and Labor Relations*

At 11:40 I emailed Ed Tierney, Chief of Staff at 11:40 AM so that he could address my concerns.

Robert Pinkos <robert.pinkos@palmbeachschools.org>

*Nov 6,
2019,
11:40 AM*

to Edward, Jose

Ed,

When can we meet?

Bob

Chief of Staff Tierney never replied to my email.

The above email exchange can be summarized as follows: I would not be able to report Ms. Evans-Pare's wrongdoing to her supervisor, the Chief of HR, Dr. La Cava. Ms. Evans-Pare continued to direct me to put in for personal time for an event I should have attended as per my job duties, responsibilities etc.

I'm trying to report the wrongdoing of an employee and District administrators are preventing me from doing so.

Again, keep in mind; I had no idea that Dr. La Cava was already aware of Ms. Evans-Pare's cursing and yelling at me. Dr. La Cava was behind Ms. Evans-Pare directing me to take a half-day off for attending the Hispanic Education Coalition Awards Event. After all, according to Ms. Evans-Pare, it was Dr. La Cava that reported to her my presence at the HEC event. Dr. La Cava knew what my complaint would be. Dr. La Cava steadfastly avoided hearing my complaint because it would implicate his wrongdoing.

It should be noted that around late October and early November, Dr. Pinkos, Board member Marcia Andrews, and Dr. Garcia, president of HEC, were trying to work with administrative leadership to end the nonsense of Ms. Evans-Pare's directive to Mr. Fred and me to put in for personal time for attending the HEC Awards. I'm also aware that Dr. Pinkos had several conversations with Mr. Tierney during this period.

Mr. Fred, I believe, could be defined as collateral damage. It was me that Dr. La Cava and Ms. Evans-Pare wanted to punish for my recusal from the Latson case.

On November 8, 2019, at or about 8:20 AM, I parked my car in Fulton-Holland Educational Services Center (FHESC) parking lot and was on my way to entering the building. As I approached the door to the building I noticed Dr. La Cava exiting his car. Dr. La Cava's parking spot is directly opposite the entry door to FHESC.

I walked by his car as he was getting out. I asked if he was going to meet with me. Dr. La Cava responded, "I'm not going to meet with you."

Dr. La Cava then told me, "Meet with Vicki."

I responded, "I already met with Vicki. Vicki is the problem. That's why I need to meet with you. Isn't that your job to meet with me?"

Dr. La Cava responded, "I'm not going to meet with you," as he pointed his finger at me.

I replied, "Don't wag your finger at me."

Dr. La Cava looked at his finger; presumably having been unaware of his gesturing, and then lowered his hand.

At about this time, I notice Certification Analyst Jackie Richardson walking into FHESC. I nodded to her. I recognized that my voice was showing the frustration I felt.

At this point, Dr. La Cava went to the back door of his car (driver's side) and said; "Don't confront me again at my car."

I replied, "We both need to take a step back."

Dr. La Cava then stated, "I'm going to hold back from saying what I'm thinking."

At this point, I walked away and entered FHESC.

Although I didn't know it at the time, Dr. La Cava avoided meeting with me because he knew that he had covered-up Ms. Evans-Pare's unethical conduct and he was behind the directive for me to put in for personal leave for attending the HEC Event, something none of 70+ employees that attended the event did.

Upon checking my email soon thereafter, I noticed the monthly breakfast celebration was occurring in Suite A-106. Noticeably absent was Ms. Evans-Pare. Ms. Evans-Pare appeared towards the end of the breakfast entering through Mr. La Cava's suite. At this time, I was speaking with HR Manager Brenda Johnson regarding the reassignment of an employee. I brought Ms. Evans-Pare into the conversation.

Chief of Staff Tierney was updating Assistant Superintendent Pinkos at this time as to the progress of dismissing Ms. Evans-Pare's personal leave requirement for the two administrators attending the HEC event. Based my conversations with Dr. Pinkos, it is my understanding and supposition, that when Dr. La Cava entered his office, he was met by the Chief of Staff Ed Tierney. Mr. Tierney advised Dr. Gonzalo to cease and desist from requiring just 2 administrators (Jose Fred & me) out of the scores that attended to submit a leave form for personal time. This issue now had apparently reached the Superintendent, the same Superintendent that I shared a table with at the HEC district-sponsored event.

Later that afternoon I received a phone call from Board Member Marcia Andrews. Ms. Andrews notified me that the issue regarding me attending the HEC Awards had been settled. I would no longer be required to submit for a leave of absence for personal time. I would receive no adverse action for attending the HEC awards. I questioned Marcia Andrews that I had not received anything in writing to confirm that the issue had been resolved favorably for me. Ms. Andrews stated I would receive something in writing sometime next week and, if not, I should call her. Ms. Andrews was aware of my conversation with Dr. La Cava earlier in the day and advised me that it was a non-issue.

It's important to note that Dr. La Cava apparently does not value HEC for its annual scholarship event. At this year's event, he did not pay for his plate.

Recruitment & Retention Director Edwine Michel attended the event with Dr. La Cava. Sandra Arroyo, a HEC member, witnessed Dr. Gonzalo telling Mr. Michel, "Dessert looks good. Too bad you're not getting any. We're leaving." Dr. La Cava left before the scholarships were awarded. Such conduct, although not an ethics violation, illustrates that Dr. La Cava was not there to share in the joy of needy students receiving scholarships nor was he there to contribute to the scholarship program. Rather, Dr. La Cava, actually took away from the students by having the HEC cover for his plate and then cause there to be 2 empty seats when the students were being honored. As acknowledged, perhaps not a violation of School Board Policy 3.02 Code of Ethics, but certainly a heartless, selfish act that gives insight into his character.

On the afternoon of Monday, November 11, HR Manager Jose Fred received a phone call from Vicki Evans-Pare directing him to report to her by the close of the day. Mr. Fred reported the following to me.

Mr. Fred explained to Ms. Evans-Pare that he had attended the HEC Awards as part of his job as had done for the past 5 years with prior supervisors without objection and with their blessing. Jose Fred explained his job description and the District's mission statement as validation for his attendance. Mr. Fred told Ms. Evans-Pare that at his core she had offended him as an individual. This conversation was similar to one he had with Vicki Evans-Pare previously and that conversation did not persuade her to accept his professionalism to attend the HEC Awards.

Nevertheless, on November 12, Ms. Evans-Pare sent the following email:

From: Vicki Evans-Pare <vicki.evans-pare@palmbeachschools.org>
Date: November 12, 2019 at 4:22:11 PM EST
To: Jose Fred <jose.fred@palmbeachschools.org>, Robert Pinkos <robert.pinkos@palmbeachschools.org>
Cc: Gonzalo La Cava <gonzalo.lacava@palmbeachschools.org>
Subject: October 11th Luncheon - Leave Issue

Yesterday, I had further conversations with Jose regarding this issue. Based upon this discussion and as a one time accommodation, I will not require you to put in a leave of absence for the luncheon you attended on October 11th. In the future, should you wish to attend a District sponsored or community event that is outside of, but related to, your daily work, you are directed to request to attend in advance; supply an explanation of how it is tied to your job; and complete a TDE under Policy 3.65 to account for the absence and to establish that you were working during that event for liability purposes. If I do not agree that there is a nexus between the event and your job responsibilities, you will need to take personal leave to attend.

Regards,

Vicki Evans-Paré, Esq.
Director of Employee and Labor Relations

The staged meeting with Jose Fred merely served as a ruse so that Ms. Evans-Pare could save face. The issue had already been resolved against Ms. Evans-Pare's wishes. The issue was resolved by Board member Marcia Andrews and Chief of Staff Ed Tierney. This particular means of harassment against me had been shut down.

INCIDENTS 3 & 4 ANALYSIS

My attorney, Allison Duffy, has made Public Records Requests for the leave forms (PBSD 0032) for all the School District employees that attended the HEC Event. Ms. Duffy's Public Records Request has been denied. More than seventy (70) School District employees attended. Should the Public Records Request be satisfied, it would show that NONE of the attendees submitted a personal leave form (PBSD 0032) to attend the event. Such a finding would show the harassment and retaliatory conduct by Dr. La Cava and Ms. Evans-Pare towards me.

Ms. Duffy, has also made a Public Records Request for the security video showing my interaction with Dr. La Cava on November 8, 2019. Ms. Duffy's Public Records Request has been denied. Should the Public Records Request be satisfied, it would show Dr. La Cava's demeanor as exhibited by his finger wagging at me. Such a finding would show the harassment and retaliatory conduct by Dr. La Cava.

Dr. La Cava's and Ms. Evans-Pare's conduct violated the **School Board's Code of Ethics 3.02 (4) Accountability and Compliance**, which states: Each employee agrees and pledges: (4)(a) *To provide the best example possible, striving to demonstrate excellence, integrity and responsibility in the workplace,* (4)(b) *To obey local, state and national laws, codes and regulations,* (4)(d) *To treat all students and individuals with respect and to strive to be fair in all matters,* (4)(e) *To create an environment of trust, respect and non-discrimination, by not permitting discriminatory, demeaning or harassing behavior of students or colleagues.* (4)(f) *To take responsibility and be accountable for his or acts or omissions,* (4)(i) *To report improper conduct,* (4)(j) *To be efficient and effective in the delivery of job duties,* (4)(k) *To cooperate during any investigation or proceeding.*

Dr. La Cava's actions also violated, **School Board's Code of Ethics 3.02 (5)(l) Professional Conduct**, states, "We are committed to ensuring that our power and authority are used in an appropriate, positive manner that enhances the public interest and trust. Employees should demonstrate conduct that follows generally recognized professional

standards. Unethical conduct is any conduct that impairs the ability to function professionally in his or her employment position or conduct that is detrimental to the health, welfare or discipline of students or the workplace."

In addition, Dr. La Cava's and Ms. Evans-Pare's conduct violated **School Board Policy 3.10 (6) Conditions of Employment with the District** which states: *"The District requires its employees to carry out their responsibilities in accordance to School Board Policy 1.013 (as may be amended), their job descriptions and reasonable directives from their supervisors that do not pose an immediate serious hazard to health and safety or clearly violate established law or policy."*

Further, the Dr. La Cava's and Ms. Evans-Pare's conduct is prohibited by **School Board Policy 1.013 Responsibilities of School District Personnel and Staff (1)** which states: *"It shall be the responsibility of the personnel employed by the district school board to carry out their assigned duties in accordance with federal laws, rules, state statutes, state board of education rules, school board policy, superintendent's administrative directives and local school and area rules."*

Both Ms. Evans-Pare's and Dr. La Cava's conduct violated **School Board Policy 3.19 – Policy Prohibiting Discrimination and Harassment**, which states, *The School Board is committed to maintaining a work and learning environment in which all individuals are treated with dignity and respect. All employees and applicants for employment of the School District of Palm Beach County, Florida, have the right to work in an environment free from discrimination and conduct which can be considered harassing or coercive...Supervisors and managers are responsible for assuring that no employee is subjected to conduct that constitutes discrimination, sexual harassment or any other form of harassment...Prompt and thorough investigation of the alleged incident will be conducted and appropriate action will be taken.*

School Board Policy 3.19 explains **Other Harassment (5)**, *(a) Harassment on the basis of any other protected characteristic is also strictly prohibited. This includes verbal or physical conduct that denigrates or shows hostility or aversion toward an individual because of his/her race, color, religion, sex, sexual orientation, gender identity or expression, national origin, age, disability, marital status, citizenship or any other characteristic protected by law and that: (i) Has the purpose or effect of creating an intimidating, hostile, or offensive work environment; (ii) Has the purpose or effect of unreasonably interfering with an individual's work or performance; (iii) Otherwise, adversely affects an individual's employment;*

School Board Policy 3.28 – Whistleblower Protection Policy states, *It is the intent of this policy to protect an employee who engages in good faith reporting from reprisal by adverse employment action or other retaliation as a result of having disclosed wrongful conduct, and to provide employees who believe they have been subject to reprisal or false allegations a fair process to seek relief from such acts...*

"Employee" means any person hired by the School Board after completing the personnel procedures required by the School Board; or any person who performs services for the School

Board under the direction and control of contracts with an Independent Contractor for wages or other remuneration.

"Adverse personnel action" means the discharge, suspension, transfer, demotion, reprimand, warning, withholding of bonuses, the reduction of salary or benefits, or any other adverse action taken against an employee within the terms and conditions of employment as provided herein.

"Protected disclosure", according to the Florida's Public Whistleblower's Act, is the good faith reporting of:

- i. Any violation or suspected violation of any federal, state, or local law, rule, or regulation, or Board policy or procedure, committed by an employee(s), agent(s) or an independent contractor(s) of the Board which creates and presents a substantial and specific danger to the public's or students' health, safety, or welfare; or*
- ii. Any act or suspected act of gross mismanagement, malfeasance, misfeasance, gross waste of public funds, suspected or actual Medicaid fraud or abuse, or gross neglect of duty committed by an employee, agent or independent contractor of the Board.*

"Gross mismanagement" means a continuous pattern of managerial abuses, wrongful or arbitrary and capricious actions, or fraudulent or criminal conduct which may have a substantial adverse economic impact.

"Whistleblower" means a person or entity making a protected disclosure. A whistleblower may be an employee, students, parents, vendors, contractors, applicants for employment, or the general public who makes a good faith report. The whistleblower's role is as a reporting party. Whistleblowers are not investigators or finders of fact, nor do they determine the appropriate corrective or remedial action that may be warranted.

In addition, Dr. La Cava, as a holder of a Florida Professional Educator Certificate, is bound to adhere to **6A-10.081 Principles of Professional Conduct for the Education Profession in Florida**. Dr. La Cava's conduct violated:

- (1) Florida educators shall be guided by the following ethical principles:
 - (a) The educator values the worth and dignity of every person, the pursuit of truth, devotion to excellence, acquisition of knowledge, and the nurture of democratic citizenship. Essential to the achievement of these standards are the freedom to learn and to teach and the guarantee of equal opportunity for all.
 - (c) Aware of the importance of maintaining the respect and confidence of one's colleagues,

of students, of parents, and of other members of the community, the educator strives to achieve and sustain the highest degree of ethical conduct.

(2) Florida educators shall comply with the following disciplinary principles. Violation of any of these principles shall subject the individual to revocation or suspension of the individual educator's certificate, or the other penalties as provided by law.

(c) Obligation to the profession of education requires that the individual:

1. Shall maintain honesty in all professional dealings.

4. Shall not engage in harassment or discriminatory conduct which unreasonably interferes with an individual's performance of professional or work responsibilities or with the orderly processes of education or which creates a hostile, intimidating, abusive, offensive, or oppressive environment; and, further, shall make reasonable effort to assure that each individual is protected from such harassment or discrimination.

14. Shall report to appropriate authorities any known allegation of a violation of the Florida School Code or State Board of Education Rules as defined in Section 1012.795(1), F.S.

15. Shall seek no reprisal against any individual who has reported any allegation of a violation of the Florida School Code or State Board of Education Rules as defined in Section 1012.795(1), F.S.

INCIDENT #5 NARRATIVE

On Thursday, November 14, 2019, I received voicemail from HR Manager Mary Powers to call School Police Detective Lockhart. It should be noted that in my duties as an HR Manager I frequently work with the police. Upon calling Detective Lockhart I ascertained she was not calling for my assistance on a particular case, she wanted to speak to me about myself. Detective Lockhart said there were no allegations against me but she still wanted to speak with me at her office at Turning Points. I informed her that I would not speak with her without representation. Detective Lockhart never called me back.

My phone conversation with Detective Lockhart gave cause for concern and I suspected this was something Dr. La Cava was behind. It was odd for me to get a call from a detective I didn't know and one from Turning Points, a school I do not serve. Dr. La Cava and I work at FHESC where School Police is headquartered. There is little doubt that this was yet one more incident of harassment devised by Dr. La Cava to intimidate me.

INCIDENT # 5 ANALYSIS

Using the police as a conduit to harass an employee is an abuse by the employee's supervisor. Such conduct by Dr. La Cava is an abuse of my civil rights.

Dr. La Cava's conduct violated the **School Board's Code of Ethics 3.02 (4) Accountability and Compliance**, which states: Each employee agrees and pledges: (4)(a) *To provide the best example possible, striving to demonstrate excellence, integrity and responsibility in the workplace,* (4)(b) *To obey local, state and national laws, codes and*

regulations, (4)(d) To treat all students and individuals with respect and to strive to be fair in all matters, (4)(e) To create an environment of trust, respect and non-discrimination, by not permitting discriminatory, demeaning or harassing behavior of students or colleagues. (4)(f) To take responsibility and be accountable for his or acts or omissions, (4)(i) To report improper conduct, (4)(j) To be efficient and effective in the delivery of job duties, (4)(k) To cooperate during any investigation or proceeding.

Dr. La Cava's actions also violated, **School Board's Code of Ethics 3.02 (5)(I) Professional Conduct**, states, "We are committed to ensuring that our power and authority are used in an appropriate, positive manner that enhances the public interest and trust. Employees should demonstrate conduct that follows generally recognized professional standards. Unethical conduct is any conduct that impairs the ability to function professionally in his or her employment position or conduct that is detrimental to the health, welfare or discipline of students or the workplace."

In addition, Dr. La Cava's conduct violated **School Board Policy 3.10 (6) Conditions of Employment with the District** which states: "The District requires its employees to carry out their responsibilities in accordance to School Board Policy 1.013 (as may be amended), their job descriptions and reasonable directives from their supervisors that do not pose an immediate serious hazard to health and safety or clearly violate established law or policy."

Further, the Dr. La Cava's conduct is prohibited by **School Board Policy 1.013 Responsibilities of School District Personnel and Staff (1)** which states: "It shall be the responsibility of the personnel employed by the district school board to carry out their assigned duties in accordance with federal laws, rules, state statutes, state board of education rules, school board policy, superintendent's administrative directives and local school and area rules."

Dr. La Cava's conduct violated **School Board Policy 3.19 - Policy Prohibiting Discrimination and Harassment**, which states, *The School Board is committed to maintaining a work and learning environment in which all individuals are treated with dignity and respect. All employees and applicants for employment of the School District of Palm Beach County, Florida, have the right to work in an environment free from discrimination and conduct which can be considered harassing or coercive...Supervisors and managers are responsible for assuring that no employee is subjected to conduct that constitutes discrimination, sexual harassment or any other form of harassment...Prompt and thorough investigation of the alleged incident will be conducted and appropriate action will be taken.*

School Board Policy 3.19 explains **Other Harassment (5)**, (a) *Harassment on the basis of any other protected characteristic is also strictly prohibited. This includes verbal or physical conduct that denigrates or shows hostility or aversion toward an individual because of his/her race, color, religion, sex, sexual orientation, gender identity or expression, national origin, age, disability, marital status, citizenship or any other characteristic protected by law and that: (i) Has the purpose or effect of creating an intimidating, hostile, or offensive work environment; (ii) Has*

the purpose or effect of unreasonably interfering with an individual's work or performance; (iii) Otherwise, adversely affects an individual's employment;

School Board Policy 3.28 – Whistleblower Protection Policy states, *It is the intent of this policy to protect an employee who engages in good faith reporting from reprisal by adverse employment action or other retaliation as a result of having disclosed wrongful conduct, and to provide employees who believe they have been subject to reprisal or false allegations a fair process to seek relief from such acts...*

"Employee" means any person hired by the School Board after completing the personnel procedures required by the School Board; or any person who performs services for the School Board under the direction and control of contracts with an Independent Contractor for wages or other remuneration.

"Adverse personnel action" means the discharge, suspension, transfer, demotion, reprimand, warning, withholding of bonuses, the reduction of salary or benefits, or any other adverse action taken against an employee within the terms and conditions of employment as provided herein.

"Protected disclosure", according to the Florida's Public Whistleblower's Act, is the good faith reporting of:

- i. Any violation or suspected violation of any federal, state, or local law, rule, or regulation, or Board policy or procedure, committed by an employee(s), agent(s) or an independent contractor(s) of the Board which creates and presents a substantial and specific danger to the public's or students' health, safety, or welfare; or*
- ii. Any act or suspected act of gross mismanagement, malfeasance, misfeasance, gross waste of public funds, suspected or actual Medicaid fraud or abuse, or gross neglect of duty committed by an employee, agent or independent contractor of the Board.*

"Gross mismanagement" means a continuous pattern of managerial abuses, wrongful or arbitrary and capricious actions, or fraudulent or criminal conduct which may have a substantial adverse economic impact.

"Whistleblower" means a person or entity making a protected disclosure. A whistleblower may be an employee, students, parents, vendors, contractors, applicants for employment, or the general public who makes a good faith report. The whistleblower's role is as a reporting party. Whistleblowers are not investigators or finders of fact, nor do they determine the appropriate corrective or remedial action that may be warranted.

In addition, Dr. La Cava, as a holder of a Florida Professional Educator Certificate, is bound to adhere to **6A-10.081 Principles of Professional Conduct for the Education Profession in Florida**. Dr. La Cava's conduct violated:

(1) Florida educators shall be guided by the following ethical principles:

(a) The educator values the worth and dignity of every person, the pursuit of truth, devotion to excellence, acquisition of knowledge, and the nurture of democratic citizenship. Essential to the achievement of these standards are the freedom to learn and to teach and the guarantee of equal opportunity for all.

(c) Aware of the importance of maintaining the respect and confidence of one's colleagues, of students, of parents, and of other members of the community, the educator strives to achieve and sustain the highest degree of ethical conduct.

(2) Florida educators shall comply with the following disciplinary principles. Violation of any of these principles shall subject the individual to revocation or suspension of the individual educator's certificate, or the other penalties as provided by law.

(c) Obligation to the profession of education requires that the individual:

1. Shall maintain honesty in all professional dealings.

4. Shall not engage in harassment or discriminatory conduct which unreasonably interferes with an individual's performance of professional or work responsibilities or with the orderly processes of education or which creates a hostile, intimidating, abusive, offensive, or oppressive environment; and, further, shall make reasonable effort to assure that each individual is protected from such harassment or discrimination.

14. Shall report to appropriate authorities any known allegation of a violation of the Florida School Code or State Board of Education Rules as defined in Section 1012.795(1), F.S.

15. Shall seek no reprisal against any individual who has reported any allegation of a violation of the Florida School Code or State Board of Education Rules as defined in Section 1012.795(1), F.S.

INCIDENTS #6 & 7 NARRATIVE

On Friday afternoon, November 15, 2019, EEO Coordinator **Germaine Z. English** came into my office and stated, "Vicki wants to see you in her office." Upon my arrival in Ms. Evans-Pare's suite, I met Compensation Director Mark Mitchell sitting with Ms. Evans-Pare. I was handed two documents; Memorandum RE: Failure to Fulfill Job Responsibilities/Insubordination and a letter reassigning me to the South Regional Office effective Wednesday, November 20. I signed for receipt of the memorandum documenting me for my recusal from the Latson case.

The memorandum documenting me for allegedly failing to fulfill job responsibilities and insubordination was issued to me nearly 3 months after I had recused myself (August 19). Documenting an employee months after the supervisor became aware of area of concern is an unacceptable HR practice. It is a clear violation of due process. That in and of itself is a historic form of harassment reminiscent of WW II concentration camp prisoners that had broken a rule

and would be made to wait weeks not knowing when the inevitable discipline would be administered. In my case, however, it was not weeks but months, that Ms. Evans-Pare hung the discipline over my head.

Ms. Evans-Pare stated that today (11/15/19) would be my last day working at FHESC. I responded that I had a lot of cases and files I needed to button-up and it would be helpful to me to have my last day at FHESC to be Tuesday, November 19. I explained that I was flying to Germany, on Wednesday, November 20, and that would coordinate well for my transition to the South Regional Office in Boca Raton. Ms. Evans-Pare responded that today (11/15/19) would be my last day working at FHESC.

The reassignment letter signed by Ms. Evans-Pare in part reads, "This letter is direction to and confirmation of your new job duty location at the South Regional Office, 1790 N.W. Spanish river Boulevard, Boca Raton 33431 beginning Wednesday, November 20, 2019. (Underlined for emphasis).

I was being involuntarily removed from my work location that was 7 miles from my home to a location some 27 miles away. I mentioned to Mr. Mitchell and Ms. Evans-Pare that it will now cost me more to commute, as my travel mileage reimbursement would be effected. Ms. Evans-Pare responded that I could still put in for mileage reimbursement, apparently not understanding how the move to Boca Raton as my main office work dramatically impact mileage calculations per policy. I was not offered any accommodation for the inconvenience and driving costs.

I departed the meeting by saying to Mr. Mitchell and Ms. Evans-Pare that I have 10 months before I retire and all I want is to work in peace and harmony.

I understood as a seasoned HR Manager that my reassignment letter with the effective date of my reassignment had to be at the direction of the Superintendent even though the letter was signed by Ms. Evans-Pare.

Ms. Evans-Pare was determined to humiliate me by having me return to my cubicle and rush to grab my belongings, 5 days earlier than the directive as stated in the letter. Ms. Evans-Pare's conduct was clearly vindictive and an act of insubordination against a directive presumably by the Superintendent. Within minutes, IT was hauling away my computer etc. I told my colleagues I had arranged a deal in order to save face. The level of humiliation inflicted upon me by the methodic harassment of Ms. Evans-Pare was now unbearable. I did my best to keep my dignity as my colleagues helped me load my car.

INCIDENTS 6 & 7 ANALYSIS

Ms. Evans-Pare's conduct violated the **School Board's Code of Ethics 3.02 (4) Accountability and Compliance**, which states: Each employee agrees and pledges: (4)(a) *To provide the best example possible, striving to demonstrate excellence, integrity and responsibility in the workplace,* (4)(b) *To obey local, state and national laws, codes and regulations,* (4)(d) *To treat all students and individuals with respect and to strive to be fair in all*

matters, (4)(e) To create an environment of trust, respect and non-discrimination, by not permitting discriminatory, demeaning or harassing behavior of students or colleagues. (4)(f) To take responsibility and be accountable for his or acts or omissions, (4)(i) To report improper conduct, (4)(j) To be efficient and effective in the delivery of job duties, (4)(k) To cooperate during any investigation or proceeding.

Ms. Evans-Pare's actions also violated, **School Board's Code of Ethics 3.02 (5)(l) Professional Conduct**, states, "We are committed to ensuring that our power and authority are used in an appropriate, positive manner that enhances the public interest and trust. Employees should demonstrate conduct that follows generally recognized professional standards. Unethical conduct is any conduct that impairs the ability to function professionally in his or her employment position or conduct that is detrimental to the health, welfare or discipline of students or the workplace."

In addition, Ms. Evans-Pare's conduct violated **School Board Policy 3.10 (6) Conditions of Employment with the District** which states: "The District requires its employees to carry out their responsibilities in accordance to School Board Policy 1.013 (as may be amended), their job descriptions and reasonable directives from their supervisors that do not pose an immediate serious hazard to health and safety or clearly violate established law or policy."

Further, the Ms. Evans-Pare's conduct is prohibited by **School Board Policy 1.013 Responsibilities of School District Personnel and Staff (1)** which states: "It shall be the responsibility of the personnel employed by the district school board to carry out their assigned duties in accordance with federal laws, rules, state statutes, state board of education rules, school board policy, superintendent's administrative directives and local school and area rules."

Ms. Evans-Pare's conduct violated **School Board Policy 3.19 – Policy Prohibiting Discrimination and Harassment**, which states, *The School Board is committed to maintaining a work and learning environment in which all individuals are treated with dignity and respect. All employees and applicants for employment of the School District of Palm Beach County, Florida, have the right to work in an environment free from discrimination and conduct which can be considered harassing or coercive...Supervisors and managers are responsible for assuring that no employee is subjected to conduct that constitutes discrimination, sexual harassment or any other form of harassment...Prompt and thorough investigation of the alleged incident will be conducted and appropriate action will be taken.*

School Board Policy 3.19 explains **Other Harassment (5)**, (a) *Harassment on the basis of any other protected characteristic is also strictly prohibited. This includes verbal or physical conduct that denigrates or shows hostility or aversion toward an individual because of his/her race, color, religion, sex, sexual orientation, gender identity or expression, national origin, age, disability, marital status, citizenship or any other characteristic protected by law and that: (i) Has the purpose or effect of creating an intimidating, hostile, or offensive work environment; (ii) Has the purpose or effect of unreasonably interfering with an individual's work or performance; (iii) Otherwise, adversely affects an individual's employment;*

School Board Policy 3.28 – Whistleblower Protection Policy states, *It is the intent of this policy to protect an employee who engages in good faith reporting from reprisal by adverse employment action or other retaliation as a result of having disclosed wrongful conduct, and to provide employees who believe they have been subject to reprisal or false allegations a fair process to seek relief from such acts...*

"Employee" means any person hired by the School Board after completing the personnel procedures required by the School Board; or any person who performs services for the School Board under the direction and control of contracts with an Independent Contractor for wages or other remuneration.

"Adverse personnel action" means the discharge, suspension, transfer, demotion, reprimand, warning, withholding of bonuses, the reduction of salary or benefits, or any other adverse action taken against an employee within the terms and conditions of employment as provided herein.

"Protected disclosure", according to the Florida's Public Whistleblower's Act, is the good faith reporting of:

- i. Any violation or suspected violation of any federal, state, or local law, rule, or regulation, or Board policy or procedure, committed by an employee(s), agent(s) or an independent contractor(s) of the Board which creates and presents a substantial and specific danger to the public's or students' health, safety, or welfare; or*
- ii. Any act or suspected act of gross mismanagement, malfeasance, misfeasance, gross waste of public funds, suspected or actual Medicaid fraud or abuse, or gross neglect of duty committed by an employee, agent or independent contractor of the Board.*

"Gross mismanagement" means a continuous pattern of managerial abuses, wrongful or arbitrary and capricious actions, or fraudulent or criminal conduct which may have a substantial adverse economic impact.

"Whistleblower" means a person or entity making a protected disclosure. A whistleblower may be an employee, students, parents, vendors, contractors, applicants for employment, or the general public who makes a good faith report. The whistleblower's role is as a reporting party. Whistleblowers are not investigators or finders of fact, nor do they determine the appropriate corrective or remedial action that may be warranted.

INCIDENT #8 NARRATIVE

On the day before I was scheduled to fly to Germany, November 19, 2019, I received the following email from EEO Coordinator Germaine Z. English.

Germaine English

*Nov 19, 2019,
8:23 AM*

to me

Good Morning Bob,

I am conducting an investigation into complaints made by employees in which you are the subject. I would like to interview you on Wednesday, November 20, 2019 in the afternoon in your office at the South Regional Office. I'm available from noon on tomorrow. Please let me know what time will work for you.

You can have representation at this meeting. If you would like to bring legal representation, please let me know so we can have the attorneys coordinate a time for this interview.

Thanking you in advance for your cooperation.

Apparently, Dr. La Cava did not want me to work in peace and harmony. The harassment continued even though I was now working in Boca Raton, far from FHESC.

It was at this time I retained the counsel of Fred A. Schwartz.

Upon notice that I was represented by Fred A. Schwartz, the District (La Cava, Evans-Pare, and likely Superintendent Fennoy) retained outside counsel to "investigate" me.

On January 16, 2020, I met with Gunster Law Firm Attorney Joseph G. Santoro at Phillips Point, 777 South Flagler Drive, West Palm Beach.

Representing me was Allison Duffy and Fred Schwartz.

Upon entering Gunster Law, located on the entire the 5th floor of Phillips Point, I was struck by the opulence of the reception area. In fact, the entire floor reeked of taxpayers' money quickly falling through a sieve into the hands of a private law firm. It was apparent that the District leadership decided to go all out in their attempt to intimidate me. And for what?

Mr. Schwartz, Ms. Duffy, and I were seated at a conference table. Mr. Santoro entered, accompanied by another attorney. After the introductions and handshakes, Mr. Schwartz stated he was going to audio record the interview.

Mr. Santoro objected to the interview being recorded.

I leaned towards Mr. Schwartz and suggested, "Court reporter?"

Mr. Schwartz asked Mr. Santoro why he objected to the interview being recorded.

Mr. Santoro responded something closely akin to *I don't want to. We're all lawyers here.*

Mr. Schwartz stated that it would be Mr. Santoro's choice not to have the interview if he chose not to have it recorded.

Mr. Santoro stated he disagreed.

Mr. Schwartz asked Mr. Santoro if he was aware if his client (me) had filed as a Whistleblower.

Mr. Santoro responded he was unaware of the Whistleblower Status.

Mr. Schwartz then added, "I consider this meeting to be harassment."

Mr. Santoro stated it was against the School Board's policy to record interviews.

Mr. Schwartz raised his phone from the conference table and stated he would call the School District's legal department and get an advisement.

Mr. Santoro was becoming visibly upset. Mr. Santoro asked if we (Schwartz, Duffy, Pinkos) would like some time alone to consult.

Ms. Duffy and Mr. Schwartz accepted the offer. Mr. Santoro and his colleague exited the conference room.

Several minutes later, Mr. Santoro and his colleague returned. Mr. Santoro, still visibly upset, asked Mr. Schwartz had there be a change of position regarding recording the meeting.

Mr. Santoro stated to Mr. Schwartz that his client (me) was refusing to be interviewed. (For the record, I followed the advice of my counsel. The only words I uttered were "court reporter.")

Mr. Schwartz again stated that we (Schwartz, Duffy, Pinkos) were ready to move forward with the interview. It would be Mr. Santoro's decision not to have the interview if he could not allow it being recorded.

Mr. Santoro then looked at Mr. Schwartz's phone on the conference table and asked, "Are you recording me now?"

Mr. Schwartz replied, "No."

At this point, Mr. Santoro acknowledged he chose not to go forward with the interview. Mr. Santoro and his colleague left. Mr. Santoro was noticeably agitated whereas his colleague was not.

Mr. Schwartz then emailed the Whistleblower complaint from his phone to Mr. Santoro.

Ms. Duffy, Mr. Schwartz, and I met the receptionist for parking validation. I again wondered about the extent to which the District was willing to spend taxpayers' money as I admired the view across the intracoastal at Henry Flager's mansion. For what I asked myself.

To reiterate, I did not understand at the time the flagrant acts of wrongdoing Dr. La Cava had committed beginning on August 19, 2019, when he chose not to investigate the wrongdoing of Vicki Evans-Pare. From August 19, 2019, Dr. La Cava and Ms. Evans-Pare worked in unison to systematically harass me with the apparent goal of forcing me to retire. The email exchange of August 19, 2019 between Dr. La Cava and Ms. Evans-Pare was the genesis of the subsequent abusive conduct towards me. The retaliation against me grew as I document in this memorandum. There was no turning back for Dr. La Cava and Ms. Evans-Pare. Now Dr. La Cava and Ms. Evans-Pare hired a high-powered (meaning expensive) law firm to go after me.

And for what?

Germaine Z English was certainly no match for the likes of Fred A Schwartz. Apparently, Ms. Evans-Pare and Dr. La Cava had little faith in the District's legal department handling the case that would center on protecting their retaliatory conduct.

The long-term answer to that question is Ms. Evans-Pare and Dr. La Cava had allowed their retaliatory conduct against me for my recusal from the Latson case to morph into an litany of coordinated harassment acts that could not be justified. Ms. Evans-Pare and Dr. La Cava presumably came to the conclusion that there was no other option than to continue to ratchet-up their retaliatory acts with the goal that I would retire.

In other words, the campaign of harassment against me was likely motivated by two factors: (1) My recusal from the Latson Investigation coupled with the unease that I would likely be called as a witness exposing the lack of merits of the investigation designed to find cause for termination. (2) The need for Ms. Evans-Pare and Dr. La Cava to hide their acts of wrongdoing. And with each passing day their misconduct and fear of exposure caused an ever expansion of harassment.

Simply put, the Chief of Human Resources and the Director of Employee Relations engaged in conduct that disqualifies each from the positions they hold as the supposed models of ethical behavior and protectors of employee rights. Dr. La Cava and Ms. Evans-Pare failed in their most basic responsibilities to carry out their job responsibilities.

Mr. Santoro sent the following email to Mr. Schwartz on January 16, 2020 at 11:00 am.

*From: "Santoro, Joseph" <JSantoro@gunster.com>
Date: January 16, 2020 at 11:00:23 AM EST
To: "Fred A. Schwartz" <schwartz@kolawyers.com>, "Nelson, Anthony" <ANelson@gunster.com>
Cc: Jean Middleton <jean.middleton@palmbeachschools.org>
Subject: RE: Pinkos IG Complaint*

Mr. Schwartz

Thank you for your email. We will accept this statement and consider it as part of our investigation. Of course, I vehemently disagree with your characterization of this morning's events. It was your client's refusal to answer questions that resulted in the interview not proceeding. Pursuant to School Board policy 3.25, investigations of this nature are intended to be non-adversarial, and are confidential. We postponed this interview several weeks at your request, and permitted your client to have two attorneys to represent him in attendance. Despite this, and for reasons which are unclear to me, he refused to proceed without imposing conditions which were inappropriate and inconsistent with the School Board's standard processes. If you would like to reconsider your client's position, we are available to conduct the interview. Otherwise we will complete our investigation with the information we have, which will include your client's written submission. Thank you.

*Joseph G. Santoro
Shareholder, Chair Labor and Employment Practice Group
Gunster
777 South Flagler Drive, Suite 500 East
West Palm Beach, FL 33401
P 561-650-0605
F 561-655-5677*

The aforementioned email further substantiates Mr. Schwartz's assertion that the January 16 meeting was yet another form of harassment on several accounts:

- Per Mr. Santoro, "It was your client's refusal to answer questions that resulted in the interview not proceeding."
 - I never refused to be interviewed. I followed the advice of my counsel. The only words I spoke were to Mr. Schwartz when I said, "Court Reporter."
 - Mr. Santoro is misrepresenting the truth with the apparent goal of wanting to make me look insubordinate. I actually came prepared to the meeting with notes and a 20+ page typed statement that I planned to read aloud.
- Per Mr. Santoro, "Pursuant to School Board Policy 3.25, investigations of this nature are intended to be non-adversarial, and are confidential."

- There were five (5) attendees at the meeting. The only attendee who took on an adversarial tone and demeanor was Mr. Santoro.
- The meeting was intended to be an interview as part of an investigation. All District documents become public records ten (10) days after the close of the case pursuant to public records law.
- Per Mr. Santoro, "We... permitted your client to have two attorneys to represent him in attendance."
 - My due process rights allow me to have the representation I see fit. Mr. Santoro apparently thinks I need his permission.
- Per Mr. Santoro, "Despite this, and for reasons which are unclear to me, he refused to proceed without imposing conditions which were inappropriate and inconsistent with the School Board's standard processes."
 - Mr. Schwartz made it very clear and repeatedly that it was Mr. Santoro's decision not go forward with a recorded interview.
 - I did not refuse anything. I only spoke two words ("court reporter") and that was said to Mr. Schwartz. I said nothing to Mr. Santoro after the initial introductions.
 - Mr. Santoro referred to "conditions, which were inappropriate and inconsistent with the School Board's standard processes"; yet he does not cite a policy. Mr. Schwartz offered to phone the District's legal department to get a ruling. Mr. Santoro chose to walk out of the meeting.

There is little doubt as to what Mr. Santoro's objectives were for the meeting. Mr. Santoro's conduct and mischaracterizations gives insight into his lack of character, integrity, and professionalism. It's not difficult to understand that the law firm was hired by the District to carry out the goal of marginalizing me. Leave not doubt: Those who favor an audio recording have nothing to hide; whereas those that don't want an accurate and irrefutable record of what said and how it was said, do not want an audio recording.

INCIDENT #8 ANALYSIS

Dr. La Cava and Ms. Evans-Pare directing the EEO Coordinator to launch an investigation of me and then follow that up by pending a huge sum of money on a private law firm to harass and intimidate me are acts of gross mismanagement, malfeasance, gross waste of public funds. Dr. La Cava's and Ms. Evans-Pare's misconduct are acts a person not ought to do (malfeasance) and an improper act by which a person may lawfully do that is ethically wrong (misfeasance). Certainly, Incident #8 alone exemplifies misconduct, but more importantly it should be looked at in the context of all the proceeding acts of wrongdoing that ultimately led to this abomination.

Dr. La Cava's and Ms. Evans-Pare's conduct violated the **School Board's Code of Ethics 3.02 (4) Accountability and Compliance**, which states: Each employee agrees and pledges: (4)(a) *To provide the best example possible, striving to demonstrate excellence, integrity and responsibility in the workplace,* (4)(b) *To obey local, state and national laws, codes*

and regulations, (4)(d) To treat all students and individuals with respect and to strive to be fair in all matters, (4)(e) To create an environment of trust, respect and non-discrimination, by not permitting discriminatory, demeaning or harassing behavior of students or colleagues. (4)(f) To take responsibility and be accountable for his or her acts or omissions, (4)(i) To report improper conduct, (4)(j) To be efficient and effective in the delivery of job duties, (4)(k) To cooperate during any investigation or proceeding.

Dr. La Cava's and Ms. Evans-Pare's actions also violated, **School Board's Code of Ethics 3.02 (5)(l) Professional Conduct**, states, "We are committed to ensuring that our power and authority are used in an appropriate, positive manner that enhances the public interest and trust. Employees should demonstrate conduct that follows generally recognized professional standards. Unethical conduct is any conduct that impairs the ability to function professionally in his or her employment position or conduct that is detrimental to the health, welfare or discipline of students or the workplace."

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Ms. Evans-Pare's and Dr. La Cava's conduct violated **School Board Policy 3.19 – Policy Prohibiting Discrimination and Harassment**, which states, *The School Board is committed to maintaining a work and learning environment in which all individuals are treated with dignity and respect. All employees and applicants for employment of the School District of Palm Beach County, Florida, have the right to work in an environment free from discrimination and conduct which can be considered harassing or coercive...Supervisors and managers are responsible for assuring that no employee is subjected to conduct that constitutes discrimination, sexual harassment or any other form of harassment...Prompt and thorough investigation of the alleged incident will be conducted and appropriate action will be taken.*

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the purpose or effect of unreasonably interfering with an individual's work or performance; (iii) Otherwise, adversely affects an individual's employment;

School Board Policy 3.28 – Whistleblower Protection Policy states, *It is the intent of this policy to protect an employee who engages in good faith reporting from reprisal by adverse employment action or other retaliation as a result of having disclosed wrongful conduct, and to provide employees who believe they have been subject to reprisal or false allegations a fair process to seek relief from such acts...*

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"Protected disclosure", according to the Florida's Public Whistleblower's Act, is the good faith reporting of:

- i. Any violation or suspected violation of any federal, state, or local law, rule, or regulation, or Board policy or procedure, committed by an employee(s), agent(s) or an Independent contractor(s) of the Board which creates and presents a substantial and specific danger to the public's or students' health, safety, or welfare; or*
- ii. Any act or suspected act of gross mismanagement, malfeasance, misfeasance, gross waste of public funds, suspected or actual Medicaid fraud or abuse, or gross neglect of duty committed by an employee, agent or independent contractor of the Board.*

"Gross mismanagement" means a continuous pattern of managerial abuses, wrongful or arbitrary and capricious actions, or fraudulent or criminal conduct which may have a substantial adverse economic impact.

"Whistleblower" means a person or entity making a protected disclosure. A whistleblower may be an employee, students, parents, vendors, contractors, applicants for employment, or the general public who makes a good faith report. The whistleblower's role is as a reporting party. Whistleblowers are not investigators or finders of fact, nor do they determine the appropriate corrective or remedial action that may be warranted.

In addition, Dr. La Cava, as a holder of a Florida Professional Educator Certificate, is bound to adhere to **6A-10.081 Principles of Professional Conduct for the Education Profession in Florida**. Dr. La Cava's conduct violated:

(1) Florida educators shall be guided by the following ethical principles:

(a) The educator values the worth and dignity of every person, the pursuit of truth, devotion to excellence, acquisition of knowledge, and the nurture of democratic citizenship. Essential to the achievement of these standards are the freedom to learn and to teach and the guarantee of equal opportunity for all.

(c) Aware of the importance of maintaining the respect and confidence of one's colleagues, of students, of parents, and of other members of the community, the educator strives to achieve and sustain the highest degree of ethical conduct.

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(c) Obligation to the profession of education requires that the individual:

1. Shall maintain honesty in all professional dealings.

4. Shall not engage in harassment or discriminatory conduct which unreasonably interferes with an individual's performance of professional or work responsibilities or with the orderly processes of education or which creates a hostile, intimidating, abusive, offensive, or oppressive environment; and, further, shall make reasonable effort to assure that each individual is protected from such harassment or discrimination.

14. Shall report to appropriate authorities any known allegation of a violation of the Florida School Code or State Board of Education Rules as defined in Section 1012.795(1), F.S.

15. Shall seek no reprisal against any individual who has reported any allegation of a violation of the Florida School Code or State Board of Education Rules as defined in Section 1012.795(1), F.S.

I appreciate you taking the time to investigate my complaint of retaliation and reconsidering my status as Whistleblower as you have become aware of additional pertinent facts.



THE SCHOOL DISTRICT OF
 PALM BEACH COUNTY, FL
 DEPARTMENT OF EMPLOYEE AND LABOR RELATIONS
 3300 FOREST HILL BOULEVARD, A-106
 WEST PALM BEACH, FL 33406-5870
 PHONE: 561-434-8873 / FAX: 561-434-8178
 WWW.PALMBEACHFLORIDA.SCHOOLSDISTRICT.FL

VICKI EVANS-PARÉ, ESQ.
 DIRECTOR

GONZALO S. LA CAVA, Ed.D.
 CHIEF OF HUMAN RESOURCES

Activity #: 20-0012-I
 OIG Staff: Oscar Restrepo
 Date Rec'd: 7/24/20 Pages: 3
 Rec'd: Robert Pinkos
 Redacted: Yes No N/A Req'd TBD
 Exhibit/Reference #: 3

MEMORANDUM

DATE: November 15, 2019
 TO: Robert Pinkos
 FROM: Vicki Evans-Paré, Director
 Employee and Labor Relations
 RE: Failure to Fulfill Job Responsibilities/Insubordination

This document was written to memorialize the events of August 2019 related to the Latson investigation and to set forth expectations for your employment.

Specifically, on July 31, 2019, at approximately 6:19 p.m. I sent you a request to meet on August 1st to discuss a new investigation. We met on the morning of August 1, 2019, at which time I assigned the investigation into William Latson's behavior. We discussed the fact that I had initially contemplated assigning the case to another investigator; however, that employee cited a religious conflict with the case. You questioned why it was being assigned to you. I informed you at that time it was being given to you as it was one of your assigned schools. You voiced your irritation that you were not called by the South Regional Superintendent when the original statements were made by Mr. Latson. We then discussed the fact that the original email would not be a part of the investigation as it was considered handled by Mr. Latson and his supervisor(s). The initial scope was limited to the following issues, in no particular order, during the time period of July 5 to July 13, 2019:

- Did Dr. Latson submit a Leave of Absence for his absences during the week of July 8th-11th and was it approved by the Regional Superintendent?
- Whether his supervisors were aware of his planned vacation absent a signed leave?
- Did Dr. Latson appropriately communicate with District leadership during the relevant time period?
- Did Dr. Latson's email to his staff of July 8, 2019, violate any policies?

At the time the preliminary allegations were ethical misconduct and failure to fulfill his job responsibilities.

On or about August 8th, we met to discuss the progress. You again voiced your irritation in how the initial email was handled by the Regional Office. From your preliminary findings, you indicated the Deputy Superintendent bore some responsibility for the situation. You provided me with a draft report at that meeting. The report focused mainly on the leave of absence issue. There was no analysis as to what policies he may have violated. I made



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PALM BEACH COUNTY, FL
DEPARTMENT OF EMPLOYEE AND LABOR RELATIONS
3300 FOREST HILL BOULEVARD, A-106
WEST PALM BEACH, FL 33406-5870
PHONE: 561-434-8873 / FAX: 561-434-8178
WWW.PALMBEACHSCHOOLS.ORG

VICKI EVANS-PARÉ, ESQ.
DIRECTOR

GONZALO S. LA CAVA, Ed.D.
CHIEF OF HUMAN RESOURCES

corrections and asked you to focus less on the leave issue and more on the lack of leadership and communication. I also directed you to complete the investigation with the scope provided. If during the course of your investigation you uncovered policy/rule violations by others, you were directed to include specific details of the same in a separate memo so a new investigation(s) could be opened, if necessary.

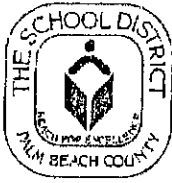
On Wednesday, August 14, 2019, in response to the aforementioned request, you provided me with a memo detailing your understanding of the scope of the investigation. You further stated that you had never been required to reach any conclusions in your prior investigations. The memo also detailed the Superintendent's attempt to non-reappoint Dr. Latson and your belief that "District administrators from the South Regional Office, Department of Teaching and Learning, and the Superintendent's suite" failure to report Dr. Latson's original email to this office violated the Code of Ethics (3.02-4-f). You recommended that an investigation into "how/when employees responded to their learning of Dr. Latson's wrongdoing" be conducted by an outside entity.

- On August 15, 2019, at the Employee and Labor Relations staff meeting, I reviewed the basis for which an HR manager could recuse his/herself from an investigation. I stated that the manager must have a "direct, personal and significant personal involvement with the accused or a critical witness" to have grounds to request a recusal.

On Monday, August 19 2019, you came to my office to announce that you were recusing yourself from and would not be completing the Latson investigation. The basis for your decision was that your wife is a direct report to Mr. Oswald. You did not have direct, personal or significant involvement with Mr. Oswald as a critical witness. You also stated that your "moral compass" would not permit you to conduct the investigation under the limited scope as you believed it should have been broader. During this day (August 19th) we had at least one other face-to-face meeting and several emails exchanged. I also requested further details related to your August 14th memo specifically requesting "a more detailed accounting of what information you uncovered including the names of the administrators and the wrongdoing attributable to each". Your response provided a listing of names but the only wrongdoing was failing to report it to HR prior to it becoming public. It was your belief that this violated the Code of Ethics.

In an August 21, 2019 email, you indicated that because your wife reported to Mr. Oswald, you would potentially become a witness to the investigation into his alleged failure to contact HR regarding the April 2018 email by Dr. Latson. You also provided a list of 15 questions that you believe should be asked of the employees you previously listed.

Based upon the scope of the investigation you were directed to complete, you were not a potential witness nor did you have a direct, personal and significant personal involvement



THE SCHOOL DISTRICT OF
PALM BEACH COUNTY, FL
DEPARTMENT OF EMPLOYEE AND LABOR RELATIONS
3300 FOREST HILL BOULEVARD, A-106
WEST PALM BEACH, FL 33406-5870
PHONE: 561-434-8873 / FAX: 561-434-8178
WWW.PALMBEACHSCHOOLS.ORG

VICKI EVANS-PARÉ, ESQ.
DIRECTOR

GONZALO S. LA CAVA, ED.D.
CHIEF OF HUMAN RESOURCES

with the accused or a critical witness. Specifically, you refused to perform an investigation, after your supervisor instructed you to do so.

You have been trained to investigate complaints regarding employees and have done so for at least the past five years. Going forward, it is critical that you perform all tasks that are assigned to you with the following exceptions: they are illegal, unsafe, you have legitimate grounds for recusal, or you have not been trained.

Received: _____

Date: _____

11/15/2019

Employee's signature indicates receipt of this document and does not necessarily signify agreement with its content.

Reviewed by: _____

Vicki Evans-Paré
Director of Employee & Labor Relations

Date: _____

11/15/19



THE SCHOOL DISTRICT OF
 PALM BEACH COUNTY, FL
 DEPARTMENT OF EMPLOYEE AND LABOR RELATIONS
 3300 FOREST HILL BOULEVARD, A-106
 WEST PALM BEACH, FL 33406-5870
 PHONE: 561-434-8873 / FAX: 561-434-8178
 WWW.PALMBEACHSCHOOLS.ORG

VICKI EVANS-PARÉ, ESQ.
 DIRECTOR

GONZALO S. LA CAVA, Ed.D.
 CHIEF OF HUMAN RESOURCES

November 15, 2019

Robert Pinkos
 902 Whipoorwill Trail
 West Palm Beach, FL 33411

Activity #: 20-0012-I
 OIG Staff: Oscar Restrepo
 Date Rec'd: 2/24/20 Page: Hand Delivered
 Rec'd: Robert Pinkos
 Redacted: Yes No N/A Req'd TBD
 Exhibit/Reference #: 4

Re: Assignment to New Duty Location

Dear Mr. Pinkos:

This letter is direction to and confirmation of your new duty location at the **South Regional Superintendent's Office, 1790 N. W. Spanish River Boulevard, Boca Raton, FL 33431** beginning Wednesday, November 20, 2019. Your duty hours will remain 8 a.m. – 5 p.m. While you will continue your work as a HR Manger for the Department of Employee and Labor Relations with no change in job duties, you will need to communicate with and share your daily calendar with the Regional Superintendent, Dr. Peter Licata. All requests for sick leave, personnel leave and/or annual leave will continue to be sent to me. Should you need to attend any meetings at the Fulton Holland Educational Services Center, you will be expected to check in at the front desk as a visitor.

Sincerely,

Vicki Evans-Paré
 Director

Cc: Dr. Peter Licata, Regional Superintendent, South Office
 Dr. Gonzalo LaCava, Chief of Human Resources

On 11/8/2019, I parked my vehicle in my assigned spot between 8:35 and 8:45 and upon opening my driver side door, Mr. Bob Pinkos immediately came between my open door and myself and initiated a very animated and aggressive conversation while I was seated in my vehicle.

Mr. Pinkos, told me "you need to meet with me" in a very aggressive manner and tone.

I responded, "I will not be meeting with you and you need to get with your supervisor"

In a loud and aggressive tone and closer to my face, He responded, "Is it not your job to meet with me if there is an issue with my supervisor?"

At this time, he began to walk away and continued making loud comments that were inaudible.

Mr. Pinkos walked around my car, which gave me an opportunity to exit my car and immediately upon exiting my car, I made the comment, "You cannot speak to me this way"

Mr. Pinkos responded, "you can wag your finger at me all you want"

Mr. Pinkos then proceeded to walk around the front of the car and put his hand on my door and continued speaking in a loud and aggressive fashion. I cannot recall the comments made by Mr. Pinkos as I was nervous about the situation and his behavior.

I told him that this conversation was over and he informed me that he was "very emotional" about the situation and he walked away.

At that moment, I gathered my personal belongings from my car entered building "A". I then proceeded to make contact with an eye witness who had been present during the confrontation. I asked her for her name and informed her that she may be asked to share what she saw in the parking lot. She stated her name was Katrina Todd from the purchasing department.

Due to the event with Mr. Pinkos, I requested and was granted access to park in the parking coral to ensure for my safety and ensure this type of incident would not reoccur. This incident has made it uncomfortable to work in the same building with Mr. Pinkos since we work in such close proximity.



Gonzalo La Cruz

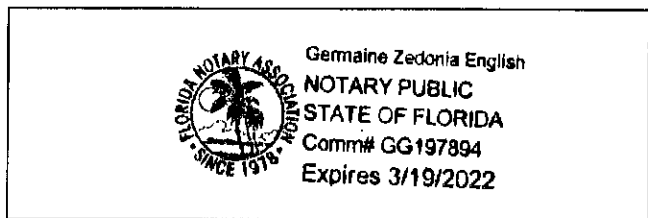
Activity #: 20-0012-I
OIG Staff: OSCAR ACOSTA
Date Rec'd: 3/11/20 Pages: 2
Rec'd: 6 English
Redacted: Yes No N/A Req'd TBD
Exhibit/Reference #: 5

The attached was written by Gonzalo La Cava. I declare that I have read the foregoing statement and that the facts stated in it are true and correct.

[Signature]
Gonzalo La Cava

11/12/2015
Date

Subscribed and sworn to by Gonzalo La Cava who appeared before me on the 12 day of November, 2015 and is personally known to me; or produced identification; or whose identity was verified through record of employment.



[Signature]
Signature, Notary Public

Germaine Zedonia English
Printed Name of Notary

Notary Public, State of Florida, County of Palm Beach

My commission expires: 3/19/2022



THE SCHOOL DISTRICT OF
PALM BEACH COUNTY, FL
3300 FOREST HILL BOULEVARD, A-106
WEST PALM BEACH, FL 33406-5870
WWW.PALMBEACHSCHOOLS.ORG

Activity #: 20-0017-I
OIG Staff: Oliver Restrepo
Date Rec'd: 3-11-20 Pages: 2
Rec'd: 6 English
Redacted: Yes No N/A Req'd TBD
Exhibit/Reference #: 6

Statement of Katrina Todd

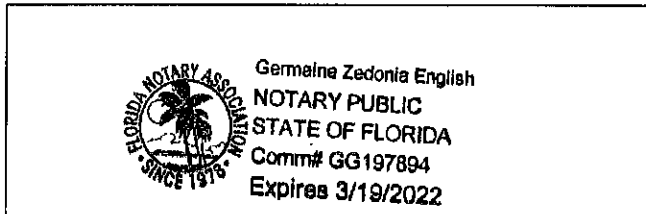
1. My name is Katrina Todd. I am over the age of 18 years old and I have personal knowledge of the information contained in this sworn statement. I have been employed with the School District of Palm Beach County since 2000. I am currently a Senior Purchasing Technician.
2. On November 8, 2019, I met with Germaine English, EEO Coordinator where the following statements and/or summary of my statements were made:
 - a. When I arrive today at Fulton-Holland Education Service Center (FHESC), I noticed a man standing at Dr. La Cava's car blocking his ability to exit his vehicle. I do not know the man's name but he was an older man with glasses and was dressed casually. This was around 8:35am. I slowed down as I approached the building because I was not sure but it appear to be heated conversation. As Dr. La Cava got out of his car, he said, "that was inappropriate for you to come to my car" to the person as he was walking away towards the building. The man turned around and went back to his car and said while touching his car "I guess now you're going to be pointing fingers at me". Dr. La Cave said something to the extent "I think this conversation is over". I then entered the building and ran into Jackie from the Certification Department. I stopped to speak to her and told her that there was an employee being aggressive outside. The man then walked in behind me and he spoke to Jackie. Dr. La Cava entered the building after the man and said to me that he may need to speak to me later and asked for my name.

3. I declare that I have read the foregoing statement and that the facts stated in it are true and correct.

Katrina Todd
Katrina Todd

11/8/19
Date

Subscribed and sworn to by Katrina Todd who appeared before me on the 8 day of November, 2019 and is personally known to me; or produced identification; or whose identity was verified through record of employment.



Germaine Zedonia English
Signature, Notary Public
Germaine Zedonia English
Printed Name of Notary
Notary Public, State of Florida, County of Palm Beach
My commission expires: 3/19/2022



THE SCHOOL DISTRICT OF
PALM BEACH COUNTY, FL
3300 FOREST HILL BOULEVARD, A-106
WEST PALM BEACH, FL 33406-5870
WWW.PALMBEACHSCHOOLS.ORG

Activity #: 20-0012-I
OIG Staff: Oscar Restrepo
Date Rec'd: 3/11/20 Pages: 2
Rec'd: G. English
Redacted: Yes No N/A Req'd TBD
Exhibit/Reference #: 7

Statement of Jacquelyn Richardson

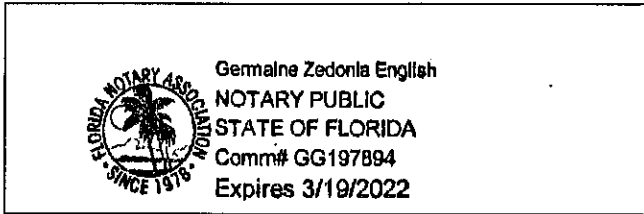
1. My name is Jackie Richardson. I am over the age of 18 years old and I have personal knowledge of the information contained in this sworn statement. I have been employed with the School District of Palm Beach County since 1982. I am currently a Senior Human Resources Analyst.
2. On November 8, 2019, I met with Germaine English, EEO Coordinator where the following statements and/or summary of my statements were made:
 - a. I was walking through the atrium outside of A-152 when Katrina Todd entered the building this morning. Katrina said that someone was fighting (verbal) & it looked like it was going to get aggressive. She was obvious concerned and I inquired as to whether we needed to call the police. At that time, Bob Pinkos, came into the building and spoke to me. I said "hi" and he went to his suite (A-140). Afterwards, Dr. La Cava came into the building and Katrina asked Dr. La Cava if he was okay. He responded that something to the extent of 'I can talk about it another time'. Katrina did tell me that a person said "Don't you come out and meet me at my car again".

3. I declare that I have read the foregoing statement and that the facts stated in it are true and correct.

Jacquelyn Richardson
Jacquelyn Richardson

11/8/19
Date

Subscribed and sworn to by Jacquelyn Richardson who appeared before me on the 8 day of November, 20 19 and is personally known to me; or produced identification; or whose identity was verified through record of employment.



Germaine Zedonia English
Signature, Notary Public

Germaine Zedonia English
Printed Name of Notary

Notary Public, State of Florida, County of Palm Beach

My commission expires: 3/19/2022

Arthur T. Schofield, P.A.
Attorney at Law

Fighting for the Rights of Employees & Victims since 1993

Arthur Schofield, Esq.
aschofield@flalabor.com

Renae Main, Paralegal
rmain@flalabor.com

October 1, 2020

Teresa A. Michael,
Inspector General
Office of the Inspector General
3318 Forest Hill Blvd., C-306
West Palm Beach, FL 33406

Activity #: 20-0012 -I
OIG Staff: OSCAR CASTRO
Date Rec'd: 10/1/20 Pages: 5
Rec'd: Arthur Schofield
Redacted: Yes No N/A Req'd TBD
Exhibit/Reference #: 8

Re: Opinion Letter on Adverse Personnel Action

Dear Ms. Michael:

In your letter to my office dated September 2, 2020 you sought a legal opinion on two issues providing me with two exhibits, a November 15, 2019 memorandum authored by Vicki Evans-Paré and a letter from the same author written on the same day, both addressed to Robert Pinkos. You also provided me with a copy of the Whistleblower Protection Policy of the School Board.

Issue No. 1

Issue Presented:

“We are seeking an opinion as to whether or not the memorandum (Exhibit #1) is considered to be ‘adverse personnel action’ under the WB provisions. Statements obtained from HR staff (HR Director and the employee’s immediate supervisor) indicate that the memorandum is not part of the employee’s personnel file and is considered ‘coaching’ which would be used in his performance appraisal.”

Opinion:

The memorandum issued by Ms. Evan-Paré references Mr. Pinkos’ “Failure to Fulfill Job Responsibilities/Insubordination.” It memorializes events that occurred in August 2019, concludes that Mr. Pinkos “refused to perform an investigation, after [his] supervisor instructed [him] to do so and places Mr. Pinkos on notice of expectations of future assigned tasks. It was explained that this memorandum will not be part of Mr. Pinkos’ personnel file but would be considered “coaching” and used in his performance appraisal.

It is the opinion of the undersigned that the memorandum is an “adverse personnel action.” Section 112.3187(3)(c) of Florida’s Public Whistleblower’s Act defines “adverse personnel action” to mean:

the discharge, suspension, transfer, or demotion of any employee or the withholding of bonuses, the reduction in salary or benefits, *or any other adverse action* taken against an employee within the terms and conditions of employment by an agency or independent contractor.

§ 112.3187(3)(c), Fla. Stat. (2013) (emphasis added).

In *Irven v. Department of Health and Rehab.*, 790 So.2d 403 (Fla. 2001) the Florida Supreme Court addressed a conflict in the district courts on the interpretation of the Whistle Blower's Act and held that it should be liberally construed.

The conflict issue is whether the Whistle Blower's Act should be strictly or liberally construed. We agree with petitioner that *the Act is remedial and should be given a liberal construction*. See *Martin County v. Edenfield*, 609 So.2d 27, 29 (Fla.1992) (“[W]e believe it clear that the [public employee] Whistle-Blower’s Act is a remedial statute designed to encourage the elimination of public corruption by protecting public employees who ‘blow the whistle.’ As a remedial act, the statute should be construed liberally in favor of granting access to the remedy.”); *Hutchison v. Prudential Ins. Co.*, 645 So.2d 1047, 1049 (Fla. 3d DCA 1994) (holding that under *Edenfield*, the Act should be liberally construed).

Irven, 790 So.2d at 406. (emphasis added)

In determining what constitutes an adverse employment¹ action, Florida courts have followed federal precedent under Title VII of the Civil Rights Act of 1964. In *Burlington N. & Santa Fe Ry. Co. v. White*, 548 U.S. 53, 71 (2006) the United States Supreme Court addressed what constitutes an “adverse employment action” in the context of a claim for retaliation. The plaintiff, a forklift operator who complained of sexual harassment by her immediate supervisor, was removed from her indoor job as forklift operator and reassigned to outdoor duty as a track laborer. She was also suspended without pay for thirty-seven days but eventually reinstated with back pay.

The question considered by the Supreme Court was whether these employment actions—transfer and suspension—amounted to forbidden retaliatory actions. The Court said:

The antiretaliation provision protects an individual not from all retaliation, but from retaliation that produces an injury or harm. As we have explained, the Courts of Appeals have used differing language to describe the level of seriousness to which

¹ While the Whistle Blower Act refers to “personnel action,” courts refer to “employment action,” a distinction without a difference.

this harm must rise before it becomes actionable retaliation. In our view, a plaintiff must show that a reasonable employee would have found the challenged action materially adverse, “which in this context means it well might have ‘dissuaded a reasonable worker from making or supporting a charge of discrimination.’”

548 U.S. at 67-68 (emphasis added).

The *Burlington* Court went on to say that petty slights or minor annoyances are not actionable. “We spoke of material adversity because we believe it is important to separate significant from trivial harms.” *Id.* at 68. *See also, MacLean v. City of St. Petersburg*, 194 F. Supp. 2d 1290, 1298 (M.D. Fla. 2002) (reminding that an employment action is not adverse merely because the employee dislikes or disagrees with it).

The *Burlington* Court concluded that the steps taken against the plaintiff by her employer were actionable. The job transfer did not change the plaintiff’s job classification or her pay, but she was moved from an indoor job of forklift operator to the outdoor job of track laborer. The evidence supported the proposition that a reasonable employee in the plaintiff’s position would view such a transfer as a materially adverse change in work assignment, because the forklift operator position was objectively considered a better job and the outdoor duties were more arduous and dirtier. *Id.* at 71. Thus the transfer was an adverse employment action, even though the job classification and pay stayed the same.

As for the suspension, the employer argued that it had already taken corrective action because it reinstated her with back pay. The Court rejected that argument and held that such action does amount to a materially adverse action if it is done for retaliatory purposes. *Id.* at 72. Although the plaintiff eventually received back pay, the family was without income for thirty-seven days. *Id.*

While this memorandum is not part of Mr. Pinkos’ personnel file, it is a public record labeling him as being “insubordinate” accessible to any member of the public, news media outlets, and potential future employers of Mr. Pinkos. It will also be used in completing Mr. Pinkos’ performance appraisal. It is unknown what, if any, impact the memorandum may have on that appraisal, but in light of the ruling in *Burlington* the question is whether a memorandum – one accessible to all labeling someone insubordinate and that could impact a performance appraisal – would “dissuade[] a reasonable worker from making [a complaint].”

It is the opinion of the undersigned that this memorandum may very well dissuade a reasonable employee from complaining.

Issue No. 2

Issue Presented:

“The second issue involves moving of his duty station (Exhibit #2). Would this move be considered a ‘transfer’ and therefore an ‘adverse personnel action?’ According to statements obtained during the course of the investigation, the employee was transferred to deescalate the situation and avoid further verbal altercations between the employee and his superiors.”

Opinion:

The change of duty moved Mr. Pinkos’ work from 3300 Forest Hill Boulevard, West Palm Beach, to 1790 N.W. Spanish River Boulevard, Boca Raton. According to the letter addressed to Mr. Pinkos, he resides at 902 Whipporwill Trail, West Palm Beach Florida. Prior to the change of duty Mr. Pinkos’ commute to work was 15 minutes (30 minute round trip) traveling 7.4 miles; the change increased the commute to 37 minutes (1 hour 14 minute round trip) traveling 31.3 miles.² Also, prior to the change of duty Mr. Pinkos was able to travel secondary roads. With the change of location Mr. Pinkos will have to travel Interstate 95 or the Florida Turnpike, incurring tolls.

It is the opinion of the undersigned that the change of duty is an “adverse employment action.”³ Even before the ruling in *Burlington*, at least one court in Florida found that a transfer resulting in a longer commute to and from work constitutes an “adverse employment action.”

In *Gibbons v. State Pub. Emps. Relations Comm’n*, 702 So. 2d 536 (Fla. 2d DCA 1997), an employee filed an Unfair Labor Practice charge alleging that his employer retaliated against him for union activity by transferring him to an office more than fifty miles away from his present office. *Id.* at 536. Relying on federal case law, the Second District said:

[P]roof of a prima facie case of retaliation requires a showing that: 1) the plaintiff was engaged in protected activity; 2) the plaintiff was thereafter subjected by his employer to an adverse employment action; and 3) there is a causal link between the protected activity and the adverse employment action.

Id. at 537 (citing *Weaver v. Casa Gallardo, Inc.*, 922 F.2d 1515 (11th Cir. 1991) superseded by statute on other grounds, *Munoz v. Oceanside Resorts, Inc.*, 223 F.3d 1340 (11th Cir. 2000); see also *City of Coral Gables v. Coral Gables Walter F. Stathers Mem’l Lodge 7*, 976 So. 2d 57, 63-64 (Fla.

²These distances were identified through Map Quest.

³The undersigned cannot comment on the represented reasons for the change in duty station; that is, whether it was done for the legitimate non-retaliatory reasons of de-escalating conflict.

A. Schofield, Esq.
Opinion Ltr.
October 1, 2020
Page 5 of 5

3d DCA 2008); *Sch. Bd. of Lee Cnty. v. Lee Cnty. Sch. Bd. Emp.*, 512 So. 2d 238, 239 (Fla. 1st DCA 1987); *Pasco Cnty. Sch. Bd. v. Fla. Pub. Emp. Relations Comm'n*, 353 So. 2d 108, 117 (Fla. 1st DCA 1977).

In *Gibbons*, the court found that the employee had sufficiently alleged a *prima facie* showing of unlawful retaliation based solely on a longer commute.

In the present case, Gibbons alleged that he was engaged in protected activity pursuant to section 447.301(3),(4), which provides that public employees have the right to engage in concerted activities not prohibited by law for the purpose of collective bargaining or other mutual aid or protection and that they have the right to present grievances to their employer. Further, Gibbons alleged that he was thereafter subjected to an adverse employment action, *because he was transferred to an office more than fifty miles away from his current office.*

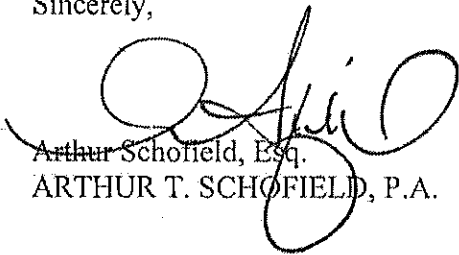
Finally, Gibbons alleged a causal link between his protected activity and the adverse employment action by claiming that his employer was aware of his protected expression when his employer took the adverse employment action. Gibbons stated in his charge that he had informed his supervisors about his complaints on numerous occasions.

Based on the foregoing, we conclude that Gibbons' charge alleged a prima facie case. Accordingly, we reverse the order dismissing Gibbons' charge and remand with instructions to reinstate the charge and for further proceedings consistent with this opinion.

Id. at 536. (emphasis added)

It is the opinion of the undersigned that this change of duty station may very well dissuade a reasonable employee from complaining.

Sincerely,



Arthur Schofield, Esq.
ARTHUR T. SCHOFIELD, P.A.

Activity #: 200012-I
OIG Staff: Oscar Restrepo
Date Rec'd: 3/12/20 Pages: 18
Rec'd: Online
Redacted: Yes No N/A Req'd TBD
Exhibit/Reference #: 9



Threat Assessment Guide



The School Board of Palm Beach County is committed to excellence in education and preparation of all our students with the knowledge, skills, and ethics required for responsible citizenship and productive employment.

Ex 9

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The Marjory Stoneman Douglas High School Public Safety Act (SB 7026)

SB 7026 is comprehensive legislation that focuses on public safety and schools safety. SB 7026 requires each school to establish a Threat Assessment Team comprised of persons with expertise in counseling, academic instruction, school administration and law enforcement. Their duties include coordination of resources, assessments and intervention for students whose behavior poses a threat to the safety of school and /or staff.

Mandatory Members:

- ✓ Administration
- ✓ School Counselor
- ✓ School Police
- ✓ Educator

(Optional: any Pertinent Staff with the skill set needed for individual situations)

Threat Assessment in Schools is Predicated on Six Principles:

- Prevention is Possible
- Consider the Context
- Adopt an investigative mindset
- Rely on facts, not profiles
- Gather information from multiple sources
- Does the student pose a threat?

Goals of Threat Assessment:

- Maintain a safe school environment by preventing an act of violence from taking place.
- Resolve student conflicts or problems that underlie threatening behavior.
- Identify students of concern.
- Determine the level of threat and the response required.
- Determine what's appropriate as a follow-up to the threat:
 - Counseling
 - Intervention
 - FBA/BIP
 - Mental Health Services Referral
 - Psychological Evaluation
 - Arrest
 - Expulsion

Types & Levels of Threats

A threat is an **expression of intent to physically or sexually harm someone**. This expression may be spoken, written, or gestured. Threats can be expressed directly or indirectly to the victim or to others, and threats may be explicit or implied. Threats sometimes, but rarely, actually involve guns or explosive devices.

Types of Threats

- **Direct:** identifies a specific act against a specific target delivered in a clear and explicit manner
- **Indirect:** threat tends to be vague, unclear and ambiguous. Violence is implied.
- **Veiled:** threat is one that strongly implies but does not explicitly threaten violence
- **Conditional:** threat is often used in extortion cases. It warns that a violent act will happen if certain demands are not met.

Levels of Threats

A threat to harm others can be **transient** (i.e., expression of anger or frustration that can be quickly or easily resolved) or **substantive** (i.e., serious intent to harm others that involves a detailed plan and means). Upon assessing, threats fall into one of three levels, either **LOW**, **MEDIUM**, or **HIGH**. While transient threats are considered to be **LOW**, substantive are considered to be either **MEDIUM** or **HIGH** level.

TRANSIENT THREATS

Low Level

Transient threats are defined as statements that do not express a lasting intent to harm someone. Transient threats are either intended as figures of speech, or reflect feelings that dissipate in a short period when the student thinks about the meaning of what he or she has said. It is important to realize that most threatening statements are not serious threats because the student has no substantive intention of carrying out the threat. A threat is transient if it can be quickly and easily resolved (Cornell & Sheras, 2006).

INDICATORS OF A TRANSIENT THREAT

- Threat is vague and indirect.
- Information contained within the threat is inconsistent, implausible or lacks detail.
- Threat lacks realism.
- Content of threat suggests that person is unlikely to carry it out.
- Context of threat suggests person is unlikely to have access to resources, lacks intent and motivation, and does not present with a history of conflict or related violent behaviors.

EXAMPLES OF TRANSIENT THREATS

1. "I'm gonna kill you"—said in the heat of competition during a game/sport.
2. "I'm gonna bust you up"—said in anger, but then retracted after the student calms down.
3. A student is found with a common pocket knife with no evidence to do harm or threat attached.
4. "I could break you in half"—said to intimidate someone, but retracted after the student calms down.

SUBSTANTIVE THREATS

Medium Level

Substantive serious threats are defined as statements that express a continuing intent to harm someone. Substantive threats may express emotion and have substance. In other words, the threat contains specific, plausible details. Usually involve a fight or a threat to hit someone or to do harm without the use of a weapon (Cornell & Sheras, 2006).

INDICATORS OF A SERIOUS SUBSTANTIVE THREAT

- A threat to assault someone.
- Threat is more direct, detailed and concrete than low level threat.
- Wording in the threat suggests that the at-risk student has given some thought to how the act will be carried out.
- There may be indication of possible place and time (though these signs still fall well short of detailed plan).
- There is no clear indication that the at-risk student has taken preparatory steps, although there may be some veiled reference, or ambiguous or inconclusive evidence, pointing to that possibility — a reference to a book or movie that shows the planning of a violent act, or a vague, general statement about the availability of weapons.
- There may be a specific statement seeking to convey that the threat is not empty: "I'm serious!" or "I really mean this!"
- Context of the threat suggests student has secured resources, has definite intent and motivation, and/or there is a strong history of conflict and previous high-risk behaviors.

EXAMPLES OF SERIOUS SUBSTANTIVE THREATS

1. A student threatens to hit or strike a classmate with his fist.
2. A student sends a note saying, "I'm going to punch you out tomorrow at the bus stop."
3. Two students say, "We're gonna get her alone and beat her up today."
4. A student posts to social media that, "Rob is going to get jumped at lunchtime."

SUBSTANTIVE THREATS

High Level

Substantive very serious threats are defined as statements that express a continuing intent to harm someone. Substantive threats may express emotion and have substance. In other words, the threat contains specific, plausible details of carrying out the threat. Very serious threats involve the use of a weapon or a threat to kill, rape or inflict severe injury on someone (Cornell & Sheras, 2006).

INDICATORS OF A VERY SERIOUS SUBSTANTIVE THREAT

- The threat contains specific, plausible details. (“I am going to shoot Mr. Smith with my shotgun,” rather than “I am going to set off an atomic bomb”, or “I’ll get you for that.”)
- The threat has been repeated over time or the student has told multiple parties of the threat.
- The threat has been posted to social media, (“you all going to regret going to school tomorrow, gonna shoot the place up.”)
- There is physical evidence of intent to carry out the threat. Such evidence could include written plans, lists of victims, drawings, weapons, bomb material, or literature encouraging or describing how to carry out acts of violence.

EXAMPLES OF VERY SERIOUS SUBSTANTIVE THREATS

1. “I’m going to kill you”—while holding a weapon (not joking).
2. A student that threatened to stab a classmate is found to have a pocket knife.
3. A student posted on social media to blow up the school—student’s locker contained Molotov cocktails.

Threat Assessment Decision Tree

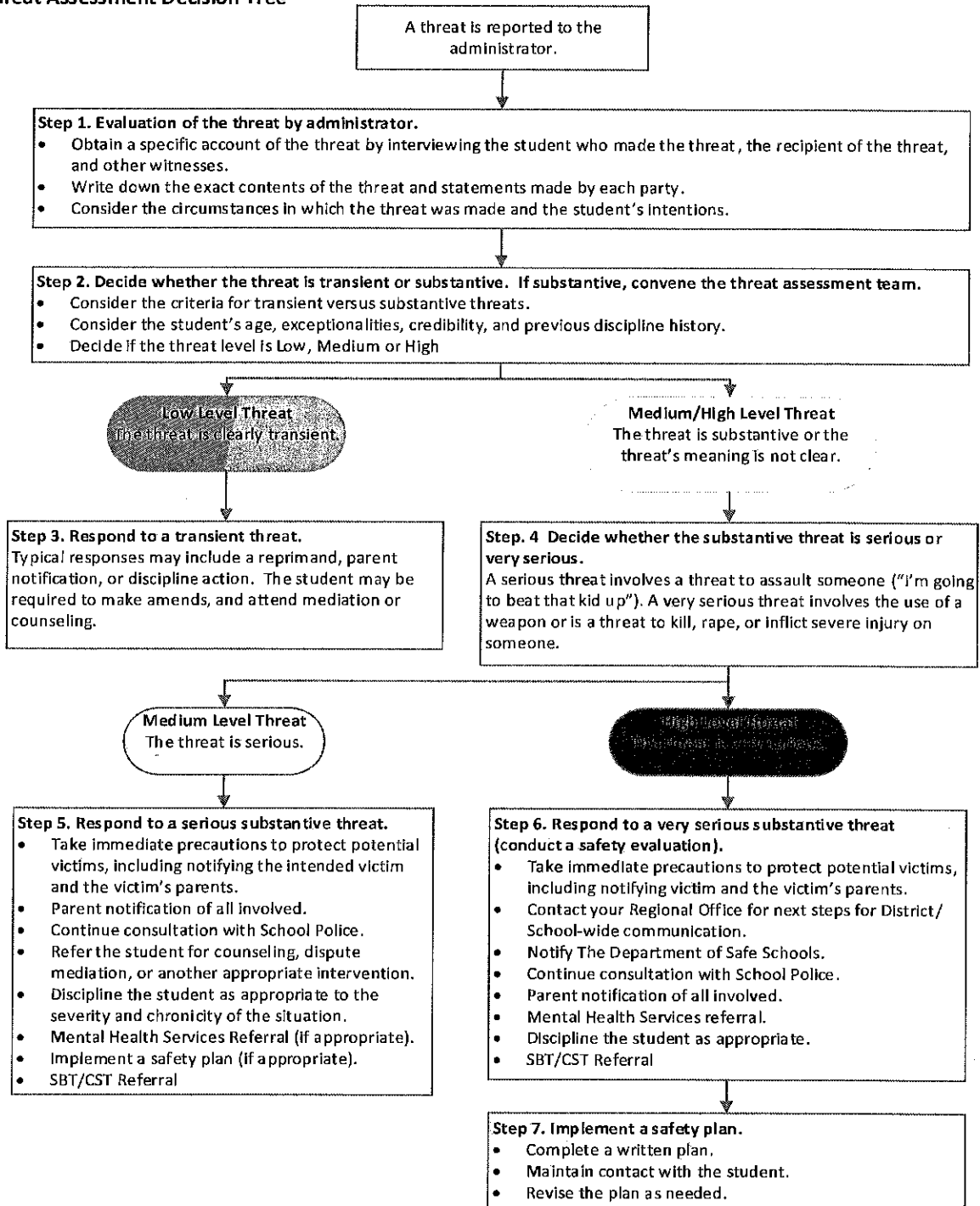


Figure 1. Threat Assessment Decision Tree. Adapted from "Guidelines For Responding To Student Threats of Violence," by D. Cornell & P. Sheras, 2006, p. 16. Copyright 2006 by Sopris West

The School District of Palm Beach County Schools has adopted threat assessment procedures developed by the U.S. Department of Education and the U.S. Secret Service in a collaborative effort to help schools reduce violence and create safe climates. This threat assessment process is an appraisal of the student's behavior in a given situation, rather than solely on stated threats or individual traits. The assessment focuses on actions, communications, and specific circumstances that might suggest that a student poses a threat of targeted violence. Targeted violence is differentiated from other violent acts by the distinct presence of a target or targets. The student who poses a threat intends to mount an attack and is engaged in planning or preparing for that attack.

Beginning the Threat Assessment

The process of conducting a threat assessment is as follows:

1. Student of Concern Identified

Students who become the focus of threat assessment inquiries and investigations may come to the attention of authorities in a number of ways. Some students may be referred to authorities by engaging in communications that cause concern, including threatening verbal comments, letters, written notes, emails, text messages, social media communication, drawings, statements, or stories written as part of a class assignment. Information about a concern for a student may also be reported through second or third parties and/or through anonymous communications.

2. School Administrator is Notified

The point of contact is a school-based administrator who will conduct the initial screening and coordinate the threat assessment procedures.

All concerns about a student will be referred to the school administrator designated as the point of contact for the student of concern. The school administrator gathers preliminary information related to the concern including statements from the referring individual and from any additional witnesses, as well as copies of written threats or drawings.

3. Administrator determines if Threat Assessment is Needed or Not Needed

The school administrator must immediately determine if the concern is potentially credible and serious. Investigation of the concern is not necessary at this point. The decision is based on the administrator's knowledge of the student and the source of the information. Initial consultation with the school SRO, school counselor, school social worker or school psychologist may be included at this stage. This is a preliminary procedure which will be used to screen out those concerns which are easily determined to be neither credible nor serious.

Examples of instances when an administrator would determine that a concern is not credible include:

- *The student is significantly cognitively delayed or very young and often makes statements that exceed his/her ability to carry out the "threat".*
- *A source makes complaints that have no basis for concern, such as "He scared me when he looked at me like that".*
- *The reported behavior of concern is more of a disciplinary issue, such as fighting, disruption, throwing objects, or destruction of school property.*
- *The behavior is likely a manifestation of the student's ESE or 504 disability.*

NOT CREDIBLE/LOW LEVEL

4. Low Level Threat/Refer to Student Services as Needed

If the concern is neither credible nor serious, it is determined to be "LOW LEVEL". The administrator considers any appropriate disciplinary actions in compliance with school board policies, and develops a support plan, as appropriate. Referral to Student Services for additional support and parent/guardian contact may be appropriate. If the student is ESE, consult the IEP team. If the student has an FBA or BIP, consider a review. If the student has a 504, consider a review.

IF NEEDED

5. INQUIRY PHASE BEGINS: Notify School-Based Threat Assessment Team and parent

If the school administrator is unable to identify the concern as not credible, a threat assessment inquiry is **immediately** initiated. The administrator will notify the School-Based Threat Assessment Team, and the parent/guardian of the student of concern that an inquiry is being conducted. However, if the information concerning a threatening situation suggests that a violation of the law has occurred or that violence is imminent – for example, a student with a weapon is on his way to school and has indicated that he intends to shoot another student – that matter must be referred immediately to SRO, who will proceed with an investigation and crisis response measures as needed. It is appropriate to request that a member of the School Police go to the student's home to search for weapons.

If any members of the Threat Assessment Team are not available, the remaining team members must proceed with the interviews as part of the threat assessment process. The members may participate via telephone or other electronic method, at necessary. *The minimum mandatory members of the school based team must include an Administrator, School Counselor, and an

SRO. Proactive planning is a critical element in the implementation of a School-Based Threat Assessment Team, and schools should not wait until a crisis occurs to establish their team.

6. Threat Assessment Team Proceeds with Interviews

It is essential to review school records for current and background information, as well as conduct interviews, as follows:

a. Collateral School Interviews with students/adults who know or witnessed behaviors of concern:

When and where did this occur? What was said or written? Who else observed/witnessed this behavior? Did the student indicate why he or she acted as they did? What was done?

b. Parent/Guardian Interview

Make it clear to the parent/guardian the objectives of the inquiry; be sure to seek parent's help in understanding the behavior that occurred and explore student's interest in and access to weapons.

c. Interview with Student of Concern

Generally this interview should be conducted by a school administrator. Prior to the interview, make certain that you are well-acquainted with the facts of the situation, and that you have reviewed the student records to be familiar with background, behavior, school performance, etc.

During the interview:

1. Maintain a professional, neutral and non-confrontational tone.
2. Ask a student directly about his/her intentions.
3. Convey the message that his/her behavior has been noticed and has caused concern.
4. If a student requests an attorney:
 - a. Inform the student that the inquiry will continue
 - b. Keep the student under supervision
 - c. Notify the parent/guardian

d. Potential Target Interview

Inform potential target that the primary purpose of the interview is to gather information about a possible situation of concern. Ask about relationship to the student of concern.

Ask about any recent interactions. Do not unduly alarm the potential target. Offer assistance and support, as needed. If it is appropriate, the potential target should be informed of the threat that was made against them so safety needs can be addressed. Notify the parent/guardian, if appropriate.

7. School-Based Threat Assessment Team Meets to Review the Case

As soon as members of the School-Based Threat Assessment Team have conducted their respective interviews, the team meets to analyze the information, examining for evidence of behavior and conditions that suggest the student poses a threat of targeted violence.

The parent/guardian will be notified and invited to participate. Should efforts to notify the parent/guardian be unsuccessful or the parent is unable to attend, the meeting will proceed as scheduled.

Presentation and analysis of the information gathered during the threat assessment inquiry should be guided by the following (Guiding Questions):

- I. Review the student's record:**
 - a. Has there been a previous threat assessment completed for this student?
 - b. Have there been any bullying reports/investigations completed for this student?
 - c. Does the discipline record include any aggressive acts, re-assignments, or threats?

- II. What are the student's motives and goals?**
 - a. What motivated the student to make the statements or take the actions that caused him or her to come to the attention of the threat assessment team?
 - b. Does the situation or circumstance that led to these statements or actions still exist?
 - c. Does the student have a major grievance or grudge?
 - d. What efforts have been made to resolve the problem and what has been the result? Does the potential attacker feel that any part of the problem is resolved or see any alternatives?

- III. Have there been any communications suggesting ideas or intent to attack?**
 - a. What, if anything, has the student communicated to someone else (targets, friends, other students, teachers, family, others) or written in a diary, journal, social media, text message, or website concerning his or her ideas and/or thoughts?
 - b. Have friends been alerted or warned away?

- IV. Has the subject shown inappropriate interest in any of the following?**
 - a. School attacks or attackers
 - b. Weapons (including recent acquisition of any relevant weapon)
 - c. Incidents of mass violence (terrorism, workplace violence, mass murderers)

- V. Has the student engaged in attack-related behaviors? These behaviors might include:**

- a. Developing an attack plan or idea
- b. Making efforts to acquire or practice with weapons
- c. Casing, or checking out possible sites and areas for attack
- d. Rehearsing attacks or ambushes

VI. Does the student have the *capacity* to carry out an act of targeted violence?

- a. How organized is the student's thinking and behavior?
- b. Does the student have the means, e.g., access to a weapon, to carry out an attack?

VII. Is the student experiencing hopelessness, desperation, and/or despair?

- a. Is there information to suggest that the student is experiencing desperation and/or despair?
- b. Has the student experienced a recent failure, loss, and/or loss of status?
- c. Is the student known to be having difficulty coping with a stressful event?
- d. Is the student now, or has the student ever been, suicidal or "accident-prone"? Has the student engaged in behavior that suggests that he or she has considered ending their life? Consider the need for a suicide risk assessment.
- e. Has the student been involved in any mental health or substance abuse therapy or treatment?

VIII. Does the student have a trusting relationship with at least one responsible adult?

- a. Does the student have at least one relationship with an adult where the student feels that he or she can confide in the adult and believes that the adult will listen without judging or jumping to conclusions? (Students with trusting relationships with adults may be directed away from violence and despair and towards hope.)
- b. Is the student emotionally connected to – or disconnected from – other students?
- c. Has the student previously come to someone's attention or raised concern in a way that suggested he or she needs intervention or supportive services?

IX. Does the student see violence as an acceptable, desirable, and/or the only way to solve problems?

- a. Does the setting around the student (friends, fellow students, parents, teachers, or other adults) explicitly or implicitly support or endorse violence as a way of resolving problems or disputes?
- b. Has the student been "dared" by others to engage in an act of violence?

X. Is the student's conversation and "story" consistent with his or actions?

- a. Does information from collateral interviews and from the student's own behavior confirm or dispute what the student says is going on?

- XI. Are other people concerned about the student's potential for violence?**
- a. Are those who know the student concerned that he or she might take action based on violent ideas or plans?
 - b. Are those who know the student concerned about a specific target?
 - c. Have those who know the student witnessed recent changes or escalations in mood and behavior?
- XII. What circumstances might affect the likelihood of an attack?**
- a. What factors in the student's life and/or environment might increase or decrease the likelihood that the student will attempt to mount an attack at school?
 - b. What is the response of other persons who know about the student's ideas or plans to mount an attack? (Do those who know about the student's ideas actively discourage the student from acting violently, encourage the student to attack, deny the possibility of violence, passively collude with an attack, etc.?)

All information will be shared and each question addressed and answered as a team. Through this process the team determines whether the student poses a threat of targeted violence.

IF STUDENT DOES NOT POSE A THREAT:

8. Close as Unfounded/Develop Support Plan

If the team determines that the student of concern does not pose a threat of targeted violence:

- A management plan is developed by the team which will address interventions and/or services that are recommended for the student to receive. The parent/guardian will be invited to attend and participate in the discussion and planning. The plan will identify the individual(s) who will be responsible for implementation of the interventions.
 - i. The team should consider any crisis needs, such as suicide risk assessment, referral to other agencies, etc.
 - ii. Consideration of Exceptional Student Education needs may indicate that an IEP team meeting be scheduled to consider revisions in services provided. If the student has a 504 plan, consider a review.
 - iii. Consideration for the need of a Manifestation Determination Meeting if re-assignment is being considered.
- Set a review date within 45 days
- The inquiry is closed

- Complete Part I, II, and the signature section of the Threat Assessment Report (PCS form #2-3175). Send all documents to the PCS Prevention Department, PCSB Administration Building.

The based school team will meet within 45 days to follow up, process the threat assessment, problem solve, assess the implementation of the interventions, and discuss making recommendations for improvement when indicated.

OR IF STUDENT DOES POSE A THREAT:

INVESTIGATION PHASE

9. INVESTIGATION PHASE BEGINS: Once the team determines that the student of concern does pose a threat of targeted violence, then this process now becomes an **investigation**. The administrator will notify law enforcement to initiate the criminal investigation. The Area Superintendent is also notified.

10. School-Based Threat Assessment Team meets to develop a Management Plan.

When the police investigation is complete (which could include a home visit to check for weapons), the School-Based Threat Assessment Team will:

- Develop a management plan which will address interventions and/or services that are recommended for the student to receive. The parent/guardian will be invited to attend and participate in the discussion and planning. The plan will identify the individual(s) who will be responsible for implementation of the interventions.
 - i. The team should consider any crisis needs, such as suicide risk assessment, referral to other agencies, etc.
 - ii. Consideration of Exceptional Student Education needs may indicate that an IEP team meeting be scheduled to consider revisions in services provided. If the student has a 504 plan, consider a review.
 - iii. Consideration for the need of a Manifestation Determination Meeting if re-assignment is being considered.

In the event an incident occurs on your campus, below is a list of contacts that should be made in the order they appear in the chart.

<i>Point of Contact</i>		<i>Phone Number</i>
School Police	Emergency Communications Center	434-8700 PX 48700
Regional Office	North Regional	494-1500 PX 81500
	Central Region	804-3254 PX 83254
	South Region	982-0918 PX 50918
	Glades Region	996-4900 PX 44900
Safe Schools	Main Office	494-1569 PX 81569
Mobile Crisis		383-5777
DCF - Report Abuse, Neglect or Exploitation		1-800-962-2873
South County Mental Health		495-0522
Safe Schools CAPE Team		494-1569 PX 81569

RESOURCES

Florida Department of Education, Office of Safe Schools
US Secret Service: Enhancing Schools Safety – Threat Assessment Model

Florida Department of Education, Office of Safe Schools
Best Practices

U.S. Department of Justice
Federal Bureau of Investigation
Making Prevention a Reality: Identifying, Assessing, and Managing the Threat of Targeted Attacks

REFERENCES

Cornell, D. & Sheras, P. (2006). *Guidelines for Responding To Student Threats of Violence*. Longmont, Colorado: Sopris West.

SPECIAL THANKS

The Department of Homeland Security, *United States Secret Service*

Federal Bureau of Investigation (FBI)



Keeping the Independence in Internal Investigations

By Elizabeth Watson Gramigna

The hallmark of a reliable investigation is the independent analysis of the facts relevant to an employee's complaint. An objective, frank analysis increases the reliability of the investigator's conclusions and also assures that the process itself is trustworthy, accessible, and fair; these factors all contribute to an effective investigation. The United States Supreme Court, federal and state courts, and the EEOC have provided guidance regarding what constitutes an effective investigation.¹ Similarly, guidelines and codes of ethics published by professional organizations serve as guidance to professionals conducting workplace investigations.² This article contains some practical advice for in-house or internal professionals conducting workplace investigations who may be faced with unique challenges to their independence.

Internal personnel, including human resources professionals, may be presented with challenges different from those faced by an outside investigator that could potentially impede their independence, or perceived independence, when conducting an investigation on behalf of their employer.³ This may be simply the consequence of the investigator's inherent role and responsibilities within an organization. For example, the internal professional may have relationships with employees who might be witnesses in the investigation (including complainants and alleged harassers); the investigator may be involved in performance management, which might prompt or be the source of the complaint; the investigator may be subjected to pressures to provide status reports during the course

¹ See *Faragher v. City of Boca Raton*, 524 U.S. 775 (1998); *Burlington Indus., Inc. v. Ellerth*, 524 U.S. 742 (1998). In these two seminal cases, the U.S. Supreme Court discussed the value of an effective antiharassment policy in combatting sexual harassment in the workplace, and recognized that employers that implement and enforce effective antiharassment policies may be afforded an affirmative defense to a claim of hostile work environment. Following these two decisions, the EEOC published guidance describing steps an employer might take to establish reasonable care in addressing workplace harassment. U.S. Equal Emp't Opportunity Comm'n, No. 915.002, Enforcement Guidance on Vicarious Liability for Unlawful Harassment by Supervisors (June 18, 1999), <http://www.eeoc.gov/policy/docs/harassment.pdf>.

² As to professional guidelines and codes of ethics, see, for example, AWI, GUIDING PRINCIPLES FOR CONDUCTING WORKPLACE INVESTIGATIONS (Rev. Ed. 2013); SOCIETY FOR HUMAN RESOURCE MANAGEMENT (SHRM) CODE OF ETHICS AND PROFESSIONAL STANDARDS, <https://www.shrm.org/about/pages/code-of-ethics.aspx> (last visited Apr. 5, 2016); and SOC'Y OF INDEP. WORKPLACE INVESTIGATORS, CODE OF ETHICS, (2015), <http://siwi.us/code-of-ethics> (last visited Apr. 5, 2016). See also state and federal rules of professional responsibility governing professional conduct of lawyers.

³ The SHRM CODE OF ETHICS AND PROFESSIONAL STANDARDS IN HUMAN RESOURCES MANAGEMENT states, "As human resources professionals, we must protect the interests of our stakeholders as well as our professional integrity and should not engage in activities that create actual, apparent, or potential conflicts of interest."

of the investigation; and the investigator may feel certain pressures because of a perceived value to the organization of the parties involved in the complaint. Careful planning at the outset of an investigation, managing expectations, educating the organization on the components of an effective investigation, implementing internal protocols, and simply being mindful of these challenges may eliminate or significantly reduce the threat, or perceived threat, to an internal investigator's independence.

Choosing an investigator

The EEOC *Guidance* provides, "The employer should ensure that the individual who conducts the investigation will objectively gather and consider the relevant facts." In addition, the AWI *Guidelines* identify key factors to use to determine the appropriate person to conduct an impartial investigation. These factors include someone who is, and is perceived to be, impartial.⁴ For example, factors to be considered include whether the investigator is a party to the situation (e.g., in another capacity the investigator may have assisted with a reorganization of the affected department), and whether the in-house investigator has preconceived knowledge or a vested interest in the outcome of the investigation.⁵

In addition to investigations, the internal human resource professionals may serve dual or multifunctional roles and responsibilities, such as performance management, within an organization. An actual or perceived conflict may arise when the internal professional involved in the performance management is charged with the task of investigating a harassment complaint made by an employee who was placed on a performance improvement plan (PIP), and the underlying allegation is that the PIP was in retaliation for protected conduct, discriminatory, or otherwise unlawful. The performance assessment of the employee will likely be challenged, and therefore the investigator in this situation could be a witness to the underlying factual issue: the propriety of the performance evaluation. Alternatively, the investigator may have, or may be perceived to have, alliances with the manager or complainant. In this situation, it would be optimal for the internal professional involved in the underlying issues to recuse himself or herself from the investigation. Similarly, if the professional closely supports a particular work group in the organization, he or she must consider whether relationships with potential parties or witnesses might impede judgment.

An employer and investigator would be wise to consider in the planning stage of the investigation whether any potential

⁴ AWI GUIDING PRINCIPLES, Principle 2 (a).

⁵ Chersky, *Ethical Issues for Internal Professionals Who Conduct Workplace Investigations*, AWI J., April/July 2014, at 5. See also EEOC GUIDANCE, "The employer should ensure that the individual who conducts the investigation will objectively gather and consider the relevant facts." The SHRM states that when selecting the investigator, the appropriate investigator should "have no stake in the outcome." SHRM, INVESTIGATIONS: HOW TO CONDUCT INVESTIGATIONS (Apr. 22, 2013).

conflicts might affect the investigator's independence. Consideration should be given to the scope of the investigation, the likely material issues at stake, and the potential witnesses. Care should be taken to determine whether there are any potential conflicts, such as involvement in the underlying facts, role as a potential witness, relationships and perceived alliances with involved parties, and chain of command, that could compromise the investigator's independence. It would be optimal to have recusal procedures, an alternate investigator, or a plan to refer to an outside investigator should conflicts arise. Having such protocols in place also serves to (1) encourage the investigator to engage in this important deliberation; (2) make it more acceptable for the investigator to recuse himself or herself and to have another internal professional conduct the investigation; (3) educate management about the importance of an impartial investigation; and (4) show commitment to a fair antiharassment process by the organization.

Handling internal pressures to complete the investigation quickly

After choosing the appropriate investigator and defining the scope of the investigation with the employer, the investigator will commence the investigation. EEOC *Guidance* and other professional guidelines, such as the AWI *Guiding Principles*, provide that an investigative process, to be effective, must be thorough. A thorough review of relevant facts often includes several witness interviews, including the complainant and the alleged harasser, and a review of relevant documents, all of which take time. Along with the pressure to get the investigations concluded, investigators are always balancing the needs for the investigation to be "prompt" with the need for it to be "thorough." This may be particularly difficult for internal professionals who tend to handle a large volume of complaints.

An internal investigator might be susceptible to internal pressures to complete the investigation because of deadlines pertinent to the department under investigation, such as rollout of a new service or product. The investigator may be directly contacted by the parties' supervisors with questions and pressures to complete the investigation, stated concerns about the potential impact on the productivity of the parties due to the investigation, or suggestions regarding the veracity of certain witnesses. The pressure may be more significant if the alleged harasser is a higher-level employee and the supervisor is higher-ranked than the investigator. These pressures could include a request to hurry to a conclusion or questioning the investigator during the course of the investigation about what the witnesses are saying. These pressures can interfere with a good-faith and thorough process and can threaten the investigator's independence.

Setting expectations up front could eliminate or reduce pressures faced by an internal investigator in these circumstances. An organization, along with the investigator, should discern at the outset of the investigation any potential challenges presented by timing of the investigation. A

"work-around" plan should be constructed. Additionally, "need-to-know" communications, such as the level and frequency of status updates as the investigation proceeds, as well as who receives them, should be determined at the outset. These discussions and planning might include what management should and should not say or do relative to the involved parties during the investigation.

An investigator is often challenged with addressing these pressures on his or her own. The investigator should enlist the support of his or her supervisor. Moreover, adopting protocols that address these concerns, such as limiting direct contact with an investigator, or at least a plan for support when an investigator is faced with this challenge, could alleviate these pressures. Understanding the investigator's tension to get the investigation concluded while at the same time having the obligation to be thorough, organizations could adopt systems that provide investigators with backup support. Protocols could be communicated to management during training and/or in written policies and regulations. An organization might be well served to educate managers and supervisors about the importance of a thorough and independent investigation and about their obligations and responsibilities with regard to the policy. Training managers of their responsibilities not just to report complaints, but to refrain from activity that could inadvertently impede the investigation, would be helpful in eliminating pressure to an investigator that could ultimately hinder his or her independence.

Avoiding reputation and character "evidence" in making credibility assessments

When conducting an investigation, an internal professional may have personal knowledge of an employee's "reputation" or hear about it from fellow colleagues. For example, if a complainant is challenging a performance evaluation as discriminatory based on having rebuked her manager's sexual overtures, the investigator should not allow the credibility of the complaint to be impacted based on the accused's reputation of "being a family man." Alternatively, the investigator may have heard the opposite, that the accused is separated from his spouse or unhappily married. Again, the investigator should not rely on this information to make credibility conclusions. The EEOC *Guidance* specifically states, "Information relating to the personal lives of the parties outside the workplace would be relevant only in unusual circumstances." An internal investigator may have more of this type of information available to him or her and must be deliberate in developing the facts and avoiding a tendency to confirm biases that he or she may harbor because of knowledge of information not relevant to the facts being investigated. The investigator must avoid making premature factual conclusions that are not fully independent and reliable.

Tendencies to take management at its word or to use reputation and character in an analysis can be avoided by fully developing the facts by eliciting relevant information such as: What exactly occurred? Are there other persons with relevant knowledge? Are

these notes or documents supporting the witnesses' testimony? If so, get it; if not, ask why it does not exist. The EEOC *Guidance* sets forth areas of questioning and possible questions to ask. Follow these and other guidelines, which are intended to help the investigator elicit relevant facts. Challenge the facts. Seek objective means to determine credibility: plausibility (i.e., look at the timeline), independent corroboration from other witnesses, corroborating documents, and motive to falsify. Seek objective underlying data pertaining to both sides.

Showing compassion without emotional involvement during the investigation

An internal professional might know the complainant, accused, and/or witnesses personally. The strain of an investigation and/or the underlying issues may be evident on the parties, who may cry or exhibit other signs of anxiety, stress, and concern. It may be challenging for the internal investigator to refrain from allowing this to impact his or her reasoning or be conflicted because of his or her role's dual responsibility to "support" the employee. Behavioral research has shown that empathy, although a good thing, can erode ethics. In making an effort to see the things the way people close to us do, we may take on their interests as our own. This may make one more willing to overlook transgressions.⁶ Internal investigators should audit their own loyalties within the organization.

These facts can present a practical dilemma for the investigator: learning to manage the "human" side of an investigation while maintaining neutrality. It is critical for an investigator to remember that as an advocate of a fair, independent investigative process, he or she is fulfilling a responsibility to support the employees. As a practical point, there are ways to show the "human" side as an investigator. There may be a tendency to nod or agree with a witness as a showing of support and compassion; however, this could be mistaken by the witness as the investigator "taking sides." The better response, as a way to show the witness that he or she has been heard and understood, is to say simply, "I understand." Another effective way to convey understanding is to repeat back to the witness what he or she just said. The investigator should avoid emotional attachment to any witness. If this becomes a risk because of the investigator's individual perceptions or personal knowledge outside of the investigation, the investigator should recuse himself or herself or have someone else read the report to act as a sounding board.

It cannot be stressed enough that focusing on the facts and developing them in the analysis is an investigator's best tool for reaching conclusions objectively.

⁶ Adam Waltz, *The Limits of Empathy*, HARV. BUS. REV., Jan.–Feb. 2016, at 6. Recognizing that empathy is the current rage being touted as a critical leadership skill, Professor Waltz discusses recent research, which suggests that this focus on empathy may be too intense. He states that although empathy is essential to leading and managing others (without it there would be disastrous decisions), failing to recognize its limits can impair individual and organizational performance.

Steering clear of other influences in report writing

After concluding witness interviews, document review, and analysis of the facts, the investigator might be charged with drafting a report that contains his or her conclusions. If the investigator is required to have the legal department or risk management department review the report before it is finalized, this too can present the internal professional with unique challenges if the investigator is concerned that the reviewer is looking for a particular result or finding. This pressure may simply be due to an inherent reticence to deliver bad news, or the knowledge that a conclusion will be unexpected. The investigator should not allow these influences to impact his or her final conclusions. The culture of an organization, from the top to the bottom, will largely impact the investigator in this situation. An organization that values a respectful and safe work environment, and fosters that value through education, policies, and a fair internal grievance process, will cultivate an atmosphere that sees a frank and honest assessment of facts as a positive opportunity for growth.

Conclusion

In conclusion, the internal investigator may be presented with unique pressures that could challenge his or her independence. However, there are practical and proactive measures that an organization or an investigator can take to eliminate or reduce these threats. At the outset, the investigator should screen for actual or perceived conflicts of interest. Expectations should be stated upfront with regard to communication during the course of the investigation. Also, the organization might educate upper management about these expectations and the importance of them to the integrity of the investigation, in addition to stressing the significance of eradicating discrimination and harassment in the workplace. An investigator must avoid advocating for any party to the investigation by building trust and advocating for a fair process. All of these goals are best accomplished by conducting a rigorous investigation focused on facts. Finally, the analysis and conclusions should be based on independent facts and free of other influences. An investigator, in conducting a thorough, frank, and rigorous investigation, and by supporting conclusions succinctly, will present the decision maker with a reliable assessment of a claim. An organization that supports an independent process is in the best position to bring about positive change.



Elizabeth W. Gramigna, Esq., SPHR, practices law in Short Hills, New Jersey. Ms. Gramigna has investigated the conduct of executives, board members, politicians, police officers, and other employees in the private and public sector. Her firm provides training, mediation, coaching, and professional services that proactively address workplace conflict. She has authored articles and spoken about ethically compliant investigations and the nuances of an effective investigation. Ms. Gramigna is a full-time faculty member of the AWI Institute. She can be reached at egramigna@elizabethgramigna.com.

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OIG Staff: OSCAR Restrepo
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Guidelines for Investigations

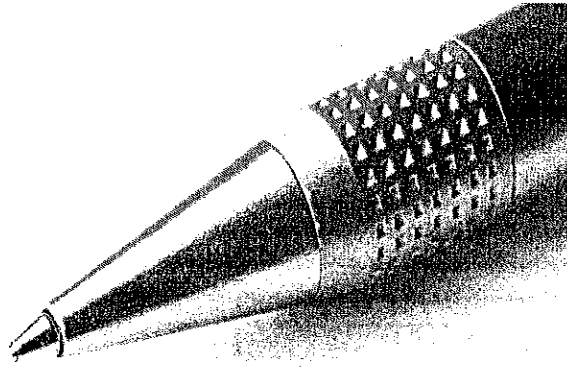
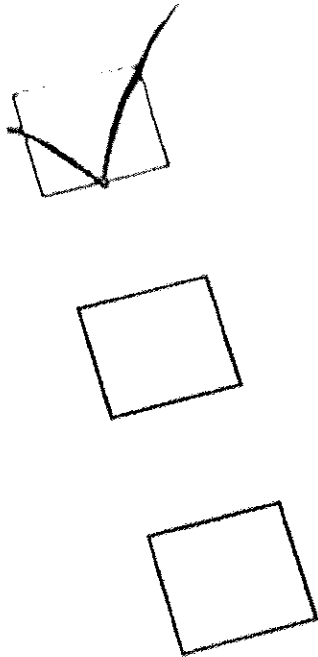


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**Florida Department of Education
Office of Professional Practices Services
325 West Gaines Street, Suite 224 E
Tallahassee, Florida 32399-0400**

Investigative Responsibility

Florida Public School Districts, Charter Schools, Private Schools that accept scholarship funds, and the Florida School for the Deaf and Blind are required to review allegations of misconduct by instructional personnel and school administrators as defined in s.1012.01, Florida Statutes.

When an allegation of misconduct by a certified educator is determined to be legally sufficient in that the investigation supports ultimate facts that show a violation has occurred as provided in s. 1012.795, Florida Statutes and as defined by State Board of Education Rule, a school or district must report the allegation, all supporting documents and findings to the Florida Department of Education, Office of Professional Practices Services within 30 days of knowledge of the incident.

In accordance with s.1012.796(5), Florida Statutes, when an allegation of misconduct affects the health, safety or welfare of a student, the district school must immediately suspend the instructional personnel or school administrators from regularly assigned duties, with pay, and reassign the suspended personnel or administrator to a position that does not have direct student contact. The suspension shall continue until the completion of the proceedings.

Definition: **Instructional Personnel** means any K-12 staff member whose function includes the provision of direct instructional services to students. Instructional personnel also includes K-12 personnel whose functions provide direct support in the learning process of students. Included in the classification of instructional personnel are the following K-12 personnel: Classroom teachers, student personnel services, librarians/media specialists, other instructional staff, and education paraprofessionals.

Definition: **Administrative Personnel** includes K-12 personnel who perform management activities such as developing broad policies for the school district and executing those policies through the direction of personnel at all levels within the district. Administrative personnel are generally high-level personnel who have been assigned the responsibilities of system wide or school wide functions, such as district school superintendents, assistant superintendents, deputy superintendents, school principals, assistant principals, career center directors, and others who perform management activities. Broad classifications of K-12 administrative personnel are as follows: District-based instructional administrators, district-based non-instructional administrators, school administrators.

Investigations

Investigations are conducted when allegations arise that an employee has violated the employee code of conduct, policy and procedures, the Principles of Professional Practices, the Code of Ethics or Principles of Professional Conduct, other State Board of Education Rule or violated a state or federal statute.

Investigations are comprehensive, in-depth, fact-finding endeavors to obtain all the information involving the complaint. These facts are used to ultimately determine if the allegations contained in the complaint are true. Investigations may involve obtaining, reviewing and analyzing documents, obtaining other forms of evidence, conducting interviews of victims and witnesses or other involved parties, and the individual who is the subject of the investigation. The investigation involves a complete analysis of all the facts and evidence gathered and is finalized with a comprehensive report which compiles all relevant statements and evidence obtained. The results of the investigation will typically determine if or to what degree the action(s) occurred and produce a determination as to whether the complaint is substantiated or not.

Types of Investigations

Schools and districts may encounter two standard types of investigations:

Administrative: Investigations that involve allegations that an employee has violated the code of conduct, district policy or procedure, state statute, rules or regulations, or federal statutes. Administrative investigations may be conducted to determine if disciplinary action should be taken by an employer against an employee or by the certificate issuing entity against the certificate holder.

Criminal: Investigations into possible criminal activity by a district employee, which if substantiated could result in arrest and prosecution. This does not include the administrative review of a criminal charge, or the determination of any action for a criminal act, but rather the actual investigation conducted by law enforcement to determine if a criminal offense may have occurred.

National Labor Relations Board v. J. Weingarten, Inc.
420 US 251, 43 L Ed 2d 171, 95 S Ct 959

In unionized workplaces, employees have the right under the National Labor Relations Act to the presence of a union representative during a management inquiry that the employee reasonably believes may result in discipline.

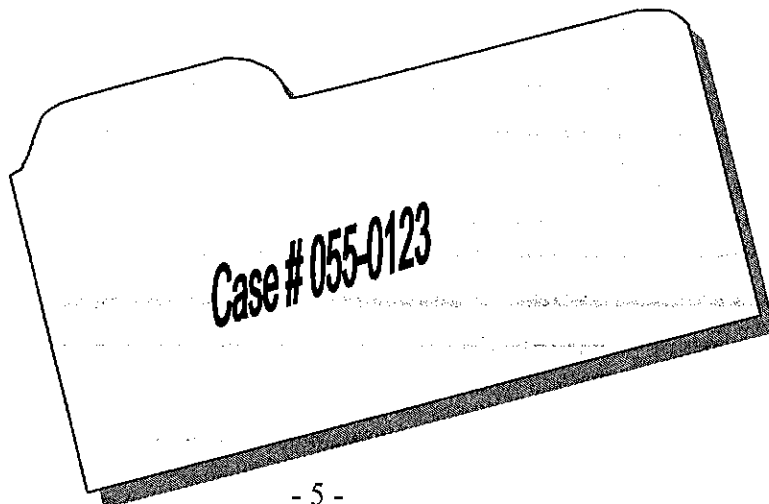
Weingarten does not apply to investigations by the Department for certificate purposes.

Qualitative Standards

Quality Control: Individual(s) assigned to an investigation should be impartial and have the ability to act independently. Individual(s) regularly assigned to conduct an investigation should have the knowledge, skills, and experience to conduct the investigative work.

Planning: A comprehensive review of reported facts is essential to a good investigation. A diligent analysis of the reported facts will help determine what documents will be needed and which individuals are to be interviewed. The analysis of the case facts should consider the number of individuals involved, the time period to be covered, the nature and extent of any evidence that should be collected, the challenges or constraints in interviewing parties or obtaining evidence and the time frame for completion.

Evidence Collection and Storage: Evidence in an investigation may consist of many types of documents or items. Evidence should be relevant and useful in documenting the facts and the conclusion. Information, evidence and data gathered during an investigation should be carefully documented and organized and should be supported with a chain of custody which includes who accessed or collected the data and when and how the data was collected, and any transfer of the item.



Timeliness: All investigations should be completed within a reasonable time period, based upon the nature of the investigation. Pursuant to s.1012.796 (1)(c), Florida Statutes, each school district, charter school and private school that accepts scholarship students shall file in writing with the Department all legally sufficient complaints within 30 days after the date on which subject matter of the complaint comes to the attention of the school or school district. To fulfill this statutory obligation, a district or school must determine if the allegation is supported and if so, shall forward all information to the Department within 30 days of knowledge of the complaint. *Schools and districts should not wait for conclusion or determination of employment action(s) to report legally sufficient allegations to the Department.*

Reporting/ Documentation: A final written report that thoroughly addresses all relevant aspects of the investigation, should be accurate, objective, timely, understandable, and logically organized. The report should summarize the original complaint and relevant information gathered pertaining to the original complaint (Who, What, When, Where). Supporting documents must be attached if available and the investigator should include a conclusion.

Independence / Objectivity: The person(s) investigating or reviewing the misconduct should be an impartial and unbiased party. If the person(s) assigned to the investigation is unable to be objective or may not be considered as someone who can be impartial, it is recommended that the investigation be reassigned to an impartial party.

Confidentiality of Investigations

District Investigations: Pursuant to s.1012.31(3)(a)(1), Florida Statutes any complaint against an employee shall be confidential and exempt from the provision of s.119.071(1) until the conclusion of the preliminary investigation or until such time as the preliminary investigation ceases to be active.

Department of Education Investigations: Pursuant to s.1012.796(4), Florida Statutes the complaint and all information obtained pursuant to the investigation by the Department shall be confidential and exempt from the provisions of s. 119.07(1) until the conclusion of the preliminary investigation or until such time as the preliminary investigation ceases to be active.

Investigative Techniques and Suggestions

When charged with conducting an investigation into allegations of misconduct by an educator or other school employee:

- Take ALL allegations seriously and treat them accordingly.
- Use due care in conducting investigations and preparing reports.
- Take steps to ensure the safety and well being of students; remove the accused from contact with victims / witnesses.
- Notify the subject of the investigation of the allegations and provide direction that he/she should conduct him or her self in an appropriate fashion.
- If there is a suspicion of criminal activity, contact the appropriate law enforcement agency immediately. Coordinate with the law enforcement agency to determine if the administrative investigation would interfere with criminal proceedings. Administrative investigations should always defer to criminal proceedings.
- When appropriate notify the Department of Children and Families (refer to s. 39.201, Florida Statutes.)
- Acquire any physical evidence relative to the case. Document each item and properly maintain it in a secure location throughout the investigation.
- Establish a chain of custody for the evidence.
- Determine pertinent victims / witnesses, i.e. typically individuals that have or may have first hand knowledge of the incident.
- If an alleged incident occurred in a classroom, obtain and keep the class roster.
- Compile victims / witnesses statements and physical evidence in a comprehensive report which presents the facts fairly and objectively.
- Complete the investigation in a timely manner.

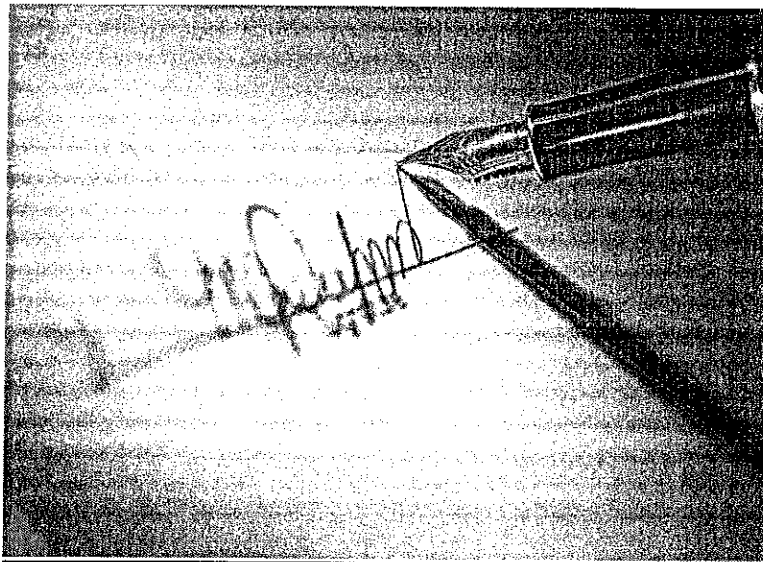
Interviewing the Victims and Witnesses

Interviews should be conducted in a private room or area that is sparsely decorated and is neat and orderly with minimal contents or distractions. For example, a small conference room with a table and chairs.

When conducting an interview:

- Plan questions to establish good flow to the interview, but be prepared to improvise and ask impromptu questions.
- Be aware of employees' rights and requirements.
- Victims / witnesses should be interviewed first; in private and confidentially.
- The accused should be interviewed last.
- Never interview the victims / witnesses in the present of the accused.
- Interview victims / witnesses individually, in private, and with limited distractions.
- Begin interviewing pertinent victims / witnesses as soon as possible while events are fresh in their minds.
- Establish a positive rapport with interviewees, but remain professional and objective.
- Advise the victims / witnesses to remain truthful at all times and that the purpose of the interview is to establish the facts of the complaint.
- Avoid intimidation tactics and accusatory tones.
- During the interview, ask variations of, "Is there any other information that you can remember/provide that would be helpful in determining what happened?"
- Do not interrupt a victim/witness during an interview, allow them to talk; Silence between questions will often elicit additional information.
- Be an active listener during an interview and reiterate or restate responses to ensure accuracy if necessary.

- Record victims / witnesses written statements according to the guidelines established by the district.
- Victims / witnesses statements should be specific, provide complete information, and whenever possible should include who, what, when, where, why, and how.
- Encourage reporting of retaliation and any attempts to influence victims / witnesses.
- When the interview is complete, explain the remaining steps before the process is complete.
- Remind all individuals that the conversation is confidential and should not be discussed with others.
- Obtain current and accurate contact information (full name, age, date of birth, address, and telephone numbers) for all victims / witnesses.
- Provide victims / witnesses with your contact information in the event that they have additional information to provide.



Tips and Comments

- Review victims / witnesses statements and evidence for incongruities, inconsistencies, additional witnesses, and / or other information that could be pertinent.
- Organize case material in a logical manner
- Physical Evidence:
 - May include, but is not limited to, photographs, seating charts, measurements, attendance records, personnel records, written reports, e-mails, court documents, computer access logs, social network pages, text messages, letters/correspondence, gifts, or memoranda.
 - Should be stored in safe place, clearly identified, and readily accessible
 - Picture color and quality is critical when used as evidence.
 - Computer data should be properly extracted and promptly catalogued. Various internet and file monitoring software programs are available to assist with this task.
 - Some cell phones have data ports to hook up to a computer or printer. The service provider can provide details on how to access text messages.

Sample Forms

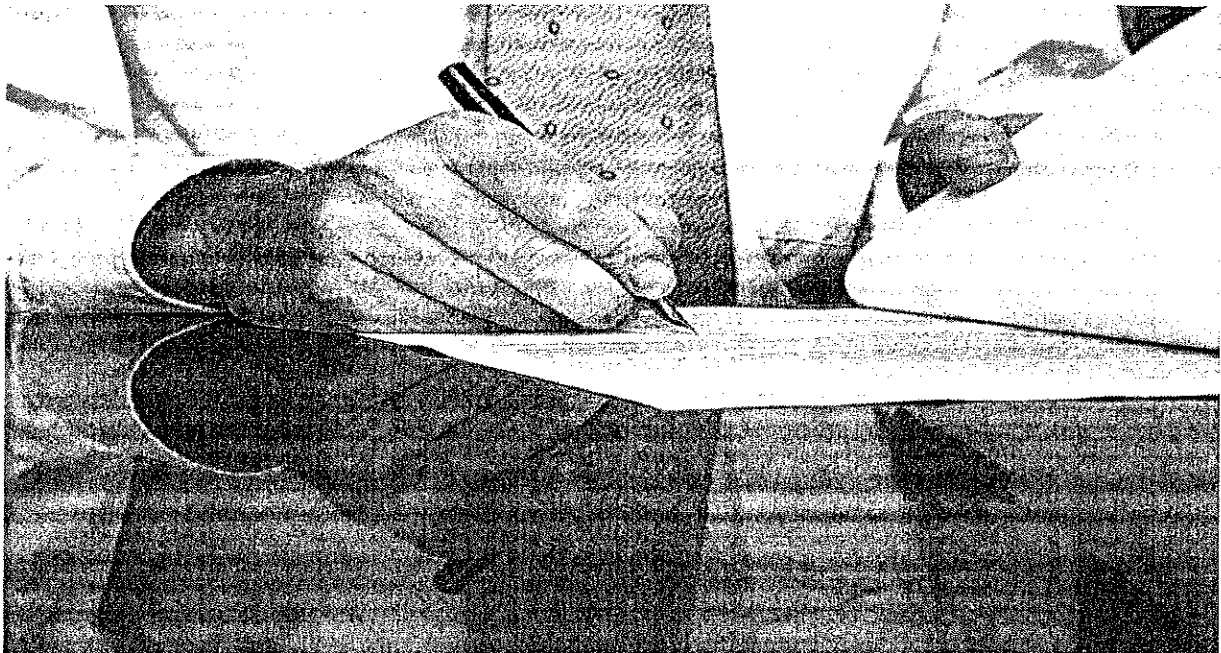
- Chain of Custody Form
- Witness Statement Form

Sample forms may be modified or altered for the needs of the user.

Required Form

- School/District Reporting Form – For reporting legally sufficient allegations of misconduct by certified educators to the Office of Professional Practices Services

This form should be used by schools and districts to report legally sufficient allegations of misconduct by certified educators to the Office of Professional Practices Services and should not be altered or modified by the user.



Chain of Custody

The item(s) described below were obtained as evidence by the undersigned during an official investigation of the : (name of school, district, or entity)		
Description of Item:		
Obtained from: (title, name, location, phone number)		
Printed name of investigator:	Signature of Investigator:	Date Obtained:
Case Number:		
Temporary disposition of item (s): (where stored)		
Released by: (printed name and signature)	Released to: (printed name and signature)	Date:
Temporary disposition of item (s): (where stored)		
Released by: (printed name and signature)	Released to: (printed name and signature)	Date:
Temporary disposition of item (s): (where stored)		
Released by:(printed name and signature)	Released to: (printed name and signature)	Date:
Temporary disposition of item (s): (where stored)		
Released by: (printed name and signature)	Released to: (printed name and signature)	Date:
Temporary disposition of item (s): (where stored)		
Released by: (printed name and signature)	Released to: (printed name and signature)	Date:
Temporary disposition of item (s): (where stored)		
Released by: (printed name and signature)	Released to: (printed name and signature)	Date:

EDUCATOR MISCONDUCT REPORTING FORM

Office of Professional Practices Services

REPORTER INFORMATION:

Public School Charter School Private School FSDB Lab School

REPORTER CONTACT INFORMATION:

School/District: _____

Contact Person Name and Title: _____

Contact Address and Telephone: _____

INFORMATION REGARDING THE EDUCATOR BEING REPORTED

EDUCATOR'S NAME: _____

ADDRESS: _____

HOME PHONE: _____ WORK PHONE: _____ CELL PHONE: _____

SSN: _____ DATE OF BIRTH: _____ DOE CERTIFICATE #: _____

ASSIGNED SCHOOL: _____

POSITION: _____ SUBJECT/GRADE LEVEL: _____

YEARS EXPERIENCE: _____

CONTRACTUAL STATUS: _____

CURRENT EMPLOYMENT STATUS: _____

SUMMARY OF THE ALLEGATION:

Reporting Directions

For questions, contact our office at 850.245.0438

In addition to the reporting form, submissions to the Office of Professional Practices Services should include:

1. All investigative materials, reports, evidence, documents or related materials (Examples include, victim or witness statements, arrest reports or court documents, newspaper articles, computer evidence, video or audio tapes, text messages or cell phone records, photographs, grade books or calendars, gifts/items, statements, arrest report(s), court documents, local investigative reports, termination or disciplinary documents, letter of resignation, district disciplinary action documents, DOAH Orders, and class rosters). **Do not send sanitized or redacted documents.**
2. The educator's current certification information and any applications processed or renewed at the local level
3. Name and contact information for all victims and witnesses (see and duplicate page two as necessary).

Direct all correspondence via regular mail to:

Florida Department of Education, Office of Professional Practices Services,
325 West Gaines Street, Suite 224-E, Tallahassee, Florida 32399-0400

EDUCATOR MISCONDUCT REPORTING FORM
PAGE TWO

VICTIMS

Name: _____

Name: _____

Address: _____

Address: _____

Telephone: _____

Telephone: _____

DOB: _____

DOB: _____

Current School: _____

Current School: _____

WITNESSES

Name: _____

Name: _____

Address: _____

Address: _____

Telephone: _____

Telephone: _____

DOB: _____

DOB: _____

Current School: _____

Current School: _____

Name: _____

Name: _____

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Telephone: _____

Telephone: _____

DOB: _____

DOB: _____

Current School: _____

Current School: _____

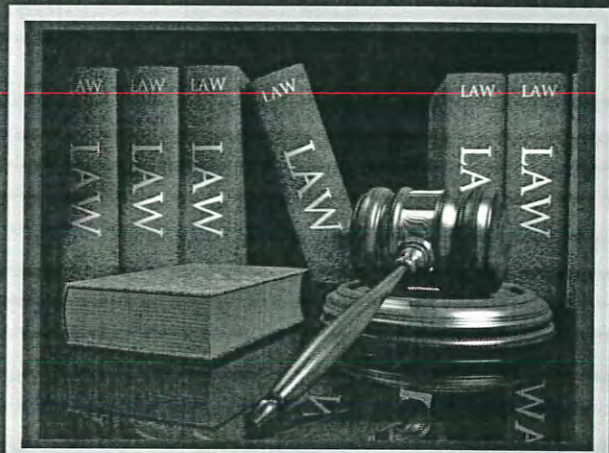


DIVISION OF INSPECTOR GENERAL
Ken Burke, CPA
Clerk of the Circuit Court and Comptroller
Pinellas County, Florida

Activity #: 22-0012-I
Case #: 0 10490
Date Rec'd: 12/2/21 Page _____
Rec'd: amr
Redacted: Yes No N/A Re
Exhibit/Reference #: 12



INVESTIGATION OF SCHOOL DISTRICT OF PALM BEACH COUNTY SUPERINTENDENT

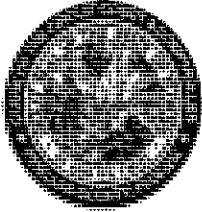


Melissa Dondero, CPA, CIA, CIG, CIGA, CIGI, CITP, CRMA, CFS, CECFE, CGI
Inspector General/Chief Audit Executive

Investigative Team

Ava Sadowska, CIA, CIG, CIGA, CIGI, CCA, CECFE, CFS, CGI – Assistant Inspector General
Darcy Eckert, CIGA, CIGI, CECFE, CFS, CGI – Senior Inspector General
Robyn Atkinson, CIGA, CIGI – Inspector General I

REPORT NO. 2021-27
December 1, 2021



Ken Burke, CPA

CLERK OF THE CIRCUIT COURT AND COMPTROLLER
PINELLAS COUNTY, FLORIDA

Clerk of the County Court
Recorder of Deeds
Clerk and Accountant of the Board of County Commissioners
Custodian of County Funds
County Auditor

Division of Inspector General

510 Bay Avenue
Clearwater, FL 33756
Telephone: (727) 464-8371
Fax: (727) 464-8386
Fraud Hotline: (727) 45FRAUD (453-7283)
Clerk's website: www.mypinellasclerk.org

December 1, 2021

Frank A. Barbieri Jr., Esq., Board Chair and Board Members
School District of Palm Beach County
3300 Forest Hill Boulevard, Suite C-316
West Palm Beach, FL 33406-5869

RE: Investigation of a Complaint Alleging Misconduct or Other Wrongdoing Involving the School District of Palm Beach County Superintendent

Pursuant to the Interlocal Agreement for Provision of Inspector General Services between the School Board of Palm Beach County, Florida, and the Office of the Clerk of the Circuit Court and Comptroller of Pinellas County, Florida, the Division of Inspector General's Public Integrity Unit has completed an investigation of the following allegation:

- The Complainants, School Board members and the Superintendent of the School District of Palm Beach County (SDPBC), requested an investigation to determine if the Superintendent potentially did not follow an appropriate disciplinary process related to the termination of a SDPBC employee. **Unfounded.**

The Superintendent of SDPBC, Dr. Donald Fennoy II, resigned from his position during the investigation, effective July 29, 2021.

To determine whether the allegation was substantiated, we reviewed policies, procedures, and appropriate records. We also interviewed staff and other parties, as needed. Our investigation was performed according to the *Principles and Standards for Offices of Inspector General* and *The Florida Inspectors General Standards Manual* from The Commission for Florida Law Enforcement Accreditation.



An Accredited Office of
Inspector General

Frank A. Barbieri Jr., Esq., Board Chair and Board Members
December 1, 2021

The Division of Inspector General uses the following terminology for the conclusion of fact/finding(s):

- **Substantiated** – An allegation is substantiated when there is sufficient evidence to justify a reasonable conclusion that the allegation is true.
- **Unsubstantiated** – An allegation is unsubstantiated when there is insufficient evidence to either prove or disprove the allegation.
- **Unfounded** – An allegation is unfounded when it is proved to be false or there is no credible evidence to support it.

The recommendations presented in this report may not be all-inclusive of areas where improvement may be needed; however, we believe implementation of the recommendations will strengthen the current internal controls.

We appreciate the cooperation shown by the staff of the School District of Palm Beach County during the course of this investigation.

Respectfully Submitted,



Melissa Dondero
Inspector General/Chief Audit Executive

cc:

Ken Burke, CPA
Pinellas County Clerk of the Circuit Court and Comptroller
Ex Officio County Auditor

Teresa Michael, Inspector General
School District of Palm Beach County
Office of Inspector General

Michael Burke, Superintendent
School District of Palm Beach County

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INTRODUCTION

Abbreviations

ALJ	Administrative Law Judge
Clerk	Pinellas County Clerk of the Circuit Court and Comptroller
DOAH	Division of Administrative Hearings
EEO	Equal Employment Opportunity
ELR	Employee and Labor Relations
FS	Florida Statutes
HR	Human Resources, School District of Palm Beach County
IG	Division of Inspector General, Pinellas County Clerk
OFI	Opportunity for Improvement
OIG	Office of Inspector General, School District of Palm Beach County
School Board	School Board of Palm Beach County
SDPBC	School District of Palm Beach County
SOP	Standard Operating Procedures
SRHS	Spanish River High School

Background

The School Board of Palm Beach County (School Board) adopted Board Policy 1.092 on December 14, 2011 (IG Policy), creating the School Board's Office of Inspector General (OIG). The IG Policy requires an external agency to investigate allegations of wrongdoing against a School Board member, the Superintendent, or any employee in the School Board's OIG. The Pinellas County Clerk of the Circuit Court and Comptroller's (Clerk) Division of Inspector General (IG) agreed to serve in the capacity of the external agency to provide these services. Therefore, on August 12, 2014, the Clerk and the School Board entered into an interlocal agreement through the Clerk's IG.

On October 21, 2020, the OIG referred a complaint against the School District of Palm Beach County (SDPBC) Superintendent to the Clerk's IG.

Allegation

The IG initiated an investigation after receiving a complaint from the OIG. The complaint alleged that the SDPBC Superintendent, Dr. Donald Fennoy II (Fennoy), potentially did not follow an appropriate disciplinary process related to the termination of a SDPBC employee.

Investigative Activity

During the course of the investigation, we performed the following to obtain evidence to conclude on the allegation:

- Reviewed SDPBC policies, Florida Administrative Code, Florida Statutes (FS), and other relevant rules and regulations
- Reviewed emails, news articles, witness testimony, and other relevant documents
- Interviewed current and former SDPBC employees

INVESTIGATIVE CONCLUSIONS

The Division of Inspector General uses the following terminology for the conclusion of fact/finding(s):

- **Substantiated** – An allegation is substantiated when there is sufficient evidence to justify a reasonable conclusion that the allegation is true.
- **Unsubstantiated** – An allegation is unsubstantiated when there is insufficient evidence to either prove or disprove the allegation.
- **Unfounded** – An allegation is unfounded when it is proved to be false or there is no credible evidence to support it.

During the course of the investigation, we determined the following facts to conclude on the allegation:

The complaint alleged the Superintendent potentially did not follow an appropriate disciplinary process related to the termination of a SDPBC employee. We performed the following:

- Reviewed documents related to the discipline, termination, reinstatement, and subsequent termination of the SDPBC employee
- Interviewed SDPBC staff

We interviewed or attempted to interview witnesses, the complainant, and the respondent. According to the documentation reviewed and interviews conducted, the following is a timeline of events:

Date	Activity
April 13, 2018	Parent of Spanish River High School (SRHS) student emailed SRHS Principal William Latson (Latson) to inquire about Holocaust education at the school, as it seemed insufficient.
April 18, 2018	Latson stated in an email to the parent, "I can't say the Holocaust is a factual, historical event because I am not in a position to do so as a school district employee." This resulted in the parent reporting the statement to SDPBC administration. SDPBC administration worked to strengthen Holocaust curriculum at SRHS and met with the parent regularly until May 2019 to discuss these efforts.
July 5, 2019	The Palm Beach Post published an article, "Spanish River High's principal refused to call the Holocaust a fact."

Investigative Conclusions
Investigation of School District of Palm Beach County Superintendent

Date	Activity
July 8, 2019	<p>The source of each entry below is indicated by footnotes, since there are telephone calls and text messages that are recorded at the origination point and not at the destination point. The testimony of the participants was used in conjunction with the telephone records.</p> <p>7:36 a.m. Deputy Superintendent Keith Oswald (Oswald) spoke to Latson to discuss a possible job reassignment and asked Latson to reply with a decision by noon of the same day.⁽¹⁾</p> <p>8:21 a.m. Oswald left a voicemail for Latson.⁽¹⁾</p> <p>8:22 a.m. Oswald texted Latson and asked Latson to call him.⁽¹⁾</p> <p>9:24 a.m. Officer Dilbert (Dilbert), SDPBC School Police, contacted Latson to notify him that there were news vans outside the school and there may be a disturbance. Latson told Dilbert he was at the airport leaving for a family vacation.⁽²⁾</p> <p>9:35 a.m. Oswald left a voicemail for Latson.⁽¹⁾</p> <p>10:32 a.m. Oswald left a voicemail and sent a text message to Latson asking Latson to call him.⁽¹⁾</p> <p>10:42 a.m. Oswald left a voicemail for Latson.⁽¹⁾</p> <p>12:31 p.m. Oswald left a voicemail for Latson.⁽¹⁾</p> <p>12:33 p.m. Oswald texted Latson telling him he was being reassigned and to call him as soon as possible.⁽¹⁾</p> <p>2:14 p.m. Latson emailed SRHS faculty to let them know he had been reassigned due to a parent inaccurately relaying a message to a newspaper.</p> <p>9:41 p.m. Oswald emailed Latson and instructed him to cease any communications to SRHS staff or others regarding the reassignment.</p> <p>(1) Source: Screenshots of Oswald's telephone and Oswald's testimony. (2) Source: Latson's telephone call log and Dilbert's testimony.</p>
July 10, 2019	<p>The following activity occurred on this date:</p> <ol style="list-style-type: none"> 1. Latson texted Oswald indicating he attempted to text him previously, but due to connectivity issues, the text did not reach Oswald. In the text message, Latson acknowledged he had been reassigned and would be in contact upon his return from vacation. 2. Oswald emailed Latson a letter indicating he was not recommending Latson's reappointment. 3. The Florida Department of Education issued a press release and letter to Fennoy stating the SDPBC School Board and Superintendent should investigate Latson and submit a report detailing how the SDPBC provides Holocaust education to students.

Investigative Conclusions
Investigation of School District of Palm Beach County Superintendent

Date	Activity
July 13, 2019	The School Board had approved Latson's reappointment on June 19, 2019. On this date, Latson mailed a signed multi-year contract to Fennoy, with a letter stating his acceptance of the reappointment action approved by the School Board on June 19, 2019. This did not follow the normal procedure for obtaining contract signatures; however, the School Board accepted and executed the contract since they had previously approved the action.
July 17, 2019	SDPBC Human Resources (HR) Employee and Labor Relations (ELR) emailed Latson two letters notifying him he was being investigated for ethical misconduct and would be assigned with pay to his residence pending the outcome of the investigation.
August 23, 2019	SDPBC HR ELR issued an investigative report concluding that there was evidence to support violations of School Board policies, procedures, and rules.
October 11, 2019	Fennoy emailed and hand delivered a letter to Latson notifying Latson that Fennoy would recommend Latson's discharge to the School Board for vote at its public meeting on October 30, 2019.
October 30, 2019	The School Board voted to approve Latson's termination of employment effective November 21, 2019, subject to appeal under sec. 120.569 FS and sec 120.57 FS.
October 31, 2019	Effective date of Latson's unpaid suspension through November 20, 2019.
November 21, 2019	Effective date of Latson's employment termination.
February 3-5, 2020 and April 16, 2020	Division of Administrative Hearings (DOAH) heard Latson's appeal.
August 13, 2020	DOAH Administrative Law Judge (ALJ) entered a Recommended Order for the School Board to enter a final order dismissing the charges against Latson and awarding lost wages.
October 7, 2020	The School Board voted to adopt the final order in the matter of SDPBC vs William Latson, rescinding the suspension and termination of Dr. Latson, awarding him lost wages for the period beginning with his suspension without pay and transferring him to a position within the district as determined by the Superintendent commensurate with his qualifications.
November 2, 2020	SDPBC School Board voted to rescind the vote taken on October 7, 2020, thereby terminating Latson's employment with the SDPBC.

Events Leading to Termination

The events leading to Latson's termination were a result of events that occurred over a year prior to the termination, as noted in the timeline above. Those initial events did not result in any formal discipline. However, when the media began reporting about the events more than 14 months later in July 2019, the SDPBC's HR ELR launched an investigation into Latson's actions related to the media response.

We interviewed Vicki Evans-Paré (Evans-Paré), the Director of HR ELR, who conducted the investigation. She indicated during the interview that when Fennoy asked her to investigate Latson, she determined she could not investigate the incidents that occurred in April 2018, as too much time had passed. Evans-Paré cited FS Section 1012.31 subparagraph 2 (b)1, "No such materials may be placed in a personnel file unless they have been reduced to writing within

45 days, exclusive of the summer vacation period, of the school system administration becoming aware of the facts reflected in the materials.” Evans-Paré noted that, although this statute is meant for teachers, she applied it to Latson in this case.

Per the investigative report, the SDPBC HR ELR received information alleging Latson had acted in a manner unbecoming a school leader in the days following a July 5, 2019, newspaper article quoting emails sent from him to a parent. Per the report, “Between July 5, 2019 and July 13, 2019, while his email was receiving global news coverage, Mr. Latson failed to respond to communications from his supervisors and failed to assist the District in addressing the serious disruption caused by the aforementioned email and news coverage.” The formal allegations consisted of ethical misconduct and failure to carry out job responsibilities.

The investigative report included a conclusion that there was evidence to support that Latson violated the following policies, procedures, and rules:

Florida Administrative Code

- Principles of Professional Conduct for the Education Profession in Florida, 6A-10.081
- Criteria for Suspension and Dismissal, 6A-5.056

School Board Policies

- 1.013 – Responsibilities of School District Personnel and Staff
- 1.014 – Responsibilities of Principals
- 3.02 – Code of Ethics
- 3.10 – Conditions of Employment with the District

The investigative report also noted Latson had no prior discipline related to the allegations and the following discipline was available:

- Verbal Reprimand with Written Notation
- Written Reprimand
- Suspension without Pay
- Termination of Employment

Subsequently, Fennoy consulted with HR and general counsel, and ultimately made the recommendation to the School Board to terminate Latson’s employment. The School Board voted to terminate Latson’s employment with the SDPBC effective November 21, 2019, as noted above in the timeline of events.

Since there were no formal progressive disciplinary procedures in place at the time of the incident, Fennoy did not have an appropriate procedure to follow. In the absence of such a directive, Fennoy consulted HR and general counsel, which are appropriate advisors in employment matters. Based on Fennoy’s actions, we determined the allegation against Fennoy was **unfounded**. However, we identified two opportunities for improvement (OFIs). The OFIs and associated recommendations are presented below.

HR Investigation Conflicts

When Fennoy initially requested HR ELR conduct an investigation into Latson's activities on July 17, 2019, Evans-Paré assigned the investigation to an investigator that recused herself. Evans-Paré indicated in an interview the investigator cited religious reasons as the basis for recusal. At the time, the SDPBC did not have formal recusal procedures in place, so Evans-Paré began working to create procedures.

Evans-Paré then assigned the investigation to another investigator, Robert Pinkos (Pinkos), on August 1, 2019. Evans-Paré adopted recusal procedures and shared them with staff during a meeting on August 15, 2019. On August 19, 2019, Pinkos recused himself. Evans-Paré indicated Pinkos recused himself because his spouse worked for Oswald. Evans-Paré did not think the relationship met the criteria as outlined in the procedures but allowed Pinkos to recuse himself and conducted the investigation herself.

Pinkos was not willing to participate in an interview with the IG; however, we reviewed a recorded interview Pinkos participated in with the SDPBC OIG. Pinkos indicated in that interview he recused himself because he did not believe the allegations were warranted, given Latson was on vacation out of the country. In a separate incident, Pinkos was involved in an altercation with a superior. HR management assigned one of Pinkos's coworkers to investigate the altercation, which created a conflict of interest, as discussed in OFI #2 below.

INVESTIGATIVE FINDINGS

1. The SDPBC Policies And Procedures Were Insufficient.

There are no policies and procedures for the following activities:

- Disciplinary Action for Principals
- Diplomatic Conflict Resolution
- Recusal Process for Investigators

Disciplinary Action for Principals

The basis of this investigation was whether or not an appropriate disciplinary process was followed for Latson based on the events discussed above. However, during the investigation, we noted there were no disciplinary procedures for principals. There did exist a policy for Suspension and Dismissal of Employees (School Board Policy 3.27), which outlined the method by which the Superintendent must notify an employee of impending suspension and/or dismissal. In this instance, Fennoy followed the policy and properly notified Latson of his plans to recommend the principal's termination.

Per SDPBC HR ELR, there were progressive discipline policies for all staff that were part of collective bargaining units with the SDPBC, which included teachers, office professionals, police officers, paraprofessionals, early childhood professionals, custodial forepersons, maintenance workers, construction workers, transportation workers, food service workers, and warehouse/material distribution employees. Since principals were not part of the bargaining units, HR simply applied the same progressive discipline policy contained in the bargaining units to the principals. However, there was nothing formally documented as a policy for principals. Therefore, we could not conclude that the appropriate policy was or was not followed.

At the conclusion of the HR investigation, HR's position was that there was evidence to support violations of Florida Administrative Code and several School Board policies, as noted above. The report indicated what disciplinary steps were available, and Fennoy ultimately recommended skipping the progressive disciplinary steps and recommended termination. The alleged violations included Latson not being responsive to text messages and telephone calls while on vacation out of the country and communicating with his staff while not responding to Oswald. Fennoy consulted with general counsel and HR before making his recommendation. Per Board policy, Fennoy made the final recommendation for termination to the Board.

After Latson's termination, he appealed to the DOAH, and the ALJ that presided over the case found that Latson was unfairly terminated and recommended his reinstatement and backpay.

The SDPBC initially followed the ALJ's recommendation and reinstated Latson but subsequently voted to terminate his employment. As a result, Latson has a pending lawsuit against the SDPBC.

There should be a clearly documented progressive discipline policy for all staff, including principals. The SDPBC should formally adopt a policy and implement it immediately. Although judgment calls are required when determining when progressive steps may be skipped, guidance should be provided by HR and general counsel.

Diplomatic Conflict Resolution

There were no formal conflict resolution policies or procedures for principals, especially for handling sensitive and potentially political issues. In addition, while some informal discussions occurred with principals during the school year, there was no formal training on this topic. In interviews, staff noted the lack of policies, procedures, and training in this area.

The SDPBC's Department of Communications had ongoing discussions with principals and assistant principals about interacting with the media regarding sensitive topics. The regional superintendents provided best practice reminders for principals at the beginning of each school year.

The SDPBC has not implemented a formal policy, procedures, or offered training in this area. Periodic training for handling sensitive subject matters and conflict resolution can improve staff performance and prevent situations from escalating. Providing conflict resolution training will enhance the SDPBC's ability to respond to sensitive or political issues. Training should be offered that is coupled with a policy and procedures so staff feels equipped to handle situations that arise.

Recusal Process for Investigators

During interviews, we learned that an HR investigator wanted to recuse herself from conducting a particular investigation, but there were no formal guidelines for doing so. The ELR Director subsequently developed a policy and shared it with staff. The department is currently in the process of developing a standard operating procedures (SOP) manual, which will contain the formalized recusal procedures.

Written policies and procedures provide necessary guidance to perform and manage school activities consistently. The development of procedures provides management with an opportunity to ensure adequate processes have been established.

Policies and procedures were not developed in this area. A lack of policies and procedures may lead to inconsistencies in performing work or staff's inability to appropriately react in certain situations.

We Recommend the SDPBC School Board:

Develop and implement policies and procedures in the areas noted.

2. There Was A Conflict Of Interest Related To HR Investigations.

During the investigative activities in HR related to Latson's actions, Pinkos, the prior HR investigator assigned to the case, was in an altercation with a superior staff member. After the altercation, Germaine English (English), another HR investigator, was asked to investigate the altercation. However, Pinkos and English were coworkers and worked together regularly. English was required to interview Pinkos and their immediate supervisor as part of the investigation. Therefore, a conflict of interest was present.

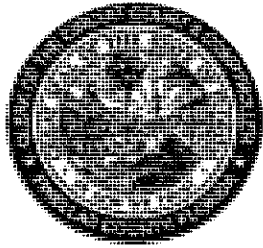
Conflicts of interest should always be disclosed. In this case, it should have been an obvious conflict to management and prevented by assigning the investigation to someone other than the subject's coworker. Per the Association of Certified Fraud Examiners, *"Organizations should establish policies clearly defining what constitutes a conflict of interest and prohibiting any such entanglements by officers, directors, employees, or other agents of the organization. A policy requiring employees to complete an annual disclosure statement is an excellent proactive approach to dealing with potential conflicts."*

HR management indicated that at the time of the incident, it wanted to interview witnesses to the altercation quickly, and the standard method for obtaining an investigation through an external law firm would not have been expeditious. In addition, the department did not have a relationship with the OIG to refer investigations when needed. Since that time, the department has formed a relationship with the OIG to refer investigations.

Investigators must remain impartial when conducting an investigation and having a conflict of interest can jeopardize the integrity of the investigation. HR should adopt a formalized procedure in its SOP manual with specific steps to take when referring investigations, including referral to an external firm or the OIG.

We Recommend the SDPBC School Board:

- A. Adopt and implement a formalized procedure in its SOP manual for disclosing conflicts of interest and the specific actions that will be taken to remedy the conflict.
- B. Adopt a formalized procedure in its SOP manual with specific steps to take when referring investigations, including referral to an external firm or the OIG.



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THE SCHOOL DISTRICT OF
PALM BEACH COUNTY, FL

OFFICE OF PROFESSIONAL STANDARDS
3300 FOREST HILL BOULEVARD, A-106
WEST PALM BEACH, FL 33406-5870

PHONE: 561-434-8873 / FAX: 561-434-8178
WWW.PALMBEACHSCHOOLS.ORG

VICKI EVANS-PARÉ, ESQ.
DIRECTOR

GONZALO S. LA CAVA, Ed.D.
CHIEF OF HUMAN RESOURCES

Via Facsimile
December, 13, 2021

Ms. Melissa Dondero
Inspector General/Chief Auditor
Pinellas County
510 Bay Avenue
Clearwater, FL 33756
Fax: 727-464-8386

Re: Investigation of a Complaint Alleging Misconduct or Other Wrongdoing Involving the
School District of Palm Beach County Superintendent.

Ms. Dondero,

I received a copy of the above referenced investigation. I was interviewed extensively in relation to these issues and found two important inaccuracies in the final report.

First, on page 10 of the report, a statement was attributed to me that was inaccurate. It reads, "Evans-Pare noted that, although this statute [1012.31] is meant for teachers, she applied it to Latson in this case." Florida Statutes §1012.31 applies to all public school employees which would have included Dr. Latson. I believe the confusion was based on a statement I made relative to progressive discipline. While there was no direct policy related to progressive discipline for administrators, we applied the process used for teachers in the Collective Bargaining Agreement with the teachers. At no time did I state that the statute at issue only applies to teachers.

Second, the section "There Was a Conflict of Interest Related to HR Investigations" explored on page 14, is based on a false assumption. Germaine English did **not** investigate the altercation between Pinkos and a superior staff member. Ms. English merely took statements from two eyewitnesses immediately after the incident to preserve their recollections. Ms. English was selected because she performed a different function than Mr. Pinkos, and worked in a different wing on a different floor of the building. The investigation into the incident was conducted by an outside law firm (Gunster Law Firm). It is my understanding that your office was supplied with a copy of the investigative report.

Finally, in the same section, it reads "[the Office of Professional Standards] did not have a relationship with the OIG to refer investigations when needed." At the time of the incident, OPS

Activity #: 22-0012-I
OIG Staff: Oscar Astuyro
Date Rec'd: 12/15/21 Pages: 2
Rec'd: Email Forwarded by IE Michael
Redacted: Yes No N/A Req'd TBD
Exhibit/Reference #: 13



THE SCHOOL DISTRICT OF
PALM BEACH COUNTY, FL
CHIEF OF HUMAN RESOURCES

VICKI EVANS-PARÉ, ESQ.

GONZALO S. LA CAVA, Ed.D.
DIRECTOR

DEPARTMENT OF EMPLOYEE AND LABOR RELATIONS
3300 FOREST HILL BOULEVARD, A-106
WEST PALM BEACH, FL 33406-5870
PHONE: 561-434-8873 / FAX: 561-434-8178
WWW.PALMBEACHSCHOOLS.ORG

did have a relationship with the OIG; however, the OIG did not investigate matters outside of issues related to fraud, waste and abuse.

While I understand that you have completed and released your investigation, I would request that this response be appended to the file. If you have any questions or concerns, please do not hesitate to contact me.

Sincerely,

Vicki Evans-Paré

Director, Office of Professional Standards

Cc: School Board Office
Mike Burke, Superintendent SDPBC
Teresa Michael, Inspector General SDPBC

BOCA RATON
FT. LAUDERDALE
JACKSONVILLE
KEY LARGO
MIAMI
ORLANDO
PALM BEACH

Activity #: 20-0012-I
OIC Staff: Restrepo
Rec'd: 3/10/20 Pages: 46
Rep: Fred Schwartz
Redacted: Yes No N/A Req'd TBD
Exhibit/Reference #: 14

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CONFIDENTIAL AND PRIVILEGED COMMUNICATION

TO: The School District of Palm Beach County
FROM: Joseph G. Santoro, Esq.; J. Anthony Nelson, Esq.
IN RE: Investigation Final Report: Complaints Against Robert Pinkos Regarding the November 8, 2019 Altercation
DATE: February 12, 2020

I. INTRODUCTION

A. Scope of Investigation

Our Firm was engaged by the School District of Palm Beach County (the "School District") to independently investigate the allegations of multiple complaints it received from School District employees regarding HR Manager, Robert "Bob" Pinkos ("Mr. Pinkos"). Specifically, we were asked to investigate an altercation that was allegedly initiated by Mr. Pinkos in the School District's parking lot on the morning of November 8, 2019.

Upon our engagement, we immediately requested and reviewed relevant documents, witness statements, and policy information. On December 5, 2019, we began interviewing the relevant witnesses. Our interviews initially included the following witnesses:

- Katrina Todd, Purchasing Technician with twenty (20) years of employment at the School District;
- Jacquelyn Richardson, HR Sr. Analyst with thirty-eight (38) years of employment at the School District;
- Dr. Gonzalo La Cava, Chief of Human Resources with three (3) years of employment at the School District; and
- Vicki Evans-Paré, Director of Employee and Labor Relations with seventeen (17) years of employment at the School District.

When we attempted to schedule an interview of Mr. Pinkos, he claimed that he was unavailable to be interviewed for several weeks. We received communications from two private attorneys that represented Mr. Pinkos, who asked that we postpone his interview until January 16, 2020 because he was unavailable due to a previously scheduled vacation. Accordingly, at the request of Mr. Pinkos's counsel, we delayed the completion of this investigation until Mr. Pinkos was available to be interviewed and was given a chance to respond to the allegations. On January 16, 2020, Mr. Pinkos appeared at our office (which was the location his lawyers

EX 14

requested) with his counsel, but refused to participate in the interview. Instead, Mr. Pinkos's attorneys provided us with a lengthy written "complaint" which he apparently submitted to the Inspector General's office on or about January 15, 2020 (the "IG Complaint"). While the IG Complaint made a plethora of allegations regarding a prior School District investigation in August 2019, it did not materially address the events that occurred on the morning of November 8, 2019.¹

After reviewing the IG Complaint we determined that the IG Complaint was outside the scope of our investigation. Specifically, our investigation was limited to whether Mr. Pinkos acted inappropriately or violated any School District policies when he allegedly instigated a confrontation with Dr. Gonzalo La Cava in the School District parking lot on the morning of November 8, 2019. To the extent that the allegations of the IG Complaint are offered by Mr. Pinkos to explain his motives for initiating the alleged confrontation on November 8, 2019, or the motives of others who might have made complaints about him, we determined that neither was particularly relevant to determining what actually occurred on November 8, 2019. First, regardless of whether the allegations of the IG Complaint were false or true (which we did not determine) neither would justify or excuse the alleged behavior engaged in by Mr. Pinkos on the morning of November 8, 2019. Second, the individuals who made the November 8, 2019 complaint were not involved in the prior investigation. Notably, the primary eye witness to the November 8, 2019 altercation claims she did not even know who Mr. Pinkos or Dr. La Cava were, and had no involvement in the School District's prior investigation.

For these reasons, we did not expand our investigation to include the issues identified in the IG Complaint as they had little, if any, relevance to the issues under our investigation.

B. Summary of Conclusions²

Based on the evidence we reviewed and the statements from the witnesses, our conclusion is that Mr. Pinkos acted in an unprofessional and inappropriate manner when he initiated a confrontation with Dr. Gonzalo La Cava, the School District's Chief of Human Resources ("Dr. La Cava"). While it appears that the confrontation stemmed from Mr. Pinkos's efforts to address a grievance regarding his supervisor, Mr. Pinkos's actions were inappropriate and done in contravention to the School District's established grievance procedures. Specifically, School Board Policy 3.31, "Grievance Procedure for Employees" (the "Grievance Procedure"), contains a clear, multi-step procedure for employees to properly address grievances with their supervisors. Based on the evidence we received, it is clear that Dr. La Cava acted

¹ Instead, this new "complaint" raised numerous allegations regarding a prior investigation conducted by the School District, and claimed that Mr. Pinkos was being subjected to retaliation.

² This Report and the information contained herein is not transmitted as 'fact' because the undersigned investigators have no personal knowledge regarding the events that occurred on the morning of November 8, 2019. Rather, what is included in this Report is a summary of the statements of the witnesses, and our opinions and conclusions regarding the information we received during the investigation process. Part of this Report includes our opinions based on our assessment of the witnesses' credibility and the existence of corroborative witness statements and other evidence.

properly and consistent with School Board Policy 3.31 by instructing Mr. Pinkos to follow the School District's Grievance Procedure to address his concerns about his supervisor. Mr. Pinkos refused to follow the Grievance Procedure and, instead, took it upon himself to improperly confront Dr. La Cava in the School District Parking lot. In this regard, Mr. Pinkos's actions were improper.

Second, during this altercation, Mr. Pinkos engaged in behavior that we believe violated School Board Policy 3.02, titled the "Code of Ethics." The Code of Ethics "is designed to protect the health, safety and general welfare of students and employees and to define unethical conduct justifying administrative or disciplinary action." The Code of Ethics governs the "accountability" and "professional conduct" of School District employees. Specifically, section 4(a) states that "Each employee agrees and pledges to provide the best example possible; striving to demonstrate excellence, integrity and responsibility in the workplace." Similarly, section 5(i) states that "Employees should demonstrate conduct that follows generally recognized professional standards" and defines unethical conduct as "any conduct that impairs the ability to function professionally in his or her employment position or conduct that is detrimental to the health, welfare or discipline of students or the workplace."

As more fully described below, Mr. Pinkos's behavior of initiating an unprofessional confrontation with a supervisor in the School District's parking lot is not within the School District's professional standards in the workplace. Rather, Mr. Pinkos's behavior was potentially detrimental to the health and welfare of himself and of others. Regardless of his reasons for initiating this confrontation, Mr. Pinkos acted in a manner that the witnesses described as "loud" and "aggressive", and caused employees to believe that the situation could become violent. Not only is such behavior outside of professional standards and the orderly and professional process for addressing grievances, it is the type of behavior that could lead to acts of violence and intimidation in the workplace and should not be tolerated, regardless of whether the reasons for the confrontation were justified or not.

For these reasons, we believe that it would be appropriate for the School District to take disciplinary action against Mr. Pinkos for his behavior.

II. INFORMATION OBTAINED DURING THE INVESTIGATION

A. Summary of Information Obtained From Witness Statements and Interviews

According to multiple witnesses, on the morning of November 8, 2019, around 8:30 a.m., an altercation was instigated by Mr. Pinkos in the School District parking lot located outside of the Fulton-Holland Educational Services Center (the "Fulton-Holland Center") that involved Mr. Pinkos and the School District's Chief of Human Resources, Dr. La Cava. Witnesses reported that Mr. Pinkos, without provocation, approached the driver side door of Dr. La Cava's vehicle while Dr. La Cava was attempting to exit his vehicle. Mr. Pinkos blocked the doorway preventing Dr. La Cava from exiting, according to witnesses. At this point, witnesses reported that Mr. Pinkos began yelling at Dr. La Cava and became visibly animated and mad. As set forth in more detail below, one witness who saw the altercation described Mr. Pinkos as "aggressive",

"animated", and "mad", and believed that it might be necessary to call the School Police as she believed that things were about to escalate to a physical altercation based on Mr. Pinkos's aggressive behavior.

In addition to other witnesses, Dr. La Cava reported this incident and reported that he initially shocked and frightened by Mr. Pinkos's actions. Dr. La Cava claims he was startled when he opened his door to get out of his vehicle upon arriving for work and saw Mr. Pinkos standing in his doorway, preventing him from exiting his vehicle. He claimed that Mr. Pinkos then started yelling at him about what Mr. Pinkos claimed was Dr. La Cava's refusal to meet with him, and was aggressive in his tone and body language. Based on Mr. Pinkos's aggressive behavior, Dr. La Cava believed that there was a possibility that Mr. Pinkos could become violent.

Mr. Pinkos ultimately stepped away from Dr. La Cava's door and allowed him to exit his vehicle. As Dr. La Cava was exiting his vehicle, he claims to have told Mr. Pinkos "you can't speak to me like that." Mr. Pinkos replied "Don't wag your finger at me." Then, according to one eye witness, Dr. La Cava told Mr. Pinkos that "it's inappropriate for you to confront me at my car." According to Dr. La Cava, Mr. Pinkos responded that he was "very emotional about this."

In Mr. Pinkos's IG Complaint, he briefly alleges that he and Dr. La Cava had a verbal exchange on the morning of November 8, 2019 in the parking lot outside of the Fulton-Holland Center. According to Mr. Pinkos, he "noticed Dr. La Cava exiting his car" and then "walked by [Dr. La Cava's] car as he was getting out" to ask if Dr. La Cava was going to meet with him. Mr. Pinkos also alleges that Dr. La Cava told him "Don't confront me again at my car," but claims that his response was "We both need to take a step back."

Various witnesses described the nature of the events that occurred in the parking lot on the morning of November 8, 2019, and Mr. Pinkos's behavior as follows:

- "heated conversation"
- "an employee being aggressive"
- "very animated and aggressive conversation"
- "raising his voice"
- "speaking in a loud and aggressive fashion"
- "seemed animated; you could see his head bobbing back and forth, like when someone is mad"
- "nervous about the situation and his behavior"
- "looks like they are going to fight"
- "thought someone was going to get hurt"
- "thought about calling the School Police"

The above are just a sampling of the types of statements made by witnesses when describing the events that occurred in the parking lot on November 8, 2019 and Mr. Pinkos's behavior. Below are summaries of each witness's interview regarding the events that occurred on the morning of November 8, 2019, in the School District parking lot.

B. Witness Statements and Interviews

i. Katrina Todd

Katrina Todd has been employed at the School District for twenty (20) years and has always worked in the Purchasing Department as a Purchasing Technician. Ms. Todd does not report to either Mr. Pinkos or Dr. La Cava; she reports directly to Darci Garbacz, the Director of the Purchasing Department. Ms. Todd informed us that prior to the November 8th altercation, she did not know Mr. Pinkos's or Dr. La Cava's name or their positions at the School District. Her only familiarity with both individuals was that she recognized them from having seen each of them in the workplace periodically.

On the morning of November 8, 2019, Ms. Todd was walking on a sidewalk adjacent to one of the parking lots outside of the Fulton-Holland Center and was making her way into the building. As she was walking into the building, Ms. Todd heard a man (who she now identifies as Mr. Pinkos) "raising his voice," which caught her attention and caused her to look into the parking lot. When she looked into the parking lot, Ms. Todd recalled seeing Mr. Pinkos "standing there over Dr. La Cava's car" while Dr. La Cava was "sitting." Ms. Todd said that Mr. Pinkos "seemed animated; you could see his head bobbing back and forth, like when someone is mad." Ms. Todd started to walk slower because she wanted to see what exactly was going on and "wanted to make sure no one was going to get hurt." She then saw Dr. La Cava exit his vehicle and recalled him saying to Mr. Pinkos, "that was inappropriate for you to come to my car." According to Ms. Todd, Mr. Pinkos responded to Dr. La Cava and the two exchanged a few more words and then began making their way into the Fulton-Holland Center. At this point, Ms. Todd continued down the sidewalk and walked into the Fulton-Holland Center. Ms. Todd claims that she never heard Dr. La Cava yell or raise his voice during the parking lot altercation.

Once she was inside the Fulton-Holland Center, Ms. Todd saw Jacquelyn Richardson, who she has known for about ten (10) years from a prayer group they both use to attend, and stopped to speak to her about the altercation that was going on in the parking lot. While she was conversing with Ms. Richardson, Ms. Todd remembers feeling "concerned" at the time. She said that her "heart was beating" because she "thought someone was going to get hurt." She also said that her and Ms. Richardson "thought about calling the School Police."

In the middle of speaking with Ms. Richardson, Ms. Todd saw Mr. Pinkos enter the building. She said that Mr. Pinkos "appeared to have calmed down." Ms. Todd then saw Dr. La Cava enter the building and asked him "are you okay?" It was clear to us, based on this question and Ms. Todd's report of the incident, that she viewed Mr. Pinkos as the aggressor in the situation. Dr. La Cava responded, "Yes, I'm okay. Someone might want to speak to you" about what just happened. After speaking with Dr. La Cava, Ms. Todd went to her office suite and

spoke with her supervisor, Ms. Garbacz, about the altercation. According to Ms. Todd, she was still so "worked up" when she got to her office that Ms. Garbacz told her "you need to breathe a little."

Ms. Todd shared with us that in her twenty (20) years with the School District, this was the first time she had ever seen an incident like the November 8th altercation. She opined that what she witnessed was bad and inappropriate, but does not want Mr. Pinkos to lose his job over the altercation.

In our opinion, Ms. Todd came across and appeared very credible during her interview. She did not know either of the individuals involved and did not show any signs of bias or prejudice during her interview. Ms. Todd always maintained eye contact while answering questions and she answered every question directly.

A copy of Ms. Todd's sworn statement dated November 8, 2019, is attached as composite Exhibit "A."

ii. Jacquelyn Richardson

Jacquelyn Richardson has been employed at the School District for thirty-eight (38) years and currently works in the Recruitment & Retention department as a HR Sr. Analyst. She is scheduled to retire in April 2020. Ms. Richardson does not report to either Mr. Pinkos or Dr. La Cava, but knew both of them prior to the November 8th altercation.

On the morning of November 8, 2019, Ms. Richardson was already at work and was walking through the Fulton-Holland Center. As Ms. Richardson was walking, she saw Ms. Todd, who she has known for years, enter the building. Ms. Todd approached Ms. Richardson and told her that there was an altercation going on in the parking lot. Ms. Richardson recalled Ms. Todd saying, "Someone is in the parking lot and it looks like they are going to fight." Ms. Todd also told her, "It looked like it was going to get aggressive." Ms. Richardson recalled Ms. Todd seeming "concerned" and "frantic," so much so that Ms. Richardson asked "should we call the police?"

As Ms. Richardson was speaking with Ms. Todd, she saw Mr. Pinkos walk into the building and continue towards the direction of his office suite. Then, she saw Dr. La Cava enter the building. Initially, Ms. Richardson did not think that Mr. Pinkos or Dr. La Cava were the individuals involved in the altercation that Ms. Todd had just witnessed. She knows both Mr. Pinkos and Dr. La Cava and has never seen either of them show any sort of signs of aggression or anger. However, once Dr. La Cava was inside the building, Ms. Todd walked directly up to him and asked him "Are you okay?" At this point, Ms. Richardson quickly realized that Mr. Pinkos and Dr. La Cava were the ones involved in the altercation. Ms. Richardson then decided that since she knew both of the individuals involved, and Ms. Todd did not, she would be the one to report the altercation.

Ms. Richardson informed us that in her thirty-eight (38) years, she has never seen an incident like this at the School District. Although Ms. Richardson said that Mr. Pinkos is "usually a pretty even-keeled guy" and that she was a "little shocked" when she heard about the altercation, she opined that some sort of discipline is warranted because Mr. Pinkos's actions were not appropriate for the workplace.

In our opinion, Ms. Richardson came across and appeared very credible during her interview. She was pleasant, forthcoming, and made eye contact while answering every question that was asked. Ms. Richardson is scheduled to retire in April 2020 and did not appear to have any bias regarding the November 8th altercation.

A copy of Ms. Richardson's sworn statement dated November 8, 2019, is attached as composite Exhibit A.

iii. Dr. Gonzalo La Cava

Dr. La Cava has been employed at the School District for three (3) years. He is the School District's Chief of Human Resources and oversees a number of departments. Dr. La Cava interacts predominately with the directors of the departments that he oversees. So, although Mr. Pinkos works in one of the departments overseen by Dr. La Cava (Employee & Labor Relations), Dr. La Cava has had very limited interactions with Mr. Pinkos. According to Dr. La Cava, he never had any sort of issue or confrontation with Mr. Pinkos prior to the parking lot altercation that occurred on the morning of November 8, 2019.

Prior to the parking lot incident on November 8, 2019, Dr. La Cava received an email from Mr. Pinkos requesting a meeting. According to Dr. La Cava, he had Ms. Evans-Paré schedule a meeting between him, Mr. Pinkos, Ms. Evans-Paré, and Jose Fred, another HR Manager in the Employee and Labor Relations department. However, on November 6, 2019 (two (2) days prior to the meeting), Dr. La Cava notified Mr. Pinkos through email that he had to cancel the meeting due to a scheduling conflict. In his email, Dr. La Cava instructed Mr. Pinkos to submit a grievance in the meantime so that any concerns that he had could be addressed immediately: "The meeting you requested has been cancelled due to a scheduling conflict. I suggest that you immediately bring any grievances or concerns to your direct supervisor so that she can address immediately and provide you with guidance."

Two (2) days later, on the morning of November 8, 2019, on or around 8:30 a.m., Dr. La Cava pulled into the parking lot outside of Fulton-Holland Center and parked his vehicle in his assigned parking space. Dr. La Cava then opened the door to get out of his vehicle and, according to him, Mr. Pinkos was standing "right in front of the door," preventing him from exiting his vehicle. Dr. La Cava says he was initially shocked and frightened by Mr. Pinkos's actions. According to Dr. La Cava, he regularly signs and approves employee terminations and he initially thought that Mr. Pinkos was possibly a prior School District employee who was disgruntled and emotional. Dr. La Cava claims that he was also shocked to see Mr. Pinkos once he realized it was him. Dr. La Cava claims that Mr. Pinkos did not maintain an assigned parking spot next to or near Dr. La Cava's spot and never parked next to or near him in the past.

Dr. La Cava recalls that the first thing Mr. Pinkos said, in an "aggressive" and "loud" manner, was "you need to meet with me." Dr. La Cava, as he had instructed Mr. Pinkos previously, responded, "You need to meet with your supervisor." Mr. Pinkos responded, "Isn't your job to mediate these things?" Then, Mr. Pinkos moved away from the driver side door which gave Dr. La Cava an opportunity to exit his vehicle, which he did. Once he exited his vehicle, Dr. La Cava claims that he told Mr. Pinkos "Bob, you cannot speak to me like that." Mr. Pinkos responded, "You can wag your finger at me all you want" which led to Dr. La Cava telling Mr. Pinkos "This conversation is over." According to Dr. La Cava, Mr. Pinkos responded, "I am very emotional about this," as if he was acknowledging that he had crossed the line.

Immediately after the altercation in the parking lot ended, Dr. La Cava made his way into the Fulton-Holland Center. Once in the building, Dr. La Cava began looking for a woman, who he did not know but believed may have witnessed the events that had just occurred in the parking lot. Dr. La Cava spotted the woman and spoke with her briefly. The woman told Dr. La Cava that her name was Katrina Todd and she worked in the Purchasing Department. Dr. La Cava informed Ms. Todd that someone may ask her to share what she witnessed in the parking lot. Following the incident, Dr. La Cava reported to the School District's Chief of Police, Frank Kitzerow, what had occurred in the parking lot with Mr. Pinkos.

In our opinion, Dr. La Cava came across and appeared very credible during his interview. He has very little interaction with Mr. Pinkos and has no apparent reason to make up or fabricate his statement. Dr. La Cava's statement was consistent with the statements made by other witnesses that we interviewed. Notably, Dr. La Cava's actions were always consistent with the School Board's policies (i.e. telling Mr. Pinkos to meet with his supervisor and submit any grievance or concern for the supervisor to address).

A copy of Dr. La Cava's sworn statement dated November 12, 2019, is attached as composite Exhibit A.

iv. Robert Pinkos

a. *Counsel for Robert Pinkos Obstructed the Interview*

Although Mr. Pinkos was scheduled to sit for an interview as part of our investigation, we were not permitted to conduct the interview and ask Mr. Pinkos questions due to Mr. Pinkos's counsel, Fred A. Schwartz, Esq.³ On December 9, 2019, we began cooperating with Mr. Pinkos's counsel to coordinate a time and date for Mr. Pinkos's interview. Mr. Pinkos's interview was eventually scheduled to occur on January 16, 2020.

Mr. Pinkos appeared for his interview on the morning of January 16, 2020 with both of his attorneys present. However, right before the interview was set to commence, Mr. Pinkos's counsel tried to impose inappropriate conditions for the interview, which he raised for the very

³ Mr. Pinkos is also represented by Allison B. Duffie, Esq.

first time that morning. Specifically, Mr. Pinkos's counsel requested that the interview be recorded on his personal cell phone. We informed counsel that we did not consent to him recording the interview on his personal cell phone, as it was inappropriate and inconsistent with the School Board's standard processes.⁴ Among other reasons, it is inappropriate for recordings to be made during an investigation of this type as it would allow for the types of questions asked in the interviews and witnesses responses to be leaked or disseminated to others, which could impact the integrity of the investigation.

Despite the presence of both attorneys at the interview, counsel purported explanation for wanting to record the interview was to ensure that Mr. Pinkos's statements given during the interview were not "manipulated" in our final report. We assured counsel that this would not occur and maintained that the interview would proceed appropriately in accordance with the School Board's standard processes and would not be recorded on counsel's personal cell phone. We reiterated that both attorneys would be present during the entire course of the interview and would witness Mr. Pinkos's statements and that counsel's concerns (which we did not believe to be legitimate) were not justified.

Mr. Pinkos, through his counsel, ultimately refused to proceed with the interview and answer our questions regarding his recollection of the events that occurred in the School District parking lot on the morning of November 8, 2019, as well as the allegations made against him concerning same. Instead, Mr. Pinkos's counsel submitted the IG Complaint as an attachment to an email, which we accepted and considered as part of our investigation. We informed counsel that Mr. Pinkos was free to reconsider his decision and proceed with the interview, but we did not receive a response. Accordingly, we completed our investigation and prepared this Report with all of the information made available to us, which included the IG Complaint.

b. Allegations in the IG Complaint Concerning the Events That Occurred on the Morning of November 8, 2019

Mr. Pinkos is a HR Manager in the School District's Employee and Labor Relations department. As a HR Manager, his direct supervisor is Ms. Evans-Paré, the Director of the Employee and Labor Relations department. On October 16, 2019, Mr. Pinkos met with Ms. Evans-Paré after he received an email from her earlier that day instructing him to complete a leave slip for the hours he spent attending the Hispanic Education Coalition Awards ("HCE Awards"). During this meeting, Ms. Evans-Paré again instructed Mr. Pinkos to complete a leave slip. Mr. Pinkos, however, advised Ms. Evans-Paré that he would not do so until he spoke with Dr. La Cava.

On October 18, 2019, Mr. Pinkos sent Dr. La Cava an email to schedule a meeting in several weeks after he returned from a vacation in Spain. As a result, the meeting was scheduled for November 8, 2019. On November 6, 2019, Mr. Pinkos received the email from Dr. La Cava

⁴ The School Board's Policy 3.25 states, in pertinent part, that "[a]ny complaint and any material relating to a personnel investigation shall be confidential until the conclusion of the investigation or until such time as the investigation ceases to be active. . . . An investigation or determination of probable cause is a nonadversary function to discover or procure evidence as part of the fact finding functions of the School Board and Superintendent."

described above, where Dr. La Cava informed him that the meeting was cancelled due to a scheduling conflict and instructed him to immediately bring any grievance to his direct supervisor. Mr. Pinkos responded that his issue was with his supervisor, Ms. Evans-Paré, and again requested to meet with Dr. La Cava since he was Ms. Evans-Paré's supervisor. Mr. Pinkos did not receive a response to his email however.

According to Mr. Pinkos, because he never received a reply from Dr. La Cava, he believed that he would not be able to report Ms. Evans-Paré's alleged wrongdoing to her supervisor, Dr. La Cava. It's not entirely clear from the IG Complaint whether this belief held by Mr. Pinkos is what motivated or prompted the events that occurred on the morning of November 8, 2019, in the parking lot. Regardless of what Mr. Pinkos's motivation may have been, he briefly mentions the events that occurred on the morning of November 8, 2019, in the IG Complaint. Specifically, the IG Complaint contains, in its entirety, the following statements concerning the events that occurred on the morning of November 8, 2019:

On November 8, 2019, at or about 8:20 AM, Mr. Pinkos parked his car in Fulton-Holland Educational Services Center (FHESC) parking lot and was on his way to enter the building when he noticed Dr. La Cava exiting his car. Dr. La Cava's parking spot is directly opposite the entry door to FHESC.

Mr. Pinkos walked by his car as he was getting out and asked if he was going to meet with him. Dr. La Cava responded, "I'm not going to meet with you."

Dr. La Cava then told Mr. Pinkos, "Meet with Vicki."

Mr. Pinkos responded, "I already met with Vicki. Vicki is the problem. That's why I need to meet with you. Isn't that your job to meet with me?"

Dr. La Cava responded, "I'm not going to meet with you," as he pointed his finger at Mr. Pinkos.

Mr. Pinkos replied, "Don't wag your finger at me."

Dr. La Cava looked at his finger, presumably having been unaware of his gesturing, and then lowered his hand.

At this point, Dr. La Cava went to the back door of his car (driver's side) and said, "Don't confront me again at my car."

Mr. Pinkos replied, "We both need to take a step back."

Dr. La Cava then stated, "I'm going to hold back from saying what I'm thinking."

At this point, Mr. Pinkos walked away and entered FHESC.

Because we were prevented from interviewing Mr. Pinkos and asking him questions regarding his allegations as well as those allegations made against him, we cannot offer an opinion as to his credibility. Regardless of the ultimate truthfulness of Mr. Pinkos's allegations (which we do not determine), we did not see any material distinctions between his allegations concerning the events that occurred in the parking lot on November 8, 2019, as pleaded, and

those of the other eye witnesses. However, even though there are no apparent material distinctions, the IG Complaint also does not contain any allegations that refute, call into question, or contradict the eye witnesses' allegations concerning Mr. Pinkos's purported aggressive demeanor or loud voice.

A copy of the relevant excerpts from the IG Complaint concerning the November 8th altercation are attached as composite Exhibit A.

v. Vicki Evans-Paré

Ms. Evans-Paré has been employed at the School District for seventeen (17) years. She is the Director of Employee and Labor Relations. As the Director of Employee and Labor Relations, she oversees the entire department and supervises HR managers, including Mr. Pinkos, but reports directly to Dr. La Cava. Although Ms. Evans-Paré did not witness any of the events that occurred in the parking lot on the morning of November 8, 2019, we interviewed Ms. Evans-Paré because she apparently was the source of Mr. Pinkos's concern. Therefore, interviewing Ms. Evans-Paré would help determine whether the Grievance Procedure was the appropriate course for Mr. Pinkos to pursue under the circumstances.

According to Ms. Evans-Paré, after she learned that Mr. Pinkos and Jose Fred attended the HCE Awards without prior approval, she informed each of them that they should have submitted a Temporary Duty Elsewhere form beforehand in accordance with School Board Policy 3.65, "Assignment to Temporary Duty Elsewhere" (the "TDE Policy"). Ms. Evans-Paré claims that she consistently applies the TDE Policy against every employee that she supervises. Therefore, according to Ms. Evans-Paré, she instructed Mr. Pinkos to submit personal leave for the time spent at the HCE Awards because he failed to submit a TDE form in advance of attending.

However, Mr. Pinkos apparently did not want to comply. Specifically, according to Ms. Evans-Paré, Mr. Pinkos did not believe that he had to follow the TDE Policy because his prior supervisors never required him to submit a TDE form in advance of attending the HCE Awards. As a result, Mr. Pinkos requested a meeting with Dr. La Cava to discuss his concern about Ms. Evans-Paré and her instructions to submit personal leave. Ms. Evans-Paré shared with us that a meeting was scheduled and that she, Mr. Pinkos, Dr. La Cava, and Mr. Fred would be in attendance. However, the meeting was eventually cancelled by Dr. La Cava.

Ms. Evans-Paré's above statements regarding Mr. Pinkos and the TDE Policy issue were consistent with the statements made by Mr. Pinkos in the IG Complaint concerning the same matter. Despite interviewing Ms. Evans-Paré, we did not determine whether or not the TDE Policy applied or whether or not Mr. Pinkos should have been required to submit personal leave, as such was not relevant to the events that occurred on the morning of November 8, 2019. Ms. Evans-Paré's statement was necessary for determining whether the established Grievance Procedure was the appropriate mechanism for Mr. Pinkos to pursue given his purported concern.

III. APPLICABLE SCHOOL BOARD POLICIES

The School District maintains policies setting forth procedures for reporting, investigating, and resolving claims of employee misconduct. These policies include the "Grievance Procedure for Employees" (School Board Policy 3.31). A copy of the Grievance Procedure is attached as composite Exhibit "B." The Grievance Procedure makes clear that the "purpose of this procedure is to secure, at the lowest administrative level, equitable solutions to claim(s) arising from a violation, misapplication, or misinterpretation of School Board Policies or Administrative Directives . . ." According to the Grievance Procedure, employees are required to follow a four-step process to resolve a grievable incident. Specifically, employees are required to attempt to resolve the grievable incident first with their immediate supervisor before attempting to resolve the incident with their supervisor's superior or Chief of Staff. The Grievance Procedure also makes clear that "[n]o retaliation or reprisals of any kind shall be taken by any member of the administration or other employee against the employee . . . in the grievance procedure by reason of such participation."

The School District also maintains a Code of Ethics policy (School Board Policy 3.02) that is "designed to protect the health, safety and general welfare of students and employees and to define unethical conduct justifying administrative or disciplinary action." See Code of Ethics at § 1, which is attached as composite Exhibit B. To that end, the Code of Ethics requires School District employees to demonstrate professional conduct and prohibits employees from engaging in conduct detrimental to the workplace. Specifically, employees are required to demonstrate "excellence, integrity and responsibility in the workplace" and "conduct that follows generally recognized professional standards." See Code of Ethics at §§ 4(a), 5(i). Further, employees are prohibited from engaging in "any conduct that impairs the ability to function professionally in his or her employment position or conduct that is detrimental to the health, welfare or discipline of students or the workplace." See *id.* at § 5(i).

IV. ANALYSIS AND RECOMMENDATIONS

A. Mr. Pinkos's actions were inappropriate and done in contravention to the Grievance Procedure.

It is clear that Mr. Pinkos did not follow the School District's established Grievance Procedure. The Grievance Procedure makes clear that the purpose of the Procedure is to "secure, at the lowest administrative level, equitable solutions to claim(s) arising from a violation, misapplication, or misinterpretation of School Board Policies or Administrative Directives, and to establish an orderly succession of procedures wherein these solutions may be pursued." Based on the nature of Mr. Pinkos's purported concern involving Ms. Evans-Paré and her alleged misapplication of the TDE Policy, Mr. Pinkos's concern fell squarely within the expressed purpose of the Grievance Procedure.

Accordingly, Dr. La Cava acted properly and consistent with the Grievance Procedure by instructing Mr. Pinkos to follow the Procedure to address his concerns about Ms. Evans-Paré. Mr. Pinkos, however, ignored Dr. La Cava's instructions and elected to act outside of the

established Grievance Procedure by confronting Dr. La Cava in the School District's parking lot. Mr. Pinkos's conduct was therefore inappropriate and in direct contravention of the Grievance Procedure.

B. Mr. Pinkos's behavior in the parking lot was unprofessional and violated the Code of Ethics.

Based on the information obtained during our investigation, we believe Mr. Pinkos's behavior exhibited in the parking lot on the morning of November 8, 2019, violated the Code of Ethics. As detailed above, the Code of Ethics requires School District employees to demonstrate "excellence, integrity and responsibility in the workplace" and "conduct that follows generally recognized professional standards." The Code of Ethics also prohibits employees from engaging in "any conduct that impairs the ability to function professionally in his or her employment position or conduct that is detrimental to the health, welfare or discipline of students or the workplace."

As detailed above, Mr. Pinkos's "aggressive" behavior was so concerning that Dr. La Cava believed that Mr. Pinkos could become violent. This sentiment was shared and corroborated by Ms. Todd who, prior to November 8, 2019, had no idea who Mr. Pinkos or Dr. La Cava were. Despite not knowing either individual, Ms. Todd shared that Mr. Pinkos's behavior was so concerning that she contemplated calling the School Police with Ms. Richardson because she believed Mr. Pinkos might start an actual fight with Dr. La Cava. Thus, Mr. Pinkos's behavior of initiating an aggressive and unprofessional confrontation with Dr. La Cava in the School District's parking lot was not within the School District's professional standards in the workplace and was a violation of the Code of Ethics.

Not only was Mr. Pinkos's behavior unprofessional, it is the type of behavior that could lead to acts of violence and intimidation in the workplace and should not be tolerated, regardless of whether the reasons for the confrontation were justified or not. The Grievance Procedure is a controlled procedure made available by the School Board for School District employees to voice their grievable concerns and pursue the appropriate relief in a secure, civil, and professional manner. The Grievance Procedure greatly diminishes the possibility of grievable concerns ending in aggressive confrontations or violence, thereby protecting employees and preserving the welfare and safety of the workplace. Therefore, allowing Mr. Pinkos's behavior that he exhibited in the parking lot on November 8, 2019, to go unpunished would subvert the very purpose of the Grievance Procedure.

V. CONCLUSION

As set forth above, we believe that it would be appropriate for the School District to take disciplinary action against Mr. Pinkos for his behavior. We believe that the information obtained during the course of our investigation establishes that Mr. Pinkos's conduct was inappropriate as it was in contravention to the established Grievance Procedure. Moreover, Mr. Pinkos's behavior of confronting his supervisor's superior in the parking lot on the morning of November 8, 2019, regardless of whether he believed the reasons for the confrontation were justified or not,

was unprofessional and a violation of the Code of Ethics. The School District's Grievance Procedure is intended to provide employees with a safe and secure mechanism to bring forth their grievances in a professional manner, such that the potential for an unprofessional confrontation or violent altercation is diminished. Mr. Pinkos's behavior is the type of behavior that could lead to acts of violence in the workplace, which is precisely the sort of results that the Grievance Procedure is designed to thwart. Accordingly, Mr. Pinkos's behavior warrants appropriate disciplinary action.

COMPOSITE EXHIBIT A



THE SCHOOL DISTRICT OF
PALM BEACH COUNTY, FL
3300 FOREST HILL BOULEVARD, A-106
WEST PALM BEACH, FL 33406-5870
WWW.PALMBEACHSCHOOLS.ORG

Statement of Katrina Todd

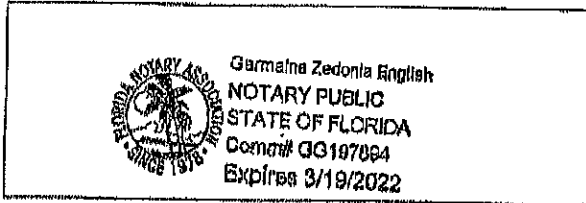
1. My name is Katrina Todd. I am over the age of 18 years old and I have personal knowledge of the information contained in this sworn statement. I have been employed with the School District of Palm Beach County since 2000. I am currently a Senior Purchasing Technician.
2. On November 8, 2019, I met with Germalne English, EEO Coordinator where the following statements and/or summary of my statements were made:
 - a. When I arrive today at Fulton-Holland Education Service Center (FHESC), I noticed a man standing at Dr. La Cava's car blocking his ability to exit his vehicle. I do not know the man's name but he was an older man with glasses and was dressed casually. This was around 8:35am. I slowed down as I approached the building because I was not sure but it appear to be heated conversation. As Dr. La Cava got out of his car, he said, "that was inappropriate for you to come to my car" to the person as he was walking away towards the building. The man turned around and went back to his car and said while touching his car "I guess now you're going to be pointing fingers at me". Dr. La Cave said something to the extent "I think this conversation is over". I then entered the building and ran into Jackie from the Certification Department. I stopped to speak to her and told her that there was an employee being aggressive outside. The man then walked in behind me and he spoke to Jackie. Dr. La Cava entered the building after the man and said to me that he may need to speak to me later and asked for my name.

3. I declare that I have read the foregoing statement and that the facts stated in it are true and correct.

Katrina Todd
Katrina Todd

11/8/19
Date

Subscribed and sworn to by Katrina Todd who appeared before me on the 8 day of November, 2019 and is personally known to me; or produced identification; or whose identity was verified through record of employment.



Germalna Zedonia English
Signature, Notary Public
Germalna Zedonia English
Printed Name of Notary
Notary Public, State of Florida, County of Palm Beach
My commission expires: 3/19/2022



THE SCHOOL DISTRICT OF
PALM BEACH COUNTY, FL
3300 FOREST HILL BOULEVARD, A-106
WEST PALM BEACH, FL 33406-5870
WWW.PALMBEACHSCHOOLS.ORG

Statement of Jacquelyn Richardson

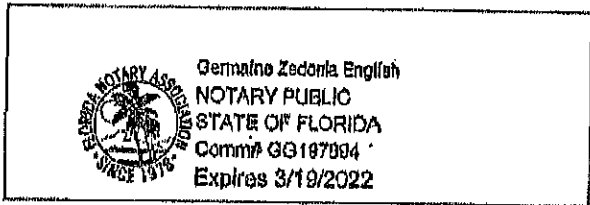
1. My name is Jackie Richardson. I am over the age of 18 years old and I have personal knowledge of the information contained in this sworn statement. I have been employed with the School District of Palm Beach County since 1982. I am currently a Senior Human Resources Analyst.
2. On November 8, 2019, I met with Germaine English, EEO Coordinator where the following statements and/or summary of my statements were made:
 - a. I was walking through the atrium outside of A-152 when Katrina Todd entered the building this morning. Katrina said that someone was fighting (verbal) & it looked like it was going to get aggressive. She was obvious concerned and I inquired as to whether we needed to call the police. At that time, Bob Pinkos, came into the building and spoke to me. I said "hi" and he went to his suite (A-140). Afterwards, Dr. La Cava came into the building and Katrina asked Dr. La Cava if he was okay. He responded that something to the extent of 'I can talk about it another time'. Katrina did tell me that a person said "Don't you come out and meet me at my car again".

3. I declare that I have read the foregoing statement and that the facts stated in it are true and correct.

Jacquelyn Richardson
Jacquelyn Richardson

11/8/19
Date

Subscribed and sworn to by Jacquelyn Richardson who appeared before me on the 8 day of November, 2019 and is personally known to me; or produced identification; or whose identity was verified through record of employment.



Germaine Zedonia English
Signature, Notary Public

Germaine Zedonia English
Printed Name of Notary

Notary Public, State of Florida, County of Palm Beach

My commission expires: 3/19/2022

On 11/8/2019, I parked my vehicle in my assigned spot between 8:35 and 8:45 and upon opening my driver side door, Mr. Bob Pinkos immediately came between my open door and myself and initiated a very animated and aggressive conversation while I was seated in my vehicle.

Mr. Pinkos, told me "you need to meet with me" in a very aggressive manner and tone.

I responded, "I will not be meeting with you and you need to get with your supervisor"

In a loud and aggressive tone and closer to my face, He responded, "is it not your job to meet with me if there is an issue with my supervisor?"

At this time, he began to walk away and continued making loud comments that were inaudible.

Mr. Pinkos walked around my car, which gave me an opportunity to exit my car and immediately upon exiting my car, I made the comment, "You cannot speak to me this way"

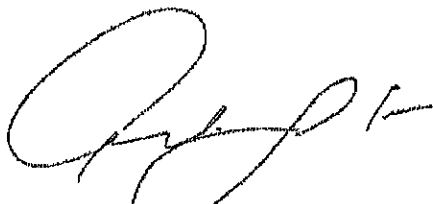
Mr. Pinkos responded, "you can wag your finger at me all you want"

Mr. Pinkos then proceeded to walk around the front of the car and put his hand on my door and continued speaking in a loud and aggressive fashion. I cannot recall the comments made by Mr. Pinkos as I was nervous about the situation and his behavior.

I told him that this conversation was over and he informed me that he was "very emotional" about the situation and he walked away.

At that moment, I gathered my personal belongings from my car entered building "A". I then proceeded to make contact with an eye witness who had been present during the confrontation. I asked her for her name and informed her that she may be asked to share what she saw in the parking lot. She stated her name was Katrina Todd from the purchasing department.

Due to the event with Mr. Pinkos, I requested and was granted access to park in the parking corral to ensure for my safety and ensure this type of incident would not reoccur. This incident has made it uncomfortable to work in the same building with Mr. Pinkos since we work in such close proximity.

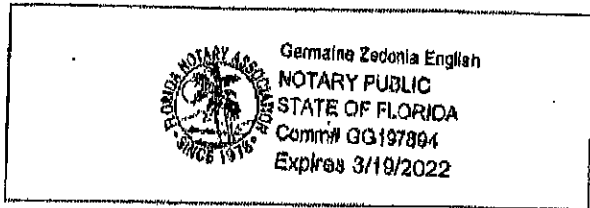

0012010 La Cam

The attached was written by Gonzalo La Cava. I declare that I have read the foregoing statement and that the facts stated in it are true and correct.

[Signature]
Gonzalo La Cava

11/12/2015
Date

Subscribed and sworn to by Gonzalo La Cava, who appeared before me on the 12 day of November, 2015 and is personally known to me; or produced identification; or whose identity was verified through record of employment.



[Signature]
Signature, Notary Public

Gemma Zedonia English
Printed Name of Notary

Notary Public, State of Florida, County of Palm Beach

My commission expires: 3/19/2022

Oswald in part as a cover-up of improper actions at the highest levels of the District's administrators. Dr. Latson's termination based on not responding to a supervisor in a "timely" manner had/has a chilling effect on employees throughout the District and prevented a fuller inquiry as to the actions of others.

On October 16, at 2:19 PM, Mr. Pinkos received the following email from Ms. Evans-Pare:

It was brought to my attention that you attended the Hispanic luncheon for a half day on Friday. Please complete a leave slip for the hours you were gone. In the future, make sure that you request time off in advance.

Upon reading the email, Mr. Pinkos immediately made his way to Ms. Evans-Pare's office as he was deeply offended. He met with Ms. Evans-Pare and she explained that Dr. La Cava had notified her that Mr. Pinkos and another HR Manager, Jose Fred, were at the event. Mr. Pinkos explained that the Hispanic Education Coalition Awards was a two-hour program, not a half-day and he has participated in the event every year since its inception 5 years ago. No previous supervisor ever questioned his attendance, but rather encouraged it. The HEC Awards is a District sponsored event that provides tens of thousands of dollars in scholarships to students in need of assistance. The event is arguably the premier District sponsored event of the year and is attended by around 40 District administrators each year. Mr. Pinkos's attendance at the event is fulfilling his job responsibility and the District's mission.

At this year's event, Mr. Pinkos was sitting with Chairman of the Board Frank Barbieri who received an award for outstanding work for the Hispanic Community, Board member Marcia Andrews, Superintendent Dr. Donald Fennoy, Assistant Superintendent for Global Studies and Community Outreach Dr. Margarita Pinkos and the President of HEC, Dr. Joaquin Garcia.

Ms. Evans-Pare responded that Mr. Pinkos should have completed a leave form for personal time for his attendance at the event but not for a half a day as her email had stated, but only for one of the two hours. After all, it was a 2-hour event and one of the two hours would be covered by his daily scheduled lunch. Ms. Evans-Pare then stated she did not know where Mr. Pinkos was and that he is "like a teacher" and should have completed a leave form. Mr. Pinkos stated he is not a teacher, but an administrator that travels extensively throughout the county as part of his daily routine. Mr. Pinkos doubted any of the scores of administrators at the event completed a leave form. He then informed Ms. Evans-Pare that he told her personal secretary that he was attending the event. In addition, his calendar attested to his location had the HEC Awards entered as well. All supervisors throughout the District can access their subordinates' Google Calendars.

Ms. Evans-Pare still would not budge, insisting Mr. Pinkos take an hour of personal leave. Mr. Pinkos advised Ms. Evans-Pare that he would not do so until he spoke with Dr. La Cava as he would certainly understand.

Mr. Pinkos contacted Dr. La Cava's office soon thereafter to schedule a meeting. Dr. La Cava did not respond. The following day Mr. Pinkos saw Dr. La Cava in the atrium outside of their offices. He was on his phone so Mr. Pinkos gestured for him to call him and he nodded. When Dr. La Cava did not call, Mr. Pinkos sent him an email on October 18, which resulted in the following exchange.

Robert Pinkos <robert.pinkos@palmbeachschools.org>

**Fri, Oct
18,
12:26
PM**

to Gonzalo, Jose

Gonzalo,

I'll be in Spain for the next couple of weeks. Let's meet upon my return. I've blocked out Wednesday, November 6, on my calendar. Could you please send out a calendar invite for that date at a time of your choosing?

Jose Fred will also be attending. Same issue.

Thank you.

--

*Bob Pinkos
HR Manager*

Gonzalo La Cava <gonzalo.lacava@palmbeachschools.org>

**Oct 18,
2019,
12:32
PM**

to Vicki, Nickla, me, Jose

Bob,

I will have Vicki schedule this meeting to ensure that we are all on the same page regarding your concerns and expectations moving forward.

Thanks

**Gonzalo S. La Cava, Ed.D.
Chief of Human Resources**

Robert Pinkos <robert.pinkos@palmbeachschools.org>

**Oct 18,
2019,
12:34
PM**

to Gonzalo

And you will attend, right?

Gonzalo La Cava <gonzalo.lacava@palmbeachschools.org>

**Oct 18,
2019,
1:59 PM**

to me

Possibly

Based on the email exchange, Mr. Pinkos now began sensing that Dr. La Cava was trying to avoid him and that he was likely working with Ms. Evans-Pare to harass him by requiring a personal leave of absence for his attendance at the HEC Awards. The motive for the harassment was clearly his recusal from the Latson case, and refusal to rubber stamp a baseless investigation to circumvent the District's failure to properly and timely reprimand Dr. Latson. Mr. Pinkos understood that Ms. Evans-Pare's tantrum of August 19 was probably standing in the way for them (La Cava & Evans-Pare) to take disciplinary action against him for allegedly being insubordinate due to his recusal. He also understood that reporting Ms. Evans-Pare's misconduct at a meeting in the presence of Dr. La Cava gave cause for him (La Cava) to be reluctant to meet. It was also looking more likely that Ms. Evans-Pare's directive for Mr. Pinkos to put in for personal leave for a legitimate District sponsored event had its genesis with Dr. La Cava. Yet, another reason for apparent avoidance.

Upon his return from Spain, Mr. Pinkos received a calendar invite to meet on November 8, with Dr. La Cava, Ms. Evans-Pare, and Mr. Fred. He was now prepared to get to the bottom of the nonsense of directing him to put in for personal leave for attending the HEC Awards. Mr. Pinkos also planned to report the August 19th misconduct of Ms. Evans-Pare. This meeting needed to be accurately recorded. Therefore, Mr. Pinkos sent the following email on Wednesday, November 6, at 8:35 AM.

Robert Pinkos <robert.pinkos@palmbeachschools.org>

**Nov 6,
2019,
8:35 AM**

to Gonzalo, Vicki, Jose

Gonzolo & Vicki,

I noticed Friday's meeting is scheduled for 30 minutes (10:30-11:00). I'm not confident that 30 minutes will be enough time. Could you please allow for one hour (10:30-11:30)?

I'm also requesting the meeting be audio recorded so that an accurate transcript can be typed afterwards.

Thank you.

Bob Pinkos
HR Manager

Then the following email exchange followed.

Gonzalo La Cava <gonzalo.lacava@palmbeachschools.org>

Nov 6,
2019,
9:19 AM

to Nickla, me, Vicki, Jose

Mr. Pinkos,

The meeting you requested has been cancelled due to a scheduling conflict. I suggest that you immediately bring any grievances or concerns to your direct supervisor so that she can address immediately and provide you with guidance. Have a wonderful day!

Gonzalo S. La Cava, Ed.D.
Chief of Human Resources

Robert Pinkos <robert.pinkos@palmbeachschools.org>

Nov 6,
2019,
10:27
AM

to Edward, Gonzalo, Jose

Gonzalo,

The issue Jose and I have is with Vicki. Both Jose and I have met with her individually. That's part of the issue.

As her supervisor, we are again requesting to meet with you.

As I had advised you in the past, this issue is important and remains so. Jose and I need to be heard. I would hope you would accommodate the time.

By you cancelling Friday's meeting, do you advise we take up this issue with the Chief of Staff?

Please advise.

Thank you.
Bob

Mr. Pinkos received no email reply from Dr. La Cava. Instead, he received the following email from Ms. Evans-Pare, 38 minutes after he asked Dr. LaCava, "By canceling Friday's meeting, do you advise we take up this issue with the Chief of Staff?"

Vicki Evans-Pare <vicki.evans-pare@palmbeachschools.org>

**Nov 6,
2019,
11:05
AM**

to me, Jose, Gonzalo

In this instance, due to the fact that I was not advised in advance that you wished to attend this luncheon, I am standing by my request that you use personal leave for the time missed. In the future, should you wish to attend a District sponsored or community event that is outside of but related to your daily work, I expect to be asked in advance; supplied an explanation of how it is tied to your job; and provided with a completed TDE under Policy 3.65 to account for the absence and to establish that you were working during that event for liability purposes.

*Vicki Evans-Paré, Esq.
Director of Employee and Labor Relations*

At 11:40, Mr. Pinkos emailed Ed Tierney, Chief of Staff so that he could address his concerns.

Robert Pinkos <robert.pinkos@palmbeachschools.org>

**Nov 6,
2019,
11:40
AM**

to Edward, Jose

Ed,

When can we meet?

Bob

Chief of Staff Tierney never replied to this email.

In summary, Mr. Pinkos would not be able to report Ms. Evans-Pare's wrongdoing to her supervisor, the Chief of HR, Dr. Gonzalo or to the Chief of Staff. Ms. Evans-Pare continued to direct Mr. Pinkos to put in for personal time for an event he should have attended as per his job duties, responsibilities etc.

Mr. Pinkos was trying to report the wrongdoing of an employee and District administrators were stonewalling his efforts.

It should be noted that around late October and early November, Dr. Margarita Pinkos, Board member Marcia Andrews, and Dr. Garcia were trying to work with administrative leadership to end the nonsense of Ms. Evans-Pare's directive to Mr. Fred and Mr. Pinkos to put in for personal time for attending the HEC Awards. Dr. Pinkos had several conversations with Mr. Tierney during this period.

Here, Mr. Fred, unfortunately is collateral damage. It was Mr. Pinkos that Dr. La Cava and Ms. Evans-Pare wanted to punish for his recusal from the Latson case.

On November 8, 2019, at or about 8:20 AM, Mr. Pinkos parked his car in Fulton-Holland Educational Services Center (FHESC) parking lot and was on his way to enter the building when he noticed Dr. La Cava exiting his car. Dr. La Cava's parking spot is directly opposite the entry door to FHESC.

Mr. Pinkos walked by his car as he was getting out and asked if he was going to meet with him. Dr. La Cava responded, "I'm not going to meet with you."

Dr. La Cava then told Mr. Pinkos, "Meet with Vicki."

Mr. Pinkos responded, "I already met with Vicki. Vicki is the problem. That's why I need to meet with you. Isn't that your job to meet with me?"

Dr. La Cava responded, "I'm not going to meet with you," as he pointed his finger at Mr. Pinkos.

Mr. Pinkos replied, "Don't wag your finger at me."

Dr. La Cava looked at his finger, presumably having been unaware of his gesturing, and then lowered his hand.

At this point, Dr. La Cava went to the back door of his car (driver's side) and said, "Don't confront me again at my car."

Mr. Pinkos replied, "We both need to take a step back."

Dr. La Cava then stated, "I'm going to hold back from saying what I'm thinking."

At this point, Mr. Pinkos walked away and entered FHESC.

Upon checking his email soon thereafter, Mr. Pinkos noticed the monthly breakfast celebration was occurring in Suite A-106. Noticeably absent was Ms. Evans-Pare. Ms. Evans-Pare appeared towards the end of the breakfast by entering through Dr. La Cava's suite. At this time, Mr. Pinkos was speaking with HR Manager Brenda Johnson regarding the reassignment of an employee, but immediately brought Ms. Evans-Pare into the conversation.

COMPOSITE EXHIBIT B



Book	School Board Policies
Section	Ch. 3. Personnel
Title	Grievance Procedure for Employees
Code	3.31
Status	Active
Adopted	July 7, 2010

1. Purpose.-- The purpose of this procedure is to secure, at the lowest administrative level, equitable solutions to claim(s) arising from a violation, misapplication, or misinterpretation of School Board Policies or Administrative Directives, and to establish an orderly succession of procedures wherein these solutions may be pursued. The provisions of this policy do not apply to employees covered by a collective bargaining agreement. No employees, including probationary employees, may use the grievance procedure in any way to appeal:

- a. A suspension or termination of employment;
- b. A non-renewal of a contract and/or a nonreappointment;
- c. The professional judgments and conclusions of the supervisor in conducting a performance evaluation; and/or
- d. The procedures and decisions made pursuant to this Policy.

No grievance shall be processed anonymously.

2. Definitions.-- As used herein, the following terms have these meanings:

- a. A "grievance" is a written complaint which alleges a violation, misinterpretation, or misapplication of School Board Policy or Administrative Directives, excluding discrimination or harassment prohibited by and addressed in Policies 3.05 and 3.19.
- b. The term "employee" includes every employee, instructional or non-instructional, of the School Board of Palm Beach County.
- c. The terms "grievant" and "complainant" refer to an employee who alleges in writing that he/she has been subjected to a violation, misapplication, or misinterpretation of School Board Policies or Administrative Directives.
- d. "Accused/employee" refers to an employee who is alleged to have subjected another employee to a violation, misapplication, or misinterpretation of School Board Policies or Administrative Directives.
- e. The term "supervisor" means the principal, director, area superintendent, Assistant Superintendent, Superintendent of Schools or other department administrator who has the direct responsibility of supervising or managing the aggrieved employee and who has the authority to take action necessary to resolve the grievance. For purposes of this Policy, this term may also include a consultant retained by the Board to provide interim management assistance.
- f. The term "superior" as used herein refers to the supervisor of the aggrieved employee's immediate supervisor.
- g. A "chief officer" is the Chief of Staff, Chief Academic Officer or the Chief Operating Officer.
- h. The term "days" in this Policy shall mean work days unless calendar days are specified.

3. Procedure for Grievances -- The following grievance procedure applies when the grievance is based on an allegation of a violation, misapplication, or misinterpretation of School Board Policies or Administrative Directives. Failure of the grievant to appeal the grievance to the next level within the timeline set forth herein shall be deemed to be acceptance of the decisions rendered at that level. Failure at any step of this procedure to communicate the decision on a grievance within the specified timelines shall permit the grievant to appeal to the next level. The timelines specified at each level shall be considered a maximum except when extended in writing by mutual consent.

1. Level One : Informal Conference

Within ten (10) work days after the employee first knows or reasonably should have known of the grievable incident, the employee shall initially discuss the matter with the immediate supervisor with the objective of informally resolving the matter. The grievant shall inform the supervisor that he/she is availing himself/herself of the grievance process. The supervisor shall summarize the conversation in writing within ten (10) work days of the discussion, and that writing must be signed by the employee making the informal complaint or marked as "refused to sign", if appropriate.

2. Level Two : Filing a Written Grievance

i. Within fifteen (15) work days after the informal conference described in Level One, if no satisfactory disposition is made, the employee may file a written grievance with the supervisor. The written grievance shall set forth specifically the event(s) upon which the grievance is based, citing the Policy and/or Directive alleged to be violated, the date the alleged infraction took place, and grounds upon which the grievance is made. The employee must sign and date the grievance.

ii. Within fifteen (15) work days after receiving the written grievance, the supervisor shall schedule another meeting with the employee. Within fifteen (15) work days of the second meeting, and after investigating the allegations, the supervisor shall issue a written decision to the employee.

3. Level Three : Review by the Supervisor's Superior

i. Within fifteen (15) work days after the supervisor's decision, if the employee is not satisfied with the supervisor's decision or if no decision has been issued, the employee may forward the written grievance and the supervisor's decision to the supervisor's superior or to the applicable chief officer. The written grievance shall set forth specifically the event(s) upon which the grievance is based, citing the Policy and/or Directive alleged to be violated, the date the alleged infraction took place, and grounds upon which the grievance is made. The employee must sign and date the grievance. If the grievance is not forwarded to the superior or chief officer within the designated time, the grievance is considered withdrawn from the grievance process and shall be so noted in the grievance file.

ii. Within fifteen (15) work days after receiving the grievance, the superior or chief officer will schedule a meeting with the employee. Within fifteen (15) work days of that meeting, and after further investigating the allegations as appropriate, the superior or chief officer shall issue a written decision to the employee. A copy shall be provided to the supervisor.

4. Level Four : Appeal to the Applicable Chief Officer

i. Within fifteen (15) work days after the superior issues a written decision, if the employee is not satisfied with the decision (or if no decision has been issued within fifteen (15) work days of the meeting), the employee may appeal the decision, in writing, to the Applicable Chief Officer. If the grievance is not forwarded to the Applicable Chief Officer within the designated time, the grievance is considered withdrawn from the grievance process and shall be so noted in the grievance file.

ii. The Applicable Chief Officer/designee may appoint an ad hoc grievance review committee. The chair of the committee will be the highest-ranking District official on the committee. The committee will consist of:

A. one (1) member from District management, selected by the Superintendent;

B. one (1) member selected by the grievant; and

C. a third member selected by agreement of the first two (2) members. If the third member is not selected by the other committee members within seven (7) calendar days, the Superintendent/designee shall appoint a third member to serve on the committee.

iii. In an effort to resolve the grievance, within fifteen (15) work days after the committee is designated, the committee shall meet with the grievant and the supervisor or superior of the person alleged to have violated, misinterpreted, or misapplied a Policy or Directive. Other persons may be presented as witnesses

at the meeting by either the grievant or the supervisor/superior. The committee shall issue a written recommendation within fifteen (15) work days after the meeting, determining whether any violation has occurred, and if so, an appropriate remedy. A copy of the recommendation shall be provided to the grievant, supervisor or superior, the Director of Labor Relations, and the Superintendent.

- iv. The recommendation of the committee shall be forwarded to the Superintendent for review. The Superintendent/designee shall review the recommendation of the committee and the record of the grievance. If the Superintendent/designee finds that a meeting with the grievant would assist in the final determination, the Superintendent/designee may schedule a meeting for the purposes of this review. The Superintendent/designee's decision is the final and binding decision of the District.

4. Rights of Employees

- a. During any of the grievance levels, the employee may be represented by a person of the employee's choice once the grievance is filed with the supervisor. For grievances that are filed by employees who choose to be represented by legal counsel, the process will begin at the chief officer phase of Level 3 of the grievance process.
- b. No retaliation or reprisals of any kind shall be taken by any member of the administration or other employee against the employee, representative, or any other participant in the grievance procedure by reason of such participation.

5. General Provisions

- a. Grievance report forms for filing a grievance (PBSC 0114) shall be available on the School Board website. Employees are to be notified of the procedures in this Policy through its posting on the School Board Policies website.
- b. Failure of the employee to advance the grievance through the procedure within the time lines designated will result in immediate dismissal of the grievance.
- c. If a preliminary investigation is begun regarding a complaint, the written complaint and documents relating to the investigation are confidential, pursuant to Fla. Stat. §§ 119.07 (3) (p) & (u), 1012.33, and 1012.796, until the investigation is either concluded or ceases to be active.
- d. All records pertaining to a grievance may be filed in a separate grievance file and may not be kept in the official "personnel file" of the employee/applicant, but this grievance file will be treated as provided by Fla. Stat. §§ 119.07 and 1012.31. All decisions of management are to be forwarded to the labor relations department, which shall be designated as the custodian of those records for grievances. The grievance file is subject to disclosure pursuant to the Public Records law and Fla. Stat. § 1012.31.
- e. If a grievance is filed under the grievance procedure in a collective bargaining agreement, the employee shall not pursue the grievance under this procedure.
- f. The filing of a grievance shall not interfere with the right of the School Board to carry out its responsibilities, subject to the final decision on a grievance.

6. Superintendent, Chief Counsel, and District Auditor

- a. When the Grievant is a Direct Board Report-- Employees who report directly to the Board (Superintendent, Chief Counsel, and District Auditor) shall file any grievance in writing with the Board Chair. The Chair should request appropriate District personnel to begin the investigation/ resolution process set forth in Section (3).
- b. When the Grievant is an Employee in the Office of a Direct Board Report-- Employees of the Office of Superintendent, Office of District Auditor, and Office of Chief Counsel should file any initial grievance with their direct supervisor pursuant to Section (3) (unless the grievance is against a direct Board report, in which case subsection (c) below shall apply). If the grievance is not resolved at this level, the grievance may be appealed as set forth under Section (3).
- c. When the Accused is a Direct Board Report-- When a direct Board report (the Superintendent, Chief Counsel, or District Auditor) is the accused, the grievant shall file the complaint in writing with the Board Chair, who shall take prompt action as specified below:
- i. First, the Chair shall notify the accused of the complaint.

- ii. Second, the Chair shall notify the Board of the complaint. The Board shall determine if the complaint appears to merit formal investigation.
- iii. If the Board deems the complaint to merit formal investigation, the Board shall set the parameters for the investigation. The investigation should seek the accused/employee's response as well as the statements of the grievant and witnesses.
- iv. If a preliminary investigation is begun, the written complaint and documents relating to the investigation are confidential, pursuant to Fla. Stat. §§ 119.07 (3) (p) & (u), 1012.33, and 1012.796, until the investigation is either concluded or ceases to be active.
- v. To conduct the investigation, the Board may consider:
 1. retaining outside special counsel (which should be an attorney or law firm that is not currently retained by the Board and has not handled any matters for or against the Board within the past five years);
 2. requesting the personnel-investigation department of another Florida school district to conduct the inquiry;
 3. contracting with the DOE Office of Inspector General; or
 4. if applicable, referring the matter to the State Attorney's Office, the Commission on Ethics, or other applicable state agency.
- vi. The Board and the employee should receive the final investigative report at the same time.
- vii. Upon receiving the report, the Board shall determine whether any action is required. The accused/employee and/or the employee's representative shall have a right to address the Board at the meeting where the decision will be made.
- viii. Consistent with the employment contract, if informal action such as a reprimand is deemed necessary, such action may be reflected in the employee's evaluation and personnel file. In accordance with the employment contract, if formal action such as demotion, suspension, or termination is deemed necessary, the employee shall receive appropriate notice and opportunity for a hearing under Fla. Stat. §§ 120.569 and 120.57, and the Board's final order may be appealable pursuant to Fla. Stat. § 120.68.

STATUTORY AUTHORITY:	Fla. Stat. §§ 1001.41; 1001.42; 1001.43; 1012.23
LAWS IMPLEMENTED:	Fla. Stat. §§ 119.07 (3) (p) & (u); 1001.41; 1012.23; 1012.31; 1012.796
HISTORY:	3/11/87; 9/22/99; 11/11/02; 7/7/2010



Book	School Board Policies
Section	Ch. 3. Personnel
Title	Code of Ethics
Code	3.02
Status	Active
Adopted	May 6, 2009
Last Revised	June 7, 2017
Prior Revised Dates	5/06/2009; 06/07/2017

Policy 3.02 - Code of Ethics

1. Purpose and Authority

The School Board of Palm Beach County (Board) believes it is imperative that public officials and public employees act in the highest ethical manner and preserve the public trust. To carry out the important duties and responsibilities entrusted to the Board, Superintendent and Board/District employees, it is important that clear, comprehensive ethical requirements be established so that members of the public will have confidence in the operations of the Board and the management of the Palm Beach County School District (District). To ensure the citizens of Palm Beach County and the State of Florida a degree of accountability within the School District, this Code of Ethics is designed to protect the health, safety and general welfare of students and employees and to define unethical conduct justifying administrative or disciplinary action.

It is the Board's intent to create a culture that fosters trust, a commitment to excellence and responsibility, personal and institutional integrity, and avoids conflicts of interest and appearances of impropriety. Thus, the Board Members, the Superintendent, administrators, teachers and other employees of Palm Beach County Public Schools, as public servants and educators, are to be bound by this Code of Ethics. The term "employee" as used herein, applies to all these groups regardless of full, part time or interim status. This policy shall extend also to the District's guests, invitees, and volunteers while they are on District property or are participating in District-related activities.

All Board Members and employees shall adhere to this policy, the "Code of Ethics for Public Officers and Employees", as set forth in the Florida Ethics Code, Part III of Chapter 112, Florida Statutes, and the "Principles of Professional Conduct for the Education Profession in Florida", Chapter 6A-10.081, F.A.C., and the "Ethics in Education Act", Chapter 2008-108, Laws of Florida, as now or hereafter amended, which are incorporated by reference and made a part of this policy. This Code of Ethics shall be viewed as additive or supplemental to the above state laws, rules and regulations. To the extent this Code of Ethics is not in conflict with any laws, regulations or School Board policies, this Code of Ethics shall control. Specific authority for the adoption of this policy is provided by Sections 112.326 and 1001.42, Florida Statutes.

2. Application and Enforceability

The Code of Ethics applies to all Board Members and employees and extends to guests, invitees, and volunteers while they are on District property or are participating in District-related events. Violations of this Code of Ethics may result in administrative or disciplinary action, up to and including suspension, dismissal, or other actions as required by law. This Code may apply when the conduct of the employee occurs on or off District property, at a school sponsored event or non-school sponsored event.

3. Making Ethical Decisions

While this Code of Ethics provides general guidance, it does not provide a complete listing or a definitive answer to every possible ethical situation. It is the intention of the Board in enacting this policy that the use of good judgment, based on high ethical principles and following such precedent as may be established by the Florida Commission on Ethics and Florida Education Practices Commission, will serve as a guide in determining appropriate conduct in any circumstance. When making decisions, the Superintendent and District employees should use good judgment to fulfill the spirit as well as the letter of this Code of Ethics, and should:

- a. Evaluate the situation and identify ethical issues.
- b. Consult this Code of Ethics, state laws and regulations, and the School Board's Policies and apply them to the situation.
- c. Ask for guidance. In the event an individual is unsure of the proper course of action to be taken in a particular circumstance, guidance may be requested from the Chief Counsel, Chief Academic Officer or Chief of Schools, as appropriate.

4. Accountability and Compliance

Each employee agrees and pledges:

- a. To provide the best example possible; striving to demonstrate excellence, integrity and responsibility in the workplace.
- b. To obey local, state and national laws, codes and regulations.
- c. To support the principles of due process to protect the civil and human rights of all students and individuals.
- d. To treat all students and individuals with respect and to strive to be fair in all matters.
- e. To create an environment of trust, respect and non-discrimination, by not permitting discriminatory, demeaning or harassing behavior of students or colleagues.
- f. To take responsibility and be accountable for his or her acts or omissions.
- g. To avoid conflicts of interest or any appearance of impropriety.
- h. To cooperate with others to protect and advance the District and its students.
- i. To report improper conduct.
- j. To be efficient and effective in the delivery of all job duties.
- k. To cooperate during any investigations or proceedings.

5. Ethical Standards

a. Abuse of Students – We are committed to ensuring that employee-student relationships are positive, professional and non-exploitative. We will not tolerate improper employee-student relationships. Each employee should always maintain a professional relationship with students, both in and outside of the classroom. Unethical conduct includes but is not limited to:

- i. Committing any act of child abuse or cruelty, including physical and verbal abuse, or any act of child endangerment.
- ii. Exposing a student to unnecessary embarrassment or disparagement.
- iii. Excessive or unnecessary physical interaction with a student, including horseplay.
- iv. Using one's professional relationship or authority with students for one's personal advantage.
- v. Engaging in, or being convicted of, a crime involving children as provided in Section 1012.315, Florida Statutes, as now or hereafter amended.

- vi. Engaging in any sexually related behavior with a student with or without consent of the student. Sexually related behavior shall include, but not be limited to, such behaviors as sexual jokes; sexual remarks; sexual kidding or teasing; sexual innuendo; pressure for dates or sexual favors; inappropriate physical touching, kissing, or grabbing; rape; threats of physical harm; sexual assault and any sexual act as provided for in Section 1012.315, Florida Statutes.
 - vii. Engaging in bullying or harassing behavior on the basis of race, gender, sex, national origin, age, religion or disability, sexual orientation or gender identity in violation of School Board Policy Nos. **5.001** (Protecting Students from Harassment and Discrimination); **5.81** (Protecting Students from Sexual Harassment and Discrimination), as now or hereafter amended; and **5.002** (Anti-Bullying and Harassment) as now or hereafter amended; or, in violation of any related federal or state laws.
 - viii. Engaging in misconduct which affects the health, safety and welfare of a student(s).
 - ix. Soliciting, encouraging, participating or consummating an inappropriate written, verbal, or physical relationship with a student.
 - x. Furnishing tobacco, alcohol, or illegal/unauthorized drugs to any student or allowing a student to consume alcohol, or illegal/unauthorized drugs, contrary to School Board Policy Nos. **3.96** (Drug and Alcohol-free Workplace) and **3.961** (Drug and Alcohol-free Workplace Policy for Employees Performing Safety-Sensitive Functions and Holders of Commercial Drivers Licenses), as now or hereafter amended.
- b. Alcohol or Drugs – We are committed to holding each other responsible for our performance as School District employees and as individuals.** Employees should refrain from the use of alcohol or illegal or unauthorized drugs while performing their official duties. Unethical conduct includes but is not limited to:
- i. Being in the workplace, on school premises or at a school-related activity involving students while under the influence of, possessing, selling using, or consuming illegal or unauthorized drugs, contrary to School Board Policy Nos. **3.96** (Drug and Alcohol-free Workplace) and **3.961** (Drug and Alcohol-free Workplace Policy for Employees Performing Safety-Sensitive Functions and Holders of Commercial Drivers Licenses).
 - ii. Being in the workplace, on school premises or at a school-related activity involving students while documented as being under the influence of, possessing, or consuming alcoholic beverages, contrary to School Board Policy Nos. **3.96** (Drug and Alcohol-free Workplace) and **3.961** (Drug and Alcohol-free Workplace Policy for Employees Performing Safety-Sensitive Functions and Holders of Commercial Drivers Licenses). A school-related activity includes, but is not limited to, any activity sponsored by the school or school system (i.e. booster clubs, parent-teacher organizations, or any activity designed to enhance the school curriculum, i.e., science trip).
 - iii. Engaging in, or being convicted of or found guilty of, or entering a plea of guilty, regardless of adjudication of guilt, of any misdemeanor or felony crime involving the sale or possession of a controlled substance.
- c. Misrepresentation or Falsification – We are committed to candor in our work relationships, providing other Board employees including supervisors, senior staff and Board members with accurate, reliable and timely information.** Employees should exemplify honesty and integrity in the performance of their official duties for the School District. Unethical conduct includes but is not limited to:
- i. Falsifying or misrepresenting professional qualifications, criminal history, college or staff development credit and/or degrees, academic award, and employment history when applying for employment and/or certification or when recommending an individual for employment, promotion or certification;
 - ii. Falsifying or misrepresenting information submitted on behalf of the School District to federal, state and other governmental agencies;
 - iii. Falsifying or misrepresenting information reported regarding the evaluation of students and/or District personnel;

- iv. Failing to report all actual or suspected cases of child abuse, abandonment or neglect as required by Section 1006.061, Florida Statutes, as now or hereafter amended;
 - v. Failing to report suspected or actual misconduct of employees that affects the health, welfare or safety of a student;
 - vi. Falsifying or misrepresenting reported reasons for absences or leaves;
 - vii. Falsifying, misrepresenting, or omitting information submitted in the course of an official inquiry/investigation; and
 - viii. Knowingly reporting alleged misconduct of a District employee which affects the health, safety or welfare of a student which the reporting party knows to be false or incorrect.
 - ix. Knowingly taking responsibility and credit for work performed or produced by others; or failing to acknowledge the work and contributions made by others, including any acts of plagiarism.
- d. ***Improper Remunerative Conduct*** – We are committed to a practice of not accepting gifts or gratuities in violation of the State Code of Ethics or which give the appearance that the gift improperly influenced our decisions. We will not solicit students, parents, vendors, lobbyists or others for anything that provides us a personal benefit different than the public.

Unethical conduct includes but is not limited to:

- i. Soliciting students or parents of students to purchase equipment, supplies or services from the employee or to participate in activities that financially benefit the employee, contrary to School Board Policy Nos. **2.21** (School Requests of Payment from Students) and **2.16** (Fund-Raising Activities Relating to Schools), as now or hereafter amended.
 - ii. Accepting gifts from vendors or potential vendors for personal use or gain where there may be the appearance of a conflict of interest or appearance of impropriety.
 - iii. Tutoring students contrary to any applicable School Board Policy or collective bargaining agreement.
 - iv. Referring a parent or student to a service, service provider or product in return for anything of value. Officers or employees making referrals as part of their official duties shall make referrals to more than one provider of the service or product, if available. For example, school counselors shall refer parents or students to more than one provider of medical services, if available. Additionally, an employee shall not refer a parent or student to any service, service provider, or product in which that employee has a financial interest, without first disclosing in writing the employee's interest to the parent or student.
 - v. Soliciting or accepting money or any other thing of value including, but not limited to gifts, favors, services, or promises of future employment, in return for advice or assistance on matters concerning the operation of the business of the Board.
- e. ***Avoidance of Conflicts of Interest and Receipt of Improper Outside Income*** – We are committed to declining outside income that might be perceived as inconsistent, incompatible or in conflict with our official duties. We will not make decisions or use our position for personal benefit or to gain an improper advantage. Employees are governed by the statutory provisions in the "Code of Ethics for Public Officers and Employees (Code of Ethics)," and certain statutes in the Florida School Code. As employees, you must comply with the provisions of the Code of Ethics and the "Principles of Professional Conduct for the Education Profession in Florida", Chapter 6A-10.081, F.A.C., and the provisions outlined herein.

A conflict of interest can exist anytime your position or decisions provide the District or yourself with a financial benefit or improper advantage. A conflict of interest shall be defined as a situation in which the employee's regard for a private interest tends to lead to a disregard of the employee's public duty or interest. We are permitted to receive outside income as long as it does not create a conflict with our work in the School District. Unethical conduct includes, but is not limited to, the employee:

- i. Participating in the decision to make a contract between the School Board and a business or entity in which the employee has a personal or financial interest. This includes contractual relationships

with units of government as well as for profit and not for profit organizations such as charter schools.

- ii. An employee who has a personal or financial interest because of a relationship with such a business, governmental agency or not for profit organization must recuse him or herself from any decision concerning that entity, including any decision to contract or not to contract with the entity and the administration of the contract. The reason for the recusal must be stated in writing and filed with the Superintendent, or his or her designee, and the School Board Attorney prior to or at the time of the action requiring recusal.
 - iii. Soliciting or accepting an Honorarium, which is related to the employee's job duties. "Honorarium" shall be defined consistent with Section 112.3149, Florida Statutes, as a payment of money or anything of value paid to the employee or on his or her behalf as consideration for an oral presentation or writing other than a book.
 - iv. Advertising business or professional activities on school district property or use work hours, property or services to perform or promote personal business or professional activities, or to campaign or raise money for any candidates for political office.
 - v. Participating in the review and approval of publications or materials for school district purchase by the office in which the employee is employed if the employee or a member of the employee's immediate family is the author/editor of or has any financial interest in the sale of such publications or materials.
 - vi. Accepting outside income in any situation where a reasonable person in the community would conclude that the receipt of the income would be inconsistent, incompatible or in conflict with the employee's official duties with the school district.
 - vii. Soliciting or accepting any personal gifts, favors or benefits of more than nominal value during a calendar year from any single person or organization that might benefit from the employee's decision. This provision does not apply to: (a) meals provided at an event at which the employee participates in a seminar or similar activity; (b) travel expenses and meals paid by a local, state, federal government agency; or (c) lawful campaign contributions.
 - viii. Soliciting or accepting, directly or indirectly, any payments or other benefits under circumstances that would create in the mind of a reasonable person in the community the belief that such payments or benefits were provided with the intent to improperly influence the employee's actions. This provision does not apply to lawful campaign contributions.
 - ix. Personally representing another person or entity or acting as an agent or attorney for compensation in connection with any matter in which the School District is interested while employed by the School District and for two (2) years after employment with the School District.
 - x. Engaging in political activities prohibited by School Board Policy No. **2.59** (Political Activities on School Board Property).
 - xi. Appointing, employing, supervising, promoting, evaluating or advancing an employee contrary to the provisions of School Board Policy No. **3.60** (Nepotism)
- f. Public Funds and Property – We are committed to ensuring that District facilities, equipment, supplies, or other District resources are used for District purposes only. Except for occasional and incidental personal use, we will not tolerate improper use of public resources, and will report and reimburse the District for costs associated with personal use.** The provisions herein shall not be applicable to community or public use of District facilities pursuant to School Board Policy **7.18** (Community Use of School Facilities). Employees entrusted with public funds and property should honor that trust with a high level of honesty, accuracy, and responsibility. Unethical conduct includes, but is not limited to:
- i. Failing to use public or school-related funds and School Board property for School District purposes and in a manner specified by School Board Policy, administrative procedures or guidelines or by federal or state laws;
 - ii. Failing to account for public funds collected from students, parents or other parties;

- iii. Submitting fraudulent requests for reimbursement of expenses or for pay;
- iv. Co-mingling public or school-related funds with personal funds or checking accounts; and
- v. Using school district property or school district funds without the necessary approval.

g. Confidentiality of Information - We are committed to abiding by all laws and School Board Policies concerning the confidentiality of student and personnel information, standardized test material, and other such information determined to be confidential by law. No current or former employee shall use or disclose, other than in the performance of his official duties and responsibilities, or as may be required by law, confidential information gained in the course of or by reason of his/her position of employment. Unethical conduct includes, but is not limited to:

- i. Sharing of confidential information concerning student academic and disciplinary records, health and medical information, family status income or assessments/testing results, unless disclosure is required or permitted by law or School Board Policy.
- ii. Sharing of confidential information restricted by state or federal law.
- iii. Threatening the integrity of student testing security, or failing to maintain student testing security, by examining, reading, revealing, or copying the passages, test items, or performance tasks; interpreting or reading test items or passages for students; changing or otherwise interfering with student responses to test items; causing achievement of schools to be inaccurately measured or reported; and copying or reading student responses.
- iv. Sharing of confidential information from a closed session of the School Board prior to such information becoming a public record subject to disclosure.

h. Criminal Acts - We are committed to employees abiding by federal, state and local laws and reporting criminal conduct. We will not tolerate criminal conduct and other conduct that damages the integrity or reputation of the School District. Unethical conduct includes but is not limited to:

- i. Committing or being convicted of felonies involving breach of public trust and other specified offenses as provided in Section 112.3173, Florida Statutes, as now or hereafter amended;
- ii. Committing, being convicted or found guilty of, or entering a plea of guilty, regardless of adjudication of guilt, of any crime involving moral turpitude, as defined by State Board of Education Rule 6A-5.056 "Criteria for Suspension and Dismissal", F.A.C., as now or hereafter amended;
- iii. Failing to report the arrest or conviction for criminal acts as provided in School Board Policy 3.13 (Self Reporting of Arrests and Convictions by School District Employees); or
- iv. Committing or being convicted of criminal acts.

i. Professional Conduct - We are committed to ensuring that our power and authority are used in an appropriate, positive manner that enhances the public interest and trust. Employees should demonstrate conduct that follows generally recognized professional standards. Unethical conduct is any conduct that impairs the ability to function professionally in his or her employment position or conduct that is detrimental to the health, welfare or discipline of students or the workplace. Unethical conduct includes, but is not limited to, the following:

- i. Failing to maintain any necessary certification or licensure required in the performance of job duties for the School District.
- ii. Shall not knowingly and willfully make false statements about a colleague.
- iii. Failing to report the alleged misconduct of a fellow employee, to cooperate fully during any investigation or to complete an investigation relative to allegations of misconduct of a fellow

employee, which affects the health, safety or welfare of a student.

- iv. Entering into a confidentiality agreement regarding terminated or dismissed instructional employees and school administrators, or personnel or administrators who are dismissed or resign in lieu of termination, based in whole or in part on misconduct that affects the health, safety or welfare of a student.
- v. Providing employment references or discussing the instructional personnel's or school administrator's performance with prospective employers in another educational setting, without disclosing the personnel's or administrator's misconduct.

2. Employee Exercising Contract Management Authority

No School Board official or employee shall exercise contract management authority where any relative or domestic partner of the official or employee is employed by or has contracts with any person doing work over which the official or employee has or exercises contract management authority. Contract Management Authority means personal involvement in or direct supervisory responsibility for the formulation or execution of a contract. This includes, without limitation, the preparation of specifications, evaluation of bids or proposals, negotiation of contract terms, and/or supervision of contract performance. An employee who exercises contract management authority regarding any Board business or transaction shall not exercise such authority in connection with:

- a. Board business with an entity in which the official or employee has financial interest;
- b. Board business with a person with whom the employee has an employment relationship;
- c. Board business with a person with whom the employee has a business relationship; and
- d. Any contract in which the employee's spouse, other relative or domestic partner has a financial interest.

For the purposes of this section, the term "relative" shall be defined as provided in §112.312(21), Florida Statutes, as now or hereinafter amended. The term "financial interest" shall be defined as such financial benefit/asset or liability consistent with the provisions of Article II, §8, *Florida Constitution*, the Florida Code of Ethics, and the rules of the Florida Commission on Ethics.

3. Statutory Compliance

Those covered by this policy shall abide by any and all applicable state and federal laws and regulations that pertain to the matters addressed in this Code of Ethics.

4. Procedures for Reporting Ethical Violations and Misconduct

- a. **Reporting Procedures.** It is the responsibility of all District employees to promptly report any complaint alleging a violation of this policy and any applicable Florida ethics laws or State Board of Education ethic standards, including any complaint against instructional staff or school administrative staff that includes grounds for the revocation or suspension of a teaching certificate. Any and all complaints shall be promptly reported to the Office of Professional Standards. If the Director of Professional Standards determines that a preliminary investigation is needed, he or she will notify the Superintendent, and submit the complaint for investigation in accordance with this policy. If after preliminary investigation and consultation, the Director of Professional Standards determines that the available evidence provides a reasonable basis for a full investigation, a full investigation of the complaint shall take place in accordance with subparagraph (b) herein.

The person alleged to have committed the violation shall be notified of the complaint and of the investigation, and shall be given an opportunity to present evidence in response to the complaint, personally or through legal counsel as part of the investigation.

- b. **Investigation of Complaints.** Complaints of employee misconduct in violation of this policy and other relevant state laws are to be reported to the Superintendent as the chief executive officer of the School District. Such reports shall be investigated under the legal authority of the Superintendent subject to the provisions of Sections 1012.315, 1012.795 and 112.3188, Florida Statutes, until such investigation has been completed. Upon making a finding of a violation, the Superintendent shall take appropriate actions, including any disciplinary action. The Superintendent shall establish a mechanism for the receipt of complaints, including the reporting by a hotline or website.

- i. **Violations committed by instructional and school administrative staff** - Any complaint against instructional personnel and school administrators, as defined in Section 1012.01, Florida

Statutes, or personnel qualified and employed pursuant to Section 1012.39, Florida Statutes, that comes to an employee's attention and that includes grounds for the revocation or the suspension of a teaching certificate, or acts prohibited by the Ethics in Education Act, Chapter 2008-108, Laws of Florida, shall be reported to the Office of the Superintendent or the Office of Professional Standards. The willful failure by a school board employee to promptly report a complaint shall constitute cause of discipline of the employee as provided by law and Board policy.

The Office of the Superintendent or the Office of Professional Standards will work collectively with the Office of Inspector General and School Police to ensure complaints are received, reviewed and investigated, as follows: If the allegations are of criminal misconduct, the complaint shall be reported to and investigated by the School Police as provided herein and reported to the Superintendent. If the allegations are of fraudulent conduct, including the misappropriation or misuse of District funds, the complaint shall be investigated by the Inspector General and reported to the Superintendent and School Board for proper disposition.

The Superintendent shall ensure that all alleged misconduct against instructional staff or school administrative staff are timely filed in writing with the Florida Department of Education. The Superintendent or his designee shall make such reports in accordance with state law and rules. If a report concerns the Superintendent, it shall be reported to the Board and the Board Chair shall file the report.

- ii. **Reporting of Possible Criminal Conduct** – A violation of criminal statutes alleged to have been committed by a District employee or volunteer, whether the conduct shall constitute a felony or a misdemeanor, shall be reported to the appropriate law enforcement agency or the School Police and the Superintendent for investigation. The School Police shall be authorized to investigate and report violations of criminal statutes to the Superintendent and any appropriate law enforcement agency. The Office of Professional Standards shall determine if the allegations of criminal conduct constitute a breach or violation of School Board Policy, this Code of Ethics provision, or professional standards consistent with the provisions in subparagraphs 4(a) and (b) of this policy. The investigative records shall be considered public records subject to confidentiality requirements provided by law pending completion of such active investigation and any resulting investigation by law enforcement agencies. Violations of criminal statutes alleged to have been committed by the Superintendent, as a constitutional officer, should be reported directly to the appropriate law enforcement agency.
- iii. **Giving False or Fraudulent Evidence** – In all proceedings, including administrative hearings and litigations in which the School Board is an interested party, and including the reporting of violations of this Ethics Code, professional standards breaches, or criminal law violations as described in this policy or the Ethics in Education Act, the evidence presented by District employees shall be truthful. Misrepresentation of factual evidence, including the presenting of false, fraudulent, intentionally misleading or untruthful evidence in any such proceedings or report is declared to be a violation of this policy. Any person making such a misrepresentation of factual evidence is subject to discipline in accordance with this policy.
- iv. **Reporting and Final Disposition** – At the conclusion of the investigation, an appropriate report setting forth all pertinent facts and circumstances will be prepared by the investigative unit and transmitted to the Superintendent or his designee. Based upon the findings presented in the investigative report, the Superintendent, or his designee, may take action in accordance with the School Board policies or state laws and rules.
- c. **Reports to Other Appropriate Agencies.** It is not the intention of this policy to prevent the filing of reports or complaints to appropriate agencies pursuant to their standards. In instances in which the right to file complaints directly with those agencies exists, the filing of a complaint pursuant to this policy is available as an alternative form of reporting.
- d. **Immunity for Making Report or Disclosure of Information.**
 - i. An instructional employee or school administrator who in good faith promptly reports the misconduct of other instructional personnel or school administrators, or an employee who in good faith promptly reports misconduct of other employees, which affects the health, safety, or welfare of a student, or violations provided in Chapter 2008-108, Laws of Florida, shall have immunity from liability as described in §768.095, Florida Statutes, or as provided in §§ 39.203 and 1006.061, Florida Statutes.

ii. An employee disclosing information in good faith about a former or current instructional employee or school administrator of the District, in accordance with the Ethics in Education Act, Chapter 2008-108, Laws of Florida, to a prospective employer, upon the request of the prospective employer of the former or current employee, is immune from liability for such disclosure to the extent as provided to the School District under §768.095, Florida Statutes.

e. **Reassignment or Removal from Workplace Pending Outcome of Investigation.** The Superintendent may reassign or remove from the workplace an employee alleged to have violated this Code of Ethics. Any reassignment or removal shall be made in the best interests of the School District and the students it serves. In deciding whether an employee should be reassigned or removed from the workplace while an investigation proceeds or is completed, the Superintendent shall consider but not be limited to the following:

- i. Whether the reported misconduct is ongoing or is likely to reoccur.
- ii. Whether the reported misconduct poses a risk to a student(s) or School District employee(s).
- iii. Whether the reported misconduct endangers the School District.
- iv. Whether the employee may impede or obstruct the investigation.

5. Actions Prohibited

- a. The School Board, its employees and agents, are prohibited from taking retaliatory action or adverse personnel action against any employee who reports violations or discloses information under this policy.
- b. The provisions of this section shall not be applicable when an employee or person discloses information known by the employee or person to be false.
- c. No remedy or other protection under this policy applies to any person who has committed or intentionally participated in committing the violation or suspected violation for which protection under this policy is being sought.

6. Post-Membership and Post-Employment Restrictions

In accordance with the Florida Code of Ethics, the following provisions shall govern the conduct of former School Board members and employees. For the purposes of this paragraph, "personally represent another person or entity for compensation" shall mean the actual physical attendance on behalf of a client in a School Board or School District proceeding, the writing of letters or filing of documents on behalf of a client, and personal communications made with the officers or employees of the School Board or School District on behalf of a client, as provided in §112.312(22), Florida Statutes, as now or hereafter amended.

- a. No former School Board member may personally represent another person or entity for compensation before the School Board or School District for a period of two (2) years following the vacation of the School Board member's office, pursuant to the provisions of §112.313(13), (14), Florida Statutes, as now or hereafter amended.
- b. No former employee of the School District may personally represent another person or entity for compensation before the School Board or School District for a period of two (2) years following the termination of his or her employment with the School District, pursuant to the provisions of §112.313(13), Florida Statutes, as now or hereafter amended.

7. Acknowledgement/Certification of Code of Ethics

Each employee will be required to annually sign an Acknowledgement/Certification Form in substantially the form and substance attached as Exhibit "A", which is incorporated herein by reference, acknowledging that the employee has received compliance training and agrees to abide by this Code of Ethics as well as the state laws and School Board policies and regulations cited in the Code. Failure to sign the Acknowledgement/Certification Form will not excuse a failure to comply with the Code of Ethics. The Acknowledgement/Certification Form shall be completed in accordance with the process determined by the Office of Professional Standards.

8. Ethics and Compliance Training

Employees shall receive annual compliance training on Code of Ethics. The training program may include online courses, video presentations, bulletins and newsletters. Exempt employees may take the course during their regular duty hours. Non-exempt employees must take the course during their regular duty hours unless requested by the employee and permission is received from the appropriate supervisor/administrator for overtime/comp time per School Board Policy 6.12 or the applicable collective bargaining agreement.

Exhibit A

Code of Ethics

Online Acknowledgment Form will be signed electronically by each employee.

I, the undersigned, _____,

hereby certifies as follows:

1. I have completed the mandatory annual compliance training on School Board Policy 3.02 (Code of Ethics).
2. I am aware that School Board Policy 3.02 (Code of Ethics) incorporates by reference The Code of Ethics for Public Officers and Employees, Chapter 112, Part III, Florida Statutes; the Principles of Professional Conduct for the Education Profession in Florida, State Board of Education Rule 6A-10.081, F.A.C.; and the "Ethics in Education Act", Chapter 2008-108, Laws of Florida.
3. I am aware that School Board Policy 3.02 (Code of Ethics) is available to me in print format on the School District of Palm Beach County's website.
4. I agree to abide by and comply with School Board Policy 3.02 (Code of Ethics) throughout my employment with Palm Beach County School District.

STATUTORY AUTHORITY:	Fla. Stat. §§ 1001.41(1) and (2); 1001.42(28); 112.313; 1012.23(1); 1001.32(2)
LAWS IMPLEMENTED:	Fla. Stat. §§ Ch. 112, Part III; 435.04(2); 1012.315; 1012.795; 1012.796; Ch. 2008-108, L.O.F.
STATE BOARD OF EDUCATION RULE:	F.A.C. 6A-10.081
HISTORY:	5/06/2009; 06/07/2017



Book	School Board Policies
Section	Ch. 1. School District
Title	Responsibilities of School District Personnel and Staff
Code	1.013
Status	Active
Adopted	February 5, 2001
Prior Revised Dates	(As P-1.01:) 6/2/76; 7/21/82; (As P-1.013:) 02/05/01

Policy 1.013 Responsibilities of School District Personnel and Staff

The district administrative staff shall be responsible for the efficient planning and administration of all supporting educational services such as maintenance, transportation, school lunch, personnel, purchasing, federal programs, payroll and other responsibilities as directed by the superintendent. The district administrative staff is also responsible for insuring that the appropriate district policies, state board of education rules, state laws, and federal laws and rules are adhered to.

1. It shall be the responsibility of the personnel employed by the district school board to carry out their assigned duties in accordance with federal laws, rules, state statutes, state board of education rules, school board policy, superintendent's administrative directives and local school and area rules.
2. District administrative staff.
 - a. The district administrative staff shall be responsible for the efficient planning and administration of all supporting educational services such as maintenance, transportation, school lunch, personnel, purchasing, federal programs, payroll and other responsibilities as directed by the superintendent. The district administrative staff is also responsible for insuring that the appropriate district policies, state board of education rules, state laws, and federal laws and rules are adhered to.
3. District instructional staff.
 - a. The district level instructional staff shall be responsible for the cooperative development, supervision, and improvement of the district instructional program. The areas include in-service education, program evaluation, development of curriculum materials, educational specifications for school facilities, development of federal programs, accreditations, state program requirements and other responsibilities as directed by the superintendent.
 - b. Pursuant to § 231.09, Fla. Stat., the primary duty of instructional personnel is to work diligently and faithfully to help students meet or exceed annual learning goals, to meet state and local achievement requirements, and to master the skills required to graduate from high school prepared for postsecondary education and work. This duty applies to instructional personnel whether they teach or function in a support role.
4. Teachers.

It shall be the duty of the teacher to provide instruction, leadership, classroom management and guidance to pupils through democratic experiences that promote growth and development both as individuals and as members of society. Pursuant to § 231.09, F.S., teachers shall perform duties prescribed by school board policies relating, but not limited, to helping students master challenging standards and meet all state and local requirements for achievement; teaching efficiently and faithfully; using prescribed materials and methods, including technology-based instruction; recordkeeping; and fulfilling the terms of any contract, unless released

from the contract by the school board.

STATUTORY AUTHORITY:	Fla. Stat. § 230.22(2)
LAWS IMPLEMENTED:	Fla. Stat. §§ 230.03; 230.35; 231.09
HISTORY:	(As P-1.01:) 6/2/76; 7/21/82; (As P-1.013:) 02/05/01



Oscar Restrepo <oscar.restrepo@palmbeachschools.org>

Follow-up

3 messages

Oscar Restrepo <oscar.restrepo@palmbeachschools.org>
To: Vicki Evans-Pare <vicki.evans-pare@palmbeachschools.org>

Tue, Feb 1, 2022 at 12:18 PM

Hello Vicki,

I am writing to clarify some points brought forward in the responses I received from you and Dr. La Cava regarding OIG case #20-0012-I.

1. How involved was Dr. La Cava in the decision to provide the memorandum to Robert Pinkos regarding Failure to Fulfill Job Responsibilities/Insubordination?
2. Did Dr. La Cava approve the issuing of the memorandum before it was issued?
3. If he was not involved did you issue the memorandum unilaterally?
4. How involved was Dr. La Cava in the decision to transfer Robert Pinkos to the South Area?
- 5.

--
 Oscar Restrepo, CIG, CFE, CIGI
 Director of Investigations
 Office of Inspector General
 Palm Beach County School District
 3300 Forest Hill Blvd., Suite C-310
 West Palm Beach, FL 33406
 (561) 434-8183

Activity #: 20-0012-I
 OIG Staff: Oscar Restrepo
 Date Rec'd: 2/2/22 Pages: 2
 Rec'd: V. Evans-Pare
 Redacted: Yes No N/A Req'd TBD
 Exhibit/Reference #: 15

Vicki Evans-Pare <vicki.evans-pare@palmbeachschools.org>
To: Oscar Restrepo <oscar.restrepo@palmbeachschools.org>

Wed, Feb 2, 2022 at 3:51 PM

Given that the events in question occurred more than 2 years ago, I can only base my answers on my recollection and our usual practices.

- Q1. How involved was Dr. La Cava in the decision to provide the memorandum to Robert Pinkos regarding Failure to Fulfill Job Responsibilities/Insubordination?
 A1. As a Director, I may have discussed the issue with Dr. LaCava; however, I may have only mentioned it in passing. He was not involved in the drafting or substance of the memo. I do recall that when I mentioned I was providing Mr. Pinkos with a memo, he suggested that I utilize Mark Mitchell as a witness and not my secretary.
- Q2. Did Dr. La Cava approve the issuing of the memorandum before it was issued?
 A2. As a Director, I did not need the approval of my supervisor to provide directives, coaching, or even lower level discipline to an employee in my department. I do not recall asking for his approval in this case or any other times I have provided direction to employees.
- Q3. If he was not involved did you issue the memorandum unilaterally?
 A3. I am unclear as to your use of the word "unilaterally". It would seem that you are implying that I did not have the authority to direct the employees under my supervision. I provided Mr. Pinkos with the memo to address his refusal to perform an essential function of his job in contradiction to standards that I had set forth to all the HR managers in August 2019. I was not directed to do so by anyone. As a Director, I needed to address what I considered to be performance concerns with an employee.
- Q4. How involved was Dr. La Cava in the decision to transfer Robert Pinkos to the South Area?
 A4. At the recommendation of Chief Kitzerow, we transferred Robert Pinkos from FHESC. I consulted with Dr. Licata (Regional Superintendent) as to whether he had any concerns with housing Mr. Pinkoas at the South Regional Offices. He voiced no concerns and was actually interested in having the HR manager for the South Region closer to the schools

he served. (It is important to realize that moving the HR managers into the field was discussed with myself, Edwine Michel and Dr. LaCava soon after Mr. Michel was hired as the Director of Recruitment. Due to spacing issues, we contemplated moving the HR managers and HR partners into the areas they served.) I know that Dr. LaCava was informed but I have no independent recollection at this time as to whether he had any input into the decision. What I do recall was that due to the assault in the parking lot by Mr. Pinkos, Dr. LaCava attempted to remove himself from the situation to the extent he could.

Q5. Did Dr. La Cava approve of Robert Pinkos' transfer to the south area?

A5. I do not recall requesting approval from Dr. LaCava to move Mr. Pinkos to the Regional Offices. I know that he was advised. After Chief Kitzerow recommended that Mr. Pinkos be moved out of FHESC, the only logical choice at the time was the South Region as all of Mr. Pinkos's portfolio of schools were in that area. At the time (pre-pandemic), remote work was not an option. Additionally, as stated above, Dr. LaCava attempted to remove himself from any involvement with Mr. Pinkos.

Q6. If he was not involved or did not approve of the transfer did you transfer him unilaterally?

A6. Again, I am unclear as to the choice of the word "unilaterally". It would seem that you are implying that I made the decision without input or advice from anyone. I was not acting unilaterally in that the decision was based upon the advice of law enforcement.

Vicki Evans-Paré, Esq.
Director of Professional Standards
vicki.evans-pare@palmbeachschools.org
(561) 434-8873

Around here, however, we don't look back for very long. We keep moving forward, opening new doors, and doing new things, because we're curious and curiosity keeps leading us down new paths. -- Walt Disney



[Quoted text hidden]

Oscar Restrepo <oscar.restrepo@palmbeachschools.org>
To: Vicki Evans-Pare <vicki.evans-pare@palmbeachschools.org>

Thu, Feb 3, 2022 at 6:23 AM

Thank you for your quick response
[Quoted text hidden]

Memorandum

To: Teresa Michael, Inspector General ("IG")
Shawntoyia Bernard, General Counsel

From: Vicki Evans-Pare

Date: January 28, 2022

Subject: Rebuttal to Draft Report for OIG Case No. 20-0012-1

Activity #: 20-0012-I
OIG Staff: OSCAR NESTRUP
Date Rec'd: 01/28/22 Pages: 159
Rec'd: From Vicki Evans-Pare
Redacted: Yes No N/A Req'd TBD
Exhibit/Reference #: 16

The investigation cited as OIG Case No. 20-0012-1 is fatally flawed in substance and in procedure. Each inaccuracy of fact and misapplication of law, rule, and/or policy is addressed individually. Immediately below, however, is a summary of the objections, refutations and overarching concerns.

Allegation 2a is legally insufficient and substantively flawed.

- The allegation of violation of School Board Policy 3.02(5) is not legally sufficient. In order for a violation to have occurred, the directive provided to Robert Pinkos (hereinafter referred to as "RP") on November 15, 2019, must have occurred after RP made a disclosure or report of a violation of Policy 3.02. The evidence shows that the only disclosure/report made by RP occurred on January 15, 2020, two months after the directive was issued. No other disclosure/report is referenced.
- A directive provided to an employee may only be classified as an adverse personnel action if it is a direct result, not of any legitimate business reason, but of protected activity on the part of the employee. No such protected activity existed prior to the issuance of the memo. To conclude otherwise, would prohibit any supervisor from providing directives or discipline to any employee for fear of a code of ethics violation as stated in this report.
- The OIG report indicated in multiple places that no retaliation occurred when RP was provided with the directive.

Allegation 3a is legally insufficient and substantively flawed.

- The allegation of violation of School Board Policy 3.02(5) is not legally sufficient. In order for a violation to have occurred, the letter moving RP from the Fulton-Holland Educational Services Center ("FHESC") that was provided to RP on November 15, 2019, must have occurred after RP made a disclosure or report of a violation of Policy 3.02. The evidence shows that the only disclosure/report made by RP occurred on January 15, 2020, two months after the directive was issued. Again, no other disclosure/report is referenced.
- One cannot take adverse personnel action against someone for protected activity before the activity occurs.
- The OIG report indicated in multiple places that the transfer of location for RP was not retaliatory.
- The report gives no weight to the undisputed fact that Chief of Police Kitzerow recommended that RP be removed from FHESC due to safety concerns.

- The report also does not include the investigative findings from the Gunster Law Firm related to the assault of Dr. Gonzalo LaCava by RP in the parking lot at FHESC which concluded that RP's "behavior [was] the type of behavior that could lead to acts of violence in the workplace...". It further concluded that disciplinary action against RP for behavior that was unprofessional and violative of the Code of Ethics was warranted.

The Investigative Report is procedurally defective and fatally flawed.

- At the time the complaint was filed (January 15, 2020), the OIG did not have jurisdictional authority to investigate violations of Policy 3.02. The Office of Professional Standards ("OPS") had sole authority for enforcement of this policy until April 7, 2021. The complaint should have been outsourced.
- The OIG did not release the draft report for seven hundred twenty-two (722) days, far in excess of both the OIG's internal departmental procedures and Florida Statutes §1012.31(2)(b)(1). This report must be redacted to remove any and all information that is uniquely identifiable to me and any other employee and may not be used as a basis for any disciplinary action. As of the date of this rebuttal, seven hundred forty-four (744) days have elapsed since the system was aware of the complaint.

**There are serious concerns regarding Conflicts of Interest,
Abuse of Power, and Retaliation.**

- There are conflicts related to the IG's independence on this issue as a result of connections between Board members and this case (i.e. connections with the attorney for RP; international travel by a Board member, the former General Counsel and RP's wife; participation of Board members and RP/RP's wife in community organizations; personal relationships between the parties; campaign contributions; etc.) when the IG takes direction from and is supervised directly by said Board members.
- A potential claim for abuse of power/conflict of interest/retaliation exists between the OIG and the undersigned (i.e. my refusal to rubber stamp a legally insufficient complaint by the OIG; pressure from the Superintendent and OIG for not doing so; and objections relative to the OIG assuming all oversight on disciplinary matters for personnel.)
- A potential claim for abuse of power/conflict of interest/retaliation exists between the Superintendent and the undersigned (i.e. my refusal to rubber stamp a legally insufficient complaint by the OIG; pressure from the Superintendent and OIG for not doing so; and the attempted demotion of my immediate supervisor within weeks of the release of the aforementioned legally insufficient complaint.)
- The issues raised in this rebuttal should be reported to and investigated by the Commission on Ethics, the Attorney General and/or the Governor of the State of Florida.

Below is a detailed explanation of the flaws in the OIG's report.

I. Background and OIG Timeline of Events

There are several misstatements of fact related to my experience with the District. At the time this report was provided to me, I had been with the District for 2 day shy of 19 years. The first decade of my service was as a labor and employment attorney for the District. At all times, I have provided oversight, defense and/or support for labor and employment litigation and/or alternate dispute resolution proceedings (grievances, arbitrations and mediations). At the time of the report, I had served as the Director of Employee and Labor Relations for almost 3 years. I am currently the Director of Professional Standards. At all times relevant to this complaint, my immediate supervisor was Dr. Gonzalo LaCava.

The information related to G. English is also inaccurate. At the time of this report, she had been with the District for almost 4 years. Additionally, her job title is that of HR manager within OPS. At all times relevant to this complaint, she was an EEO Coordinator reporting to the Director of Employee and Labor Relations (ELR) - a department which was eliminated as part of the restructure adopted by the Board on August 18, 2021.

As to the section labeled "Timeline of Events", the facts detailed in this timeline take all allegations made by RP as true and do not accept any recollections other than those provided by him as possible. The factual details are not presented in an unbiased or independent fashion but rather seek to meet a predetermined conclusion.

At many times in this report, RP's assertion that there was something unethical regarding the limited scope of the investigation is accepted as true. No weight is given to my 27 years as an attorney (22 years of which are related to employment law) or the legal sufficiency determination by no less than three attorneys within the Office of General Counsel ("OGC") -- Julieann Rico, Shawntoyia Bernard, Jean Middleton -- and by a preeminent Florida labor and employment attorney, Thomas Gonzalez. Additionally, no consideration is given to the fact that the termination of Dr. Latson has been upheld by the 4th District Court of Appeals for the State of Florida on two separate occasions. Instead, the OIG relies solely upon the assertions of RP.

I will address the issues with the OIG's factual determinations by date:

August 15, 2019 - The fact that I stated, and RP acknowledged, he was told repeatedly that if he had evidence to support an allegation of wrongdoing by any other administrators (Dr. Donald Fennoy, Keith Oswald, Dr. Ian Saltzman, Dr. Glenda Sheffield, Dr. Peter Licata and/or Howard Hepburn), he was to immediately document the information in a separate memo so that each allegation could be separately investigated is not mentioned. Further, it is never mentioned that this request was made even after RP recused himself. All that was ever provided by R.P. was a list of potential wrongdoers with questions that should be asked to determine if wrongdoing occurred. R.P. had no first-hand knowledge or any other evidence to support opening any other investigation. At all times, relevant to the complaint, RP only stated that he should have been contacted in April 2018 by the regional office as he was the HR manager assigned to the South Region.

August 15, 2019 (Staff Meeting) - The facts do not reflect that the standard for recusal was provided in writing to all HR managers as part of an agenda of the meeting as a whole. From the recitation of facts as listed here, one could incorrectly assume that the meeting was called to solely address the recusal issue and that nothing was committed to writing. The OIG was provided with my typed agenda dated August 14, 2019, with the standard. (See Exhibit #1.)

August 19, 2019 - Again the facts are inexplicably slanted only toward those most favorable to PR. There is no reference to the fact that an apology was given to RP by me for saying "bullshit" twice nor RP accepting that apology. There is no reference to his returning to my office sometime later that day where he became agitated and aggressive coming within two feet of my person. There is no reference to me having to request that he back-up or his stepping closer to me before retreating to outside my door and yelling "is this far enough." There is also no reference to my statement that the encounter was so upsetting to me that I felt it necessary to leave the building for a short period of time. This incident was possibly witnessed by Mimi Garcia, Nancy Rodriguez, and Belinda Troise – all of whom sit outside my office and none of whom were ever interviewed by the OIG.

October 11, 2019 - There is no reference or indication that TDE's and LOA's for employees traveling to locations different than those normally required for their job functions are not only required by policy but also necessary for liability purposes should an employee be involved in an accident to or from the function. School Board Policy (3.65) related to such matters is ignored.

October 18, 2019 - At no time did RP request a meeting with Dr. LaCava to discuss the Latson investigation. Every communication requesting the meeting was solely related to his attendance at the luncheon on October 11, 2019. The "facts" also state that I had decided not to open another investigation without any inquiry or information as to the truth of that statement. No decision had been made as the Latson investigation was still open and active at that time. Had RP provided the requested evidence to support his theories or evidence been uncovered, an investigation would have been opened. RP never provided any evidence of wrongdoing other than to simply raise questions he would like answered.

November 8, 2019 - The word aggressive is bracketed by quotation marks as if the descriptor is somehow inappropriate to describe what the OIG named the "parking lot incident". Both Katrina Todd and Jacquelyn Richards described RP's behavior toward Dr. LaCava in the parking lot on that day as aggressive. Ms. Richards, in fact, stated she was considering requesting law enforcement prior to Dr. LaCava entering the building.

It is further important to clarify that Dr. LaCava did not assign Germaine English to conduct an investigation. I asked Ms. English, as my direct report, to gather eyewitness statements of the incident, after learning of the incident from Dr. LaCava in order to preserve the evidence. Ms. English was specifically chosen due to her experience as an attorney and lack of relationship with RP. The OIG is well aware that the investigation into the incident was conducted by the Gunster Law Firm and issued on February 12, 2020. (Exhibit #2) It is curious to note that this report was not among the documents considered or reviewed for this investigation. To reiterate - an independent investigation conducted by a reputable law firm into the very issue giving rise to RP's transfer to the South Regional Office was specifically and deliberately ignored.

The facts as detailed around this date, fail to include any reference to Chief Kitzerow moving Dr. LaCava's parking space to the gated area under surveillance where the Board members and their direct reports park. This supports my contention that there were concerns about the potential for workplace violence based on RP's behaviors.

Within the section entitled "Policy Recitation" (pg 7 of draft report), as to School Board Policy 3.02(5)(a), emphasis is added by bolding the text. This is of interest in that the report is rife with bolded assertions. Curiously, this is only done when attempting to attack my credibility or draw attention to what appears to be a predetermined conclusion of my guilt for something.

It is also crucial to note that I am accused of taking an adverse personnel action against RP for a disclosure made or allegation of violation pursuant to policy 3.02; however, in no place within the report is there any determination that RP made such a disclosure or report. To be clear, in order to violate Policy 3.02(5)(a), there must be more than an adverse personnel action. RP must have made a disclosure or reported a violation of 3.02 prior to the action being taken on November 15, 2019. No such disclosure or report was made by RP prior to his complaint filed with the OIG on January 15, 2020 – two months after the alleged adverse personnel action. There is not one scintilla of evidence to support a violation of Policy 3.02(5)(a) by me or Dr. LaCava.

As an HR manager charged with documenting policy violations for thirteen (13) years, RP had the knowledge and first-hand experience with how complaints of ethical violations can be filed within the District. He had a plethora of options to report allegations of wrongdoing by those involved in the Latson issues including, but not limited to:

- (1) Filing a grievance under policy 3.31;
- (2) Filing a complaint with the OIG;
- (3) Emailing the Superintendent;
- (4) Emailing the Chief of Staff
- (5) Emailing the School Board;
- (6) Emailing the General Counsel or any attorney employed in her office; and/or
- (7) Filing a complaint directly with FLDOE.

He was aware of these options, as these are the mechanisms by which the HR managers in OPS receive complaints – the very complaints he investigated for over a decade. He did nothing to disclose any violations or make a report. He was well versed in Policy 3.02 and could have cited specific provisions. He did none of these things until two months after he assaulted the Chief of Human Resources in the parking lot; after he was subsequently contacted by School Police; after he was provided with directives; and after his office was moved.

At the time the complaint was filed and for the fifteen (15) months that followed, the OIG lacked jurisdiction to investigate violations of Policy 3.02. In fact, at the Board Workshop on December 9, 2020, the IG stated "Right now, the IG policy does not address ethical complaints at all." (Timer 12:58 - 13:15). She was not given jurisdiction by the School Board over Code of Ethics issues until the policy was amended on April 7, 2021. This is clearly an ex

post facto enforcement of a policy, which was not in place at the time of the alleged violation/complaint, and which occurred for the sole purpose of adversely impacting the employment of me and Dr. LaCava.

II. Allegation I and 2 - Investigative Findings

The OIG clearly states that there is insufficient evidence to support the claim that RP was retaliated against for recusing himself by requesting a TDE/LOA for his attendance at a luncheon. Interestingly, there is no reference to the fact that RP's wife, Margarita Pinkos was responsible for the luncheon or that RP and his wife sat at a table during the event with School Board members - the direct supervisors of the IG.

Again, throughout this report any statements made by me which are in conflict with other testimony is in bold. This was not done in statements by RP or others that conflict with my testimony. This is especially troubling when it occurs in the summary of my statements related to each allegation. No other witness testimony summary is interrupted with the summaries of other witnesses. In many cases, the information contained in these bolded parentheticals are not contained in the summary of the testimony of the witness at issue.

On page 11 of the draft report, there is a bolded note that appears to be an attempt to establish some retaliatory timeline; however, it clearly shows no retaliatory intent as the request for the TDE/LOA was dropped. Additionally, another bolded note in the midst of my testimony summary on page 12 of the report reads that Brenda Johnson testified to her lack of recusal "repeatedly and unequivocally". Although I have never wavered from my testimony that Ms. Johnson did state she had a religious objection, my testimony was not described as unequivocal or repeated. The undisguised bias and retaliatory intent extends even to the verbiage and font chosen throughout this report.

I have reviewed OIG reports frequently over my 19 years defending the School District against employment claims and I have never seen this style used before this case. I have also never seen such prolific use of footnotes to disparage employees. This again illustrates the blatant and deliberate attempt to discredit me and, by extension, Dr. LaCava without any legitimate factual justification.

As I did not receive a transcript of my testimony, it is difficult to address the discussion regarding the use of the Judicial Canon of Ethics in drafting the standard for recusal. What I recall informing Investigator Restrepo was that I did a Google search for standards for judges to recuse themselves. As I could find no District policy or standards for recusal for any other employees within the District, I was on my own in attempting to locate a standard to use. Based on my years of experience, I needed to narrowly tailor the standards to avoid giving an employee an easy way to avoid a lengthy or difficult case by stating that they cannot be fair. As our HR managers for the School District frequently deal with the same employees over and over again, it could cripple the disciplinary function of the District if this were the standard without something more. It is curious that OIG would take time to find better language for a recusal standard but fail to explore the criteria for establishing a retaliatory adverse employment action and/or pathways to workplace violence.

There are more issues in the section labeled as "OIG Comments". RP did make comments to me in response to a newspaper article expressing an opinion about Dr. Latson; however, RP frequently made comments – sometimes in jest, sometimes not – providing his opinion on a variety of subjects and individuals. This was interpreted by me as nothing more than standard behavior by RP. It does not appear that any of RP's coworkers were interviewed to determine if this was a usual occurrence for him.

The report states that I "admittedly yelled 'This is bullshit, this is bullshit Bob!' or 'bullshit, bullshit, bullshit, bullshit, bullshit, bullshit, bullshit, bullshit!'" This is factually inaccurate. I admitted to stating the former in a loud voice (not yelling) but have never admitted to the latter. Despite my testimony to the contrary, the words of RP are used as if admitted by me. It is indeed curious that this finding indicates a belief that I said the word eight (8) times; however, on page 8 of the draft report, in summarizing the testimony of RP, it is alleged that I said the word four (4) times. There is nothing to support RP's testimony as true as no other employees in the immediate vicinity, as stated previously, were interviewed to determine the veracity of his statement. No one was asked if my voice was raised to such a level that I could be heard beyond my office door. Additionally, no inquiries were made as to whether I have ever behaved in such a manner in front of any other employees at any time in my 19 years with the District. There was further no effort to determine if RP had a reputation for being aggressive. Had there been a real interest in determining what occurred, witness statements would have been taken in 2020. Instead, the OIG is molding the facts to fit a predetermined narrative.

This section calls into question the scope of the Latson investigation. The OIG again is ignoring the fact that the scope and investigation was closely monitored by the OGC and outside counsel. It again ignores that the termination which followed was affirmed by an appellate court twice. This is yet another attempt to damage my reputation and credibility for retaliatory reasons.

Within the section "Allegation 1 Findings", the OIG specifically found that RP had not made a protected disclosure. The analysis for any claim of retaliation requires a protected activity to occur prior to the alleged retaliatory act. The OIG found that neither I nor Dr. LaCave retaliated against RP by way of the request for the TDE/LOA to attend an off campus luncheon.

Again, within the Allegation 2 Findings, the OIG unequivocally stated that there was no evidence to show I or Dr. LaCava retaliated against RP for recusing himself by issuing the memo on November 15, 2019. Time and time again, the OIG finds that there was no retaliation.

III. Allegation 2a and 3a - Basis

As to Allegations 2a and 3a, the OIG admits that these allegations were added sometime after October 2020 – ten (10) months after the initial complaint and over six (6) months after the last receipt of any interviews or documents. The report indicates that allegations 2a and 3a were added as a result of an opinion received from Arthur Schofield, Esq. The letter from Mr. Schofield detailed the documents received and the question he was asked. Mr. Schofield wrote that he was provided with three (3) documents: the Whistle-blower policy, the

memo/directive to RP from November 15, 2019, and the letter transferring his work location from the same date. Mr. Schofield was clearly only provided with the facts necessary to elicit the OIG's desired outcome. The list of what he was not provided is extensive and telling. The OIG did **not** provide:

- (1) The School Board Policy 3.02 (Code of Ethics) - upon which this allegation is based;
- (2) The alleged disclosure/report by RP made prior to the alleged adverse personnel action (as none existed);
- (3) Any factual information regarding RP's job function that required his frequent travel to the very area to which he was transferred;
- (4) Any information regarding the standard for recusal provided to RP in August 2019;
- (5) Any information related to RP's assault of Dr. LaCava including the Gunster Law Firm report of February 2020; and/or
- (6) Any information related to the recommendation of Chief Kitzerow that RP be relocated from the FHESC.

All advice of counsel is reliant upon the client providing all relevant information. My twenty-seven (27) years as an attorney has taught me that clients frequently exclude information which does not advance their theory of the case. There is no doubt that this occurred in this case.

It is also crucial to understand that an adverse personnel action is only actionable if it is preceded by a protected activity. It cannot be actionable if the protected activity occurred after the alleged adverse action as in this case. There is not one reference in the report to any protected disclosure by RP tied to either the Code of Ethics or the Whistle-blower Act prior to January 15, 2020. The OIG is deliberately ignoring this fact. The basic legal principle and case law that an adverse employment action is only classified legally as such if it was done in retaliation for protected activity is also ignored. The OIG is using the term "adverse personnel action" as if it means something different and apart from the retaliation claims which were unsubstantiated.

Even though the report indicates that both Allegation 2a and 3a were added in response to the letter from Mr. Schofield, the findings in Allegation 2 specifically stated that the complaint filed by RP for retaliation "for making a protected disclosure/Whistle-blower complaint was not valid." There was simply no basis for this allegation.

Suddenly in the Allegation 2a Findings, the OIG claims RP was subject to disparate treatment. This is misleading. There is no discussion relative to there being no recusal standard for HR managers in OPS in place at the time Ms. Johnson declined to start the investigation. Her recusal was the impetus behind the staff meeting on August 15, 2019, providing the staff with the standard. There had been no reason to do so until this point. It would seem that the OIG believes the *ex post facto* enforcement of the standard to Ms. Johnson was required to support the imposition of the standard on RP. This not only nonsensical but would have led to a legally indefensible action against Ms. Johnson.

Furthermore, the OIG claims that I misapplied Florida Statutes §1012.31 when issuing a non-disciplinary memo to RP more than forty-five (45) days after the incident because, as cited in footnote 24, it is uniquely identifiable to RP and thus fits within the statutory

definition of a personnel file. If that is true, then the same applies to this report. The information contained therein is clearly uniquely identifiable to me, Dr. LaCava, RP and any other employee named in the report. Only, unlike the 88 day delay for the issuance of the directive to RP according to the report, the draft of this report was issued seven hundred twenty-two (722) days after the OIG became aware of the allegations giving rise to this document. There is no law that provides the OIG with a special exemption to §1012.31. The very notion that the statute applies to the memo to RP but not to this report is a clear violation of Florida law. I have been advised by the IG and her legal counsel that she believes she is exempt from this law. This is yet another example of the abuse of power and the intentional attempt by those in authority within the School District to damage my reputation. If the OIG's opinion that the law does not apply to her is allowed to stand, the weaponization of that office will only intensify and discourage anyone from speaking out against the OIG; the Superintendent and/or any Board member.

The OIG implies that my testimony that I was unable to issue the memo to RP because I was too busy with the Latson case given the speed at which I was able to issue documents close in time to the parking lot incident is not to be believed. No information was requested as to all the responsibilities I was performing between August and November. No weight was given to RP's threatening behavior toward Dr. LaCava and the recommendation by the Chief of Police that RP be removed as a reason for taking immediate action.

It is also worthy of mention that while the OIG characterized the memo/directives as an adverse personnel action due to the potential impact to his evaluation. They did not review any of the evaluations of RP before and after the incident to determine if any impact actually occurred. Again, the true facts were ignored as they do not align with the preordained outcome of this investigation.

IV. Allegation 3 Investigative Findings

In order to properly defend the allegations in 3a, I need to address findings in Allegation 3. Here, again, the OIG found no merit to the claim that RP was retaliated against by transferring him to the South Regional Office. The report, however, continues to interrupt the summary of my testimony with bolded statements attributed to other witnesses. Again, this occurs for no other witnesses.

Allegation 3 Findings make it very apparent that the move of RP from FHESC lacked temporal proximity to his recusal in the Latson case but did have temporal proximity to what has been referred to as the "parking lot incident". The findings unequivocally state that RP "was transferred for 'safety reasons' at the recommendation of Chief [of Police] Kitzerow." The OIG also found that RP's "job duties and responsibilities remained the same." The transfer was undoubtedly a result of the aggressive behavior of RP in the parking lot with the Chief of Human Resources.

Throughout the document, the word or any form of the word "allege" is absent except with regard to the parking lot incident. Every offer of fact issued by RP was treated as true. The only attempt at appearing unbiased is referring to the "alleged" assault of the Chief of Human Resources in one place. Even though that investigation was substantiated as to the

misconduct by RP by the Gunster Law Firm, the investigatory report was completely disregarded and ignored by the OIG.

V. Allegation 3a - Findings

The Allegation 3a Findings are again rife with issues. The OIG admits that Chief of Police Kitzerow recommended that RP be transferred but then deliberately ignores the fact as support for my actions. The OIG further found that the School Police department did not complete the threat assessment or file a report; however, there is no recommendation for an internal affairs investigation as to why they did not perform these critical functions to ensure the safety of District employees. Instead, the OIG tries to manipulate these facts to fit a narrative that somehow I and Dr. LaCava are to blame for their lack of action - that even though we complied with the recommendation of the head of a certified law enforcement agency with extensive experience and training, it was an adverse personnel action.

The OIG found that the transfer increased RP's expenses and commute time; however, there is no record of the OIG reviewing RP's travel reimbursements. All of RP's work (i.e. his assigned portfolio of schools) was in the South Region. While his commute did change, the move actually put him closer to the stakeholders he served. Additionally, after his retirement, his portfolio of schools was transferred, for the most part, to Dr. Nancy Patrick who at her own request continues to work out of Addison Mizner in the South Region. None of this information was included in the report or provided to Mr. Schofield. Additionally, as we frequently tell employees, they are employed by the School District and are not guaranteed any particular work location. For instance, the Public Records department which was previously housed at FHESC was moved to South ITV in Boynton Beach with the Communications department. Under the OIG's analysis, every employee in that department was subject to an adverse personnel action if their commuting time increased. These types of moves frequently occur within the District and have never been viewed as adverse personnel actions.

VI. Concerns with the Legal Review

The report also contains a section labeled as Legal Review that is troubling. There is nothing in the Investigative Report or in the legal review by the OIG's in-house counsel, which sets forth what section of Policy 3.02 was alleged by RP to have been violated, when the disclosure or report was made, and to whom. It is legally impossible to take an adverse action based upon a disclosure or report that never occurred.

The OIG attorney claims that there were no witnesses who indicated that RP acted violently or threatened violence. Ms. Todd and Ms. Richards unequivocally stated that RP acted aggressively toward Dr. LaCava and they contemplated calling for a law enforcement officer. An employee need not throw a punch to be considered a threat. The very notion that an employee may not be transferred after falsely imprisoning a supervisor in a vehicle by preventing his exit and then acting aggressively toward him with an apparent ability to carry out a violent act is either deliberately indifferent to workplace violence issues or part of a concerted effort to find fault on the part of the victim to this incident where none existed.

There is no consideration given to the assertion by me and Dr. LaCava that the delay in moving RP was an attempt to allow school police the time they needed to assess the threat as promised and required. It is crucial to remember that this entire incident was investigated by the Gunster Law Firm, and RP would have been held accountable for his impermissible conduct but for his delay tactics which ensured he was retired prior to the report's completion.

The concept that RP worked a "mere feet" from Dr. LaCava ignores two important facts: (1) the door to Dr. LaCava's suite is locked and requires badge access to enter; and (2) RP was frequently in the South Region servicing his portfolio of schools. Additionally, no mention was made of the fact that Belinda Troise, my secretary at the time, was instructed not to allow RP to enter my office and shut the door. I requested that if that occurred, she was to concoct a reason for me to exit the office or call school police if necessary. Finally, the fact that the threat assessment was not completed should explain why the transfer was necessary, not, as the OIG's counsel indicates, the other way around.

Great weight was given to the fact that RP was asked to relocate five (5) days prior to the stated transfer date in the letter. Had the OIG inquired as to this fact, they would have been directed to inquire into RP's scheduled days off leading up to the Thanksgiving break. It is my recollection that RP had a planned vacation from the next week through the Thanksgiving break. What also is conspicuously marginalized was Mark Mitchell's testimony that RP told him during the meeting on November 15th, that the move to the south region was a good solution. The OIG ignored the fact that at the time of the transfer RP thought it was a good solution.

VII. Concerns with Investigative Conclusions

The first two bullets in the section labeled as Investigative Conclusions on page 34 of the draft report clearly spell out that there was no protected disclosure by RP until January 15, 2020 and no retaliatory action was taken against him. The OIG specifically found that the alleged adverse personnel actions were taken three (3) months after the recusal but only one (1) week after the incident in the parking lot. Somehow the OIG is trying to use this fact to show a connection between the recusal and the actions taken by me on November 15th; however, it confirms that there was a legitimate business reason for directing RP to perform his job and for the transfer closer to his actual work. The actions taken were, by the OIG's own findings, clearly taken as a result of RP's aggressive behavior against Dr. LaCava, which is not protected activity.

VIII. Concerns with OIG's Recommendations

There are even more issues with the Recommendations section. The OIG states that there is no progressive discipline policy for non-bargaining unit employees. While correct in that there are no formally adopted policies, the District has applied the steps for progressive discipline contained within the Collective Bargaining Agreements for CTA, SEIU/FPSU and AESOP to all non-bargaining unit employees for my entire tenure with the District. (Exhibit #3) Additionally, a draft policy was provided to the OGC for legal review on or before November 15, 2021, codifying the procedures for progressive discipline utilized by the District as a past practice for more than two decades. (Exhibit #4)

For the reasons set forth herein, any attempt to issue discipline to me or to release an unredacted version of the investigative file and/or report more than seven hundred (700) days from the OIG receiving the complaint would violate Florida Statutes Section 1012.31, in addition to being legally insufficient in substance. The OIG may not rely on this law to support a finding that I could not issue directives to RP and ignore the more egregious length of time it took for the OIG to create this draft report.

The OIG further recommends that Standard Operating Procedures for disciplinary cases be codified by HR. The OIG was provided with a draft of the proposed Standard Operating Procedures manual on or before November 19, 2021. The OIG also further fails to acknowledge that her office was also provided with a copy of the SOP created by the department during Dr. Arthur Johnson's tenure as Superintendent. While the IG raised concerns to the Superintendent regarding the thickness of the new manual in comparison to the one utilized by Miami-Dade, she refused to review the document for reasons related to her alleged independence¹. (Exhibit #5) Had she taken the time to review the documents, she would have noticed the sections on progressive discipline and the recusal process for investigators. Again, this illustrates an attempt to paint my work in the worst light possible by ignoring facts that do not align to the prescribed narrative.

It should be noted that the Affected Party Notice in the draft report is also factually inaccurate. It states that I was provided with a copy of the draft report on December 8, 2021, and have until January 19, 2021, to respond. The draft was not received by me until January 6, 2022.

IX. Jurisdictional Concerns

The OIG also lacked Jurisdictional Authority. The complaint giving rise to this investigation was received by the OIG on or about January 15, 2020. At the time of the filing, the OIG did not have the authority to investigate violations of the Code of Ethics without an allegation of fraud. That authority was not provided by the School Board until the IG policy (1.092) was adopted on April 7, 2021. (Exhibit #6) While the IG certainly had the authority to investigate the complaint under the Whistle-blower policy, it had no jurisdiction over the Code of Ethics. To this day, the Code of Ethics policy, as stated in the policy itself and on the Policy Tracking Chart, is owned by the Office of Professional Standards ("OPS"). While OPS could not have investigated its director, the complaint should have been turned over to the Office of General Counsel for investigation by an independent outside authority, agency or firm - as has been done with other cases.

¹ The difference in thickness is due entirely to the lack of templates provided in our current draft. As with Miami-Dade, the PIM contains no templates and is a guide for administrators. The PIM is almost identical in size to our SOP. The larger document upon which the IG apparently based her assessment contains templates for all documents and, in some places, step-by-step instructions. This document operates as the back-office manual for staff. Once we are advised as to whether the Superintendent wants the SOP incorporated into policy, we will add the templates, etc. to what will serve as the back-office manual as done in Miami-Dade Public Schools.

X. Concerns Regarding Violations of Law, Retaliation, Conflicts of Interest, and Abuse of Power

It is very concerning that this report was held by the OIG for seven hundred (722) days before allowing me to respond to the allegations much less be advised that I was even under investigation. The timeline of events, as set forth (in part) below, raises other serious concerns regarding retaliation, conflicts of interest and abuse of power on behalf of the Superintendent, the IG and, possibly, several Board members.

August 19, 2019 - RP recuses himself from performing an investigation.

November 8, 2019 - Parking lot incident.

November 15, 2019 - RP issued a directive memo and relocated to the South Regional Office.

January 15, 2020 - RP files Whistle-blower complaint with OIG.

February 7, 2020 - OIG issues case closure letter to RP regarding Whistleblower Complaint.

February 12, 2020 - Gunster Law Firm issues "Investigation Final Report: Complaints Against Robert Pinkos Regarding the November 8, 2019 Altercation." (Exhibit #2)

March 2, 2020 - Forty-Fifth (45th) calendar day after complaint filed (Florida Statutes §1012.31).

March 18, 2020 - I was interviewed by the OIG relative to the Whistle-blower complaint. I was not informed that I was under investigation.

March 2020 - Investigative materials compiled and interviews completed by OIG.

October 1, 2020 - OIG receives opinion from A. Schofield on Whistle-blower policy.

November 19, 2020 - During a meeting with the OIG, OGC and HR, the IG began discussions regarding her initiative to create a centralized complaint process. Shawntoyia Bernard raised concerns as to which ethical complaints fall under the OIG and which would fall under OPS.

January 26, 2021 - Keith Oswald reported the Bonnie Fox/Charter School issues to OPS. OPS opened an investigation (hereinafter referred to as the "Fox Investigation").

February 4, 2021 - Received a call from Oscar Restrepo in the IG's office. We were told to cease the Fox Investigation immediately and turn over all documents to the OIG.

May 13, 2021 - Meeting between me and the IG. Ms. Michael indicated that she would only investigate fraud and serious violations.

July 28, 2021 - Mr. Burke becomes interim Superintendent

August 12, 2021 - I was informed by Dr. LaCava that my department was being split apart as part of a Districtwide reorganization. I was informed that despite 6 years as successfully serving as the Chief Negotiator and my background in Labor and Employment law, all labor relations functions would be removed and I was to serve only as the Director of Professional Standards.

August 13, 2021 - I received a call from Superintendent Burke assuring me that despite the reorganization, he wanted me to continue working for the District. He advised that he had no plan for hiring staff for the Labor Relations department at that time. I was subsequently replaced by a less qualified white male.

August 31, 2021 - HR and the OIG met again regarding a centralized complaint process during which I asked questions and voiced concerns.

September 2, 2021 - I received a call from Superintendent Burke to reassure me that my involuntary transfer/demotion to Director of Professional Standards was not "a devious plot to exit [me] from the system." He also said he was trying to take me "out of harm's way." He also stated that the IG felt it was not a "good fit" to have me oversee Professional Standards and Labor Relations.

September 9, 2021 - I was asked by Chief of Staff, Jay Boggess, to draft a MOU for the District to present to CTA the next morning based upon notes he provided. I complied.

September 10, 2021 - I was requested to participate in the District's caucus during the MOU negotiations to assist as they were having difficulties understanding the terms of the MOU. I felt incredibly uncomfortable with their attitudes toward me. I was also uncomfortable providing assistance when I had been removed from this function.

September 22, 2021 - I received a call from Superintendent Burke who indicated that the Labor Relations function was "suffering with [my] absence." I answered any questions he had relative to negotiations strategies and provided advice.

September 30, 2021 - HR and the OIG met regarding a centralized complaint process. I was advised that the OIG would provide language for the process. When the document was received it was to be part of the internal standard operating procedures for the OIG. We shared that it must be a policy for the District as a whole to clarify the reporting process. We also voiced concerns regarding the length of time the OIG would have to complete the review/investigations.

October 1, 2021 - Informed Superintendent Burke in a meeting with Dr. LaCava that an investigation into Keith Oswald (related to the Fox Investigation) referred to OPS from the OIG could result in differing results.

October 8, 2021 - Meeting with Superintendent Burke, OIG staff and HR wherein I informed the group that the investigation done by the OIG into Mr. Oswald was not legally sufficient and when further investigation completed, it would most likely be unsubstantiated.

October 29, 2021 - Scheduled meeting between HR, OGC, OIG and School Police to discuss the complaint clearinghouse idea. All staff from the OIG declined to attend.

October 29, 2021 - I had another conversation with Superintendent Burke regarding the Oswald investigation. Mr. Burke questioned why it was "reinvestigated". He informed me that this was causing issues with the IG and the Board. I informed him that if he wanted someone to simply rubber stamp OIG investigations regardless of the legal sufficiency, he would need to hire someone else. As an attorney, I was not comfortable signing off on an insufficient finding.

November 4, 2021 - Another meeting with Superintendent Burke, HR and representatives from the OGC was held. Staff from the OIG was invited but again did not attend. I was again questioned about reinvestigating OIG reports. I reiterated that I would not sign off on legally insufficient complaints. I stated that I would not reinvestigate any OIG complaints that received legal sufficiency sign off from the OGC - as they defend the actions when challenged. I voiced concern regarding the 45 day issue (Florida Statutes §1012.31). The Superintendent again reiterated his concerns for the "reinvestigation" and the problems it was causing for the IG and the School Board.

November 19, 2021 - The letter was sent to Keith Oswald indicating the allegations were unsubstantiated. (It is important to note that shortly thereafter PPS for DOE also found no further investigation was warranted.) Dr. LaCava and I were questioned via email by the Superintendent about the OPS outcome of this case. Superintendent Burke voiced concern that he had not been consulted before the closure letter was sent despite the numerous meetings already held. (Composite Exhibit #7)

November 22, 2021 - I sent to Superintendent Burke a detailed timeline relative to the meetings and conversations that were held as to the OIG investigation. (Composite Exhibit #7)

November 26, 2021 - Dr. LaCava and I received an email from the Superintendent voicing concern that he was not given a "final conversation along with the opportunity to weigh in on discipline stemming from these investigations." (Composite Exhibit #7)

December 8, 2021 - The IG informs me via email that neither she nor the OIG's counsel will review the draft Standard Operating Procedures Manual ("SOP") previously sent to her. (Exhibit #5)

December 13, 2021 - Dr. LaCava was informed by Superintendent Burke that he was to be demoted to a Principal at the December 15, 2021, School Board Meeting. The only reason given was that the Superintendent wanted to "go in a different direction." Dr. LaCava subsequently resigns.

December 13, 2021 - I provide the OIG with a copy of my comments to the Pinellas IG relative to the Latson report.

December 15, 2021 - At a public School Board meeting, IG provides a report to the Board in which she indicated that the HR policies, procedures and practices were deficient in less than

flattering terms. She stated that it was her top priority to assess and evaluate District systems for improvement, efficiency and accountability. The IG addressed no other division's work. She specifically stated that the Code of Ethics lacked meaningful training and was limited to a perfunctory annual video. (All training is in compliance with Policy 3.02 which actually sets forth how the training will be done in the policy; however, the IG did not mention that fact.) When the documents were requested to support and explain her public censure, the IG indicated that there were no reports, analysis, or investigations. These derogatory statements regarding the work of Dr. LaCava and I were simply her talking points.

December 21, 2021 - I was invited to a meeting to discuss a personnel issue at a school. In attendance was Dr. Licata, Mr. Hepburn, Mr. Tierney and Superintendent Burke. During the course of the meeting I provided the Superintendent with the plan of action as well as any associated risks. Superintendent Burke became red in the face as I laid out the facts as well as the risks to any other proposed plan of action. He became more and more agitated before loudly voicing his concern for my judgment and abilities - "I should be able to trust that my administrators know what they are doing." Although the men in the room had more knowledge of the factual details of the issue and had known for longer, his ire was directed only at me. I was extremely upset by this behavior. Several hours later, he came to my office. During our conversation he stated that he wanted to think more about the personnel issue and asked that I wait until the next day to take any action. It was at this meeting that he informed me that the IG had voiced concerns about the draft Standard Operating Procedures Manual because it was not as thick as the one used in Miami-Dade Public Schools. (See Footnote 1.) I took the time to explain the differences to him; however, he said the IG was vocal about the issue.

December 22, 2021 - I was told by Superintendent Burke that after the General Counsel voiced the same concerns as me, we would follow the plan of action I brought forward.

January 6, 2022 - I received the draft report from the OIG and discovered that I had been under investigation.

XI. Conclusion

The OIG's own manual for Investigators requires a more timely completion to any investigation. OIG Directive 4.02.1.G. requires cases to be completed within 120 days. Directive 6.01.3.b and c, have a 90 day timeline for finalizing any whistle-blower complaint after a determination of whistle-blower status is made. None of those standards were adhered to in this case². There was nothing supplied within the report to support any extensions of time. No questions of independence or conflict of interest were raised when the same Investigative Team that was overruled by my office in the Fox Investigation was permitted to complete an investigation into my actions. No questions of independence or conflict of interest were raised regarding the relationship between RP's wife and Board members (the OIG's direct supervisors) - i.e. membership in the same organizations, traveling overseas together, campaign contributions, and or other close personal associations. No inquiries were made into whether RP's wife's status as a subordinate of

² It should be noted that the directives from the OIG setting forth these timelines is violative of the very provisions of Florida Statutes §1012.31 cited in the OIG's draft report.

Keith Oswald gave RP a reason to retaliate against Mr. Oswald and/or former Superintendent Dr. Fennoy through the Latson investigation.

It is clear to me that upon my refusal to sit silently while the OIG revised policies to expand her (and by extension, the School Board's) authority over day-to-day personnel matters and my refusal to be pressured to assign discipline when it was not warranted because the OIG, Superintendent and/or Board members wanted to punish an employee, has resulted in a change in attitude toward me and my work as well as that of my supervisor. I have worked for the District for nineteen (19) years without issue as reflected in all of my performance evaluations. I have never had an unsatisfactory performance evaluation. I have never been disciplined. I have taken on tasks that no one else wanted simply because I was asked to do so. The fact that the Superintendent felt the need to inform me that he was not trying to exit me from the system and that he was trying to get me out of harm's way supports the belief that there were people calling for my marginalization, if not outright removal. I am the victim of retaliation for my refusal to bow to pressure to change an investigation's outcome nor to allow the OIG's office to become a weapon against other employees. There are serious questions relative to possible abuse of power, conflicts of interest, discrimination/harassment and retaliation which should be investigated by the Commission on Ethics, the Attorney General and/or the Governor for the State of Florida. This response should also be treated as a Whistle-blower complaint and provided with all protections that this entails.

I attest that I have read the foregoing and the facts stated herein are true to the best of my knowledge.

V. Evans-Paré
Vicki Evans-Paré

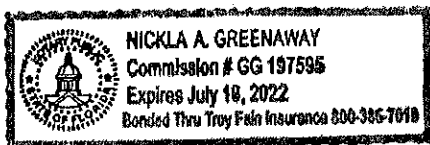
STATE OF FLORIDA
COUNTY OF PALM BEACH

Sworn to or affirmed and subscribed to me this 28th day of January 2022 by Vicki Evans-Paré.

Nickla Greenaway
Signature of Notary Public - State of Florida

Personally known or Produced Identification _____

Type of Identification _____



Agenda

ELR Staff Meeting – August 14, 2019

Coverage when out of the office – inform Belinda who will be covering for extended absences

Duty call rotation?

In the office – 8 to 5, working remotely allowed with prior permission.

Recusals - direct, personal and significant personal involvement with the accused or a critical witness

Response Time – 24 hour or less turn-around for phone calls and emails.

Sharepoint – log your cases

Sterling Award process – November 2019 should have plans in place, March 2020 interviews

Procedures for Reassignment of Employees

Email Records request – Copy Belinda and send to Richard Saturnini or Eric Walsh

Notification of Investigation – How and when is an employee notified?

Changes in Assignments – anyone interested in changing schools/regions





ELR Staff Meeting

Created by: vicki.evans-pare@palmbeachschools.org · Your response: Yes, I'm going

Time

10:30am - 11am (Eastern Time -
New York)

Date

Thu Aug 15, 2019

Where

A-128

My Notes

Guests

- Brenda Johnson
- Brian Qualters
- Carol Stewart Martin
- Darron Davis
- Deneen Wellings
- Germaine English
- Gloria Varela
- Heidy Gonzalez-Melendez
- Jessica Anderson
- Jose Fred
- Kenyetta Haywood
- Mary Powers
- Nancy Patrick
- Robert Pinkos
- Vicki Evans-Pare
- Clara Trammell
- Belinda Troise
- Erminia (Mimi) Garcia
- Nancy Rodriguez

BOCA RATON
FT. LAUDERDALE
JACKSONVILLE
KEY LARGO
MIAMI
ORLANDO
PALM BEACH



STUART
TALLAHASSEE
TAMPA
VERO BEACH
WEST PALM BEACH
WINTER PARK

GUNSTER

FLORIDA'S LAW FIRM FOR BUSINESS

CONFIDENTIAL AND PRIVILEGED COMMUNICATION

TO: The School District of Palm Beach County
FROM: Joseph G. Santoro, Esq.; J. Anthony Nelson, Esq.
IN RE: Investigation Final Report: Complaints Against Robert Pinkos Regarding the November 8, 2019 Altercation
DATE: February 12, 2020

I. INTRODUCTION

A. Scope of Investigation

Our Firm was engaged by the School District of Palm Beach County (the "School District") to independently investigate the allegations of multiple complaints it received from School District employees regarding HR Manager, Robert "Bob" Pinkos ("Mr. Pinkos"). Specifically, we were asked to investigate an altercation that was allegedly initiated by Mr. Pinkos in the School District's parking lot on the morning of November 8, 2019.

Upon our engagement, we immediately requested and reviewed relevant documents, witness statements, and policy information. On December 5, 2019, we began interviewing the relevant witnesses. Our interviews initially included the following witnesses:

- Katrina Todd, Purchasing Technician with twenty (20) years of employment at the School District;
- Jacquelyn Richardson, HR Sr. Analyst with thirty-eight (38) years of employment at the School District;
- Dr. Gonzalo La Cava, Chief of Human Resources with three (3) years of employment at the School District; and
- Vicki Evans-Paré, Director of Employee and Labor Relations with seventeen (17) years of employment at the School District.

When we attempted to schedule an interview of Mr. Pinkos, he claimed that he was unavailable to be interviewed for several weeks. We received communications from two private attorneys that represented Mr. Pinkos, who asked that we postpone his interview until January 16, 2020 because he was unavailable due to a previously scheduled vacation. Accordingly, at the request of Mr. Pinkos's counsel, we delayed the completion of this investigation until Mr. Pinkos was available to be interviewed and was given a chance to respond to the allegations. On January 16, 2020, Mr. Pinkos appeared at our office (which was the location his lawyers

EXHIBIT

EP 2

requested) with his counsel, but refused to participate in the interview. Instead, Mr. Pinkos's attorneys provided us with a lengthy written "complaint" which he apparently submitted to the Inspector General's office on or about January 15, 2020 (the "IG Complaint"). While the IG Complaint made a plethora of allegations regarding a prior School District investigation in August 2019, it did not materially address the events that occurred on the morning of November 8, 2019.¹

After reviewing the IG Complaint we determined that the IG Complaint was outside the scope of our investigation. Specifically, our investigation was limited to whether Mr. Pinkos acted inappropriately or violated any School District policies when he allegedly instigated a confrontation with Dr. Gonzalo La Cava in the School District parking lot on the morning of November 8, 2019. To the extent that the allegations of the IG Complaint are offered by Mr. Pinkos to explain his motives for initiating the alleged confrontation on November 8, 2019, or the motives of others who might have made complaints about him, we determined that neither was particularly relevant to determining what actually occurred on November 8, 2019. First, regardless of whether the allegations of the IG Complaint were false or true (which we did not determine) neither would justify or excuse the alleged behavior engaged in by Mr. Pinkos on the morning of November 8, 2019. Second, the individuals who made the November 8, 2019 complaint were not involved in the prior investigation. Notably, the primary eye witness to the November 8, 2019 altercation claims she did not even know who Mr. Pinkos or Dr. La Cava were, and had no involvement in the School District's prior investigation.

For these reasons, we did not expand our investigation to include the issues identified in the IG Complaint as they had little, if any, relevance to the issues under our investigation.

B. Summary of Conclusions²

Based on the evidence we reviewed and the statements from the witnesses, our conclusion is that Mr. Pinkos acted in an unprofessional and inappropriate manner when he initiated a confrontation with Dr. Gonzalo La Cava, the School District's Chief of Human Resources ("Dr. La Cava"). While it appears that the confrontation stemmed from Mr. Pinkos's efforts to address a grievance regarding his supervisor, Mr. Pinkos's actions were inappropriate and done in contravention to the School District's established grievance procedures. Specifically, School Board Policy 3.31, "Grievance Procedure for Employees" (the "Grievance Procedure"), contains a clear, multi-step procedure for employees to properly address grievances with their supervisors. Based on the evidence we received, it is clear that Dr. La Cava acted

¹ Instead, this new "complaint" raised numerous allegations regarding a prior investigation conducted by the School District, and claimed that Mr. Pinkos was being subjected to retaliation.

² This Report and the information contained herein is not transmitted as 'fact' because the undersigned investigators have no personal knowledge regarding the events that occurred on the morning of November 8, 2019. Rather, what is included in this Report is a summary of the statements of the witnesses, and our opinions and conclusions regarding the information we received during the investigation process. Part of this Report includes our opinions based on our assessment of the witnesses' credibility and the existence of corroborative witness statements and other evidence.

properly and consistent with School Board Policy 3.31 by instructing Mr. Pinkos to follow the School District's Grievance Procedure to address his concerns about his supervisor. Mr. Pinkos refused to follow the Grievance Procedure and, instead, took it upon himself to improperly confront Dr. La Cava in the School District Parking lot. In this regard, Mr. Pinkos's actions were improper.

Second, during this altercation, Mr. Pinkos engaged in behavior that we believe violated School Board Policy 3.02, titled the "Code of Ethics." The Code of Ethics "is designed to protect the health, safety and general welfare of students and employees and to define unethical conduct justifying administrative or disciplinary action." The Code of Ethics governs the "accountability" and "professional conduct" of School District employees. Specifically, section 4(a) states that "Each employee agrees and pledges to provide the best example possible; striving to demonstrate excellence, integrity and responsibility in the workplace." Similarly, section 5(i) states that "Employees should demonstrate conduct that follows generally recognized professional standards" and defines unethical conduct as "any conduct that impairs the ability to function professionally in his or her employment position or conduct that is detrimental to the health, welfare or discipline of students or the workplace."

As more fully described below, Mr. Pinkos's behavior of initiating an unprofessional confrontation with a supervisor in the School District's parking lot is not within the School District's professional standards in the workplace. Rather, Mr. Pinkos's behavior was potentially detrimental to the health and welfare of himself and of others. Regardless of his reasons for initiating this confrontation, Mr. Pinkos acted in a manner that the witnesses described as "loud" and "aggressive", and caused employees to believe that the situation could become violent. Not only is such behavior outside of professional standards and the orderly and professional process for addressing grievances, it is the type of behavior that could lead to acts of violence and intimidation in the workplace and should not be tolerated, regardless of whether the reasons for the confrontation were justified or not.

For these reasons, we believe that it would be appropriate for the School District to take disciplinary action against Mr. Pinkos for his behavior.

II. INFORMATION OBTAINED DURING THE INVESTIGATION

A. Summary of Information Obtained From Witness Statements and Interviews

According to multiple witnesses, on the morning of November 8, 2019, around 8:30 a.m., an altercation was instigated by Mr. Pinkos in the School District parking lot located outside of the Fulton-Holland Educational Services Center (the "Fulton-Holland Center") that involved Mr. Pinkos and the School District's Chief of Human Resources, Dr. La Cava. Witnesses reported that Mr. Pinkos, without provocation, approached the driver side door of Dr. La Cava's vehicle while Dr. La Cava was attempting to exit his vehicle. Mr. Pinkos blocked the doorway preventing Dr. La Cava from exiting, according to witnesses. At this point, witnesses reported that Mr. Pinkos began yelling at Dr. La Cava and became visibly animated and mad. As set forth in more detail below, one witness who saw the altercation described Mr. Pinkos as "aggressive",

“animated”, and “mad”, and believed that it might be necessary to call the School Police as she believed that things were about to escalate to a physical altercation based on Mr. Pinkos’s aggressive behavior.

In addition to other witnesses, Dr. La Cava reported this incident and reported that he initially shocked and frightened by Mr. Pinkos’s actions. Dr. La Cava claims he was startled when he opened his door to get out of his vehicle upon arriving for work and saw Mr. Pinkos standing in his doorway, preventing him from exiting his vehicle. He claimed that Mr. Pinkos then started yelling at him about what Mr. Pinkos claimed was Dr. La Cava’s refusal to meet with him, and was aggressive in his tone and body language. Based on Mr. Pinkos’s aggressive behavior, Dr. La Cava believed that there was a possibility that Mr. Pinkos could become violent.

Mr. Pinkos ultimately stepped away from Dr. La Cava’s door and allowed him to exit his vehicle. As Dr. La Cava was exiting his vehicle, he claims to have told Mr. Pinkos “you can’t speak to me like that.” Mr. Pinkos replied “Don’t wag your finger at me.” Then, according to one eye witness, Dr. La Cava told Mr. Pinkos that “it’s inappropriate for you to confront me at my car.” According to Dr. La Cava, Mr. Pinkos responded that he was “very emotional about this.”

In Mr. Pinkos’s IG Complaint, he briefly alleges that he and Dr. La Cava had a verbal exchange on the morning of November 8, 2019 in the parking lot outside of the Fulton-Holland Center. According to Mr. Pinkos, he “noticed Dr. La Cava exiting his car” and then “walked by [Dr. La Cava’s] car as he was getting out” to ask if Dr. La Cava was going to meet with him. Mr. Pinkos also alleges that Dr. La Cava told him “Don’t confront me again at my car,” but claims that his response was “We both need to take a step back.”

Various witnesses described the nature of the events that occurred in the parking lot on the morning of November 8, 2019, and Mr. Pinkos’s behavior as follows:

- “heated conversation”
- “an employee being aggressive”
- “very animated and aggressive conversation”
- “raising his voice”
- “speaking in a loud and aggressive fashion”
- “seemed animated; you could see his head bopping back and forth, like when someone is mad”
- “nervous about the situation and his behavior”
- “looks like they are going to fight”
- “thought someone was going to get hurt”
- “thought about calling the School Police”

The above are just a sampling of the types of statements made by witnesses when describing the events that occurred in the parking lot on November 8, 2019 and Mr. Pinkos's behavior. Below are summaries of each witness's interview regarding the events that occurred on the morning of November 8, 2019, in the School District parking lot.

B. Witness Statements and Interviews

i. Katrina Todd

Katrina Todd has been employed at the School District for twenty (20) years and has always worked in the Purchasing Department as a Purchasing Technician. Ms. Todd does not report to either Mr. Pinkos or Dr. La Cava; she reports directly to Darci Garbacz, the Director of the Purchasing Department. Ms. Todd informed us that prior to the November 8th altercation, she did not know Mr. Pinkos's or Dr. La Cava's name or their positions at the School District. Her only familiarity with both individuals was that she recognized them from having seen each of them in the workplace periodically.

On the morning of November 8, 2019, Ms. Todd was walking on a sidewalk adjacent to one of the parking lots outside of the Fulton-Holland Center and was making her way into the building. As she was walking into the building, Ms. Todd heard a man (who she now identifies as Mr. Pinkos) "raising his voice," which caught her attention and caused her to look into the parking lot. When she looked into the parking lot, Ms. Todd recalled seeing Mr. Pinkos "standing there over Dr. La Cava's car" while Dr. La Cava was "sitting." Ms. Todd said that Mr. Pinkos "seemed animated; you could see his head bobbing back and forth, like when someone is mad." Ms. Todd started to walk slower because she wanted to see what exactly was going on and "wanted to make sure no one was going to get hurt." She then saw Dr. La Cava exit his vehicle and recalled him saying to Mr. Pinkos, "that was inappropriate for you to come to my car." According to Ms. Todd, Mr. Pinkos responded to Dr. La Cava and the two exchanged a few more words and then began making their way into the Fulton-Holland Center. At this point, Ms. Todd continued down the sidewalk and walked into the Fulton-Holland Center. Ms. Todd claims that she never heard Dr. La Cava yell or raise his voice during the parking lot altercation.

Once she was inside the Fulton-Holland Center, Ms. Todd saw Jacquelyn Richardson, who she has known for about ten (10) years from a prayer group they both use to attend, and stopped to speak to her about the altercation that was going on in the parking lot. While she was conversing with Ms. Richardson, Ms. Todd remembers feeling "concerned" at the time. She said that her "heart was beating" because she "thought someone was going to get hurt." She also said that her and Ms. Richardson "thought about calling the School Police."

In the middle of speaking with Ms. Richardson, Ms. Todd saw Mr. Pinkos enter the building. She said that Mr. Pinkos "appeared to have calmed down." Ms. Todd then saw Dr. La Cava enter the building and asked him "are you okay?" It was clear to us, based on this question and Ms. Todd's report of the incident, that she viewed Mr. Pinkos as the aggressor in the situation. Dr. La Cava responded, "Yes, I'm okay. Someone might want to speak to you" about what just happened. After speaking with Dr. La Cava, Ms. Todd went to her office suite and

spoke with her supervisor, Ms. Garbacz, about the altercation. According to Ms. Todd, she was still so "worked up" when she got to her office that Ms. Garbacz told her "you need to breathe a little."

Ms. Todd shared with us that in her twenty (20) years with the School District, this was the first time she had ever seen an incident like the November 8th altercation. She opined that what she witnessed was bad and inappropriate, but does not want Mr. Pinkos to lose his job over the altercation.

In our opinion, Ms. Todd came across and appeared very credible during her interview. She did not know either of the individuals involved and did not show any signs of bias or prejudice during her interview. Ms. Todd always maintained eye contact while answering questions and she answered every question directly.

A copy of Ms. Todd's sworn statement dated November 8, 2019, is attached as **composite Exhibit "A."**

ii. Jacquelyn Richardson

Jacquelyn Richardson has been employed at the School District for thirty-eight (38) years and currently works in the Recruitment & Retention department as a HR Sr. Analyst. She is scheduled to retire in April 2020. Ms. Richardson does not report to either Mr. Pinkos or Dr. La Cava, but knew both of them prior to the November 8th altercation.

On the morning of November 8, 2019, Ms. Richardson was already at work and was walking through the Fulton-Holland Center. As Ms. Richardson was walking, she saw Ms. Todd, who she has known for years, enter the building. Ms. Todd approached Ms. Richardson and told her that there was an altercation going on in the parking lot. Ms. Richardson recalled Ms. Todd saying, "Someone is in the parking lot and it looks like they are going to fight." Ms. Todd also told her, "It looked like it was going to get aggressive." Ms. Richardson recalled Ms. Todd seeming "concerned" and "frantic," so much so that Ms. Richardson asked "should we call the police?"

As Ms. Richardson was speaking with Ms. Todd, she saw Mr. Pinkos walk into the building and continue towards the direction of his office suite. Then, she saw Dr. La Cava enter the building. Initially, Ms. Richardson did not think that Mr. Pinkos or Dr. La Cava were the individuals involved in the altercation that Ms. Todd had just witnessed. She knows both Mr. Pinkos and Dr. La Cava and has never seen either of them show any sort of signs of aggression or anger. However, once Dr. La Cava was inside the building, Ms. Todd walked directly up to him and asked him "Are you okay?" At this point, Ms. Richardson quickly realized that Mr. Pinkos and Dr. La Cava were the ones involved in the altercation. Ms. Richardson then decided that since she knew both of the individuals involved, and Ms. Todd did not, she would be the one to report the altercation.

Ms. Richardson informed us that in her thirty-eight (38) years, she has never seen an incident like this at the School District. Although Ms. Richardson said that Mr. Pinkos is "usually a pretty even-keeled guy" and that she was a "little shocked" when she heard about the altercation, she opined that some sort of discipline is warranted because Mr. Pinkos's actions were not appropriate for the workplace.

In our opinion, Ms. Richardson came across and appeared very credible during her interview. She was pleasant, forthcoming, and made eye contact while answering every question that was asked. Ms. Richardson is scheduled to retire in April 2020 and did not appear to have any bias regarding the November 8th altercation.

A copy of Ms. Richardson's sworn statement dated November 8, 2019, is attached as composite Exhibit A.

iii. Dr. Gonzalo La Cava

Dr. La Cava has been employed at the School District for three (3) years. He is the School District's Chief of Human Resources and oversees a number of departments. Dr. La Cava interacts predominately with the directors of the departments that he oversees. So, although Mr. Pinkos works in one of the departments overseen by Dr. La Cava (Employee & Labor Relations), Dr. La Cava has had very limited interactions with Mr. Pinkos. According to Dr. La Cava, he never had any sort of issue or confrontation with Mr. Pinkos prior to the parking lot altercation that occurred on the morning of November 8, 2019.

Prior to the parking lot incident on November 8, 2019, Dr. La Cava received an email from Mr. Pinkos requesting a meeting. According to Dr. La Cava, he had Ms. Evans-Paré schedule a meeting between him, Mr. Pinkos, Ms. Evans-Paré, and Jose Fred, another HR Manager in the Employee and Labor Relations department. However, on November 6, 2019 (two (2) days prior to the meeting), Dr. La Cava notified Mr. Pinkos through email that he had to cancel the meeting due to a scheduling conflict. In his email, Dr. La Cava instructed Mr. Pinkos to submit a grievance in the meantime so that any concerns that he had could be addressed immediately: "The meeting you requested has been cancelled due to a scheduling conflict. I suggest that you immediately bring any grievances or concerns to your direct supervisor so that she can address immediately and provide you with guidance."

Two (2) days later, on the morning of November 8, 2019, on or around 8:30 a.m., Dr. La Cava pulled into the parking lot outside of Fulton-Holland Center and parked his vehicle in his assigned parking space. Dr. La Cava then opened the door to get out of his vehicle and, according to him, Mr. Pinkos was standing "right in front of the door," preventing him from exiting his vehicle. Dr. La Cava says he was initially shocked and frightened by Mr. Pinkos's actions. According to Dr. La Cava, he regularly signs and approves employee terminations and he initially thought that Mr. Pinkos was possibly a prior School District employee who was disgruntled and emotional. Dr. La Cava claims that he was also shocked to see Mr. Pinkos once he realized it was him. Dr. La Cava claims that Mr. Pinkos did not maintain an assigned parking spot next to or near Dr. La Cava's spot and never parked next to or near him in the past.

Dr. La Cava recalls that the first thing Mr. Pinkos said, in an "aggressive" and "loud" manner, was "you need to meet with me." Dr. La Cava, as he had instructed Mr. Pinkos previously, responded, "You need to meet with your supervisor." Mr. Pinkos responded, "Isn't your job to mediate these things?" Then, Mr. Pinkos moved away from the driver side door which gave Dr. La Cava an opportunity to exit his vehicle, which he did. Once he exited his vehicle, Dr. La Cava claims that he told Mr. Pinkos "Bob, you cannot speak to me like that." Mr. Pinkos responded, "You can wag your finger at me all you want" which led to Dr. La Cava telling Mr. Pinkos "This conversation is over." According to Dr. La Cava, Mr. Pinkos responded, "I am very emotional about this," as if he was acknowledging that he had crossed the line.

Immediately after the altercation in the parking lot ended, Dr. La Cava made his way into the Fulton-Holland Center. Once in the building, Dr. La Cava began looking for a woman, who he did not know but believed may have witnessed the events that had just occurred in the parking lot. Dr. La Cava spotted the woman and spoke with her briefly. The woman told Dr. La Cava that her name was Katrina Todd and she worked in the Purchasing Department. Dr. La Cava informed Ms. Todd that someone may ask her to share what she witnessed in the parking lot. Following the incident, Dr. La Cava reported to the School District's Chief of Police, Frank Kitzerow, what had occurred in the parking lot with Mr. Pinkos.

In our opinion, Dr. La Cava came across and appeared very credible during his interview. He has very little interaction with Mr. Pinkos and has no apparent reason to make up or fabricate his statement. Dr. La Cava's statement was consistent with the statements made by other witnesses that we interviewed. Notably, Dr. La Cava's actions were always consistent with the School Board's policies (i.e. telling Mr. Pinkos to meet with his supervisor and submit any grievance or concern for the supervisor to address).

A copy of Dr. La Cava's sworn statement dated November 12, 2019, is attached as composite Exhibit A.

iv. Robert Pinkos

a. *Counsel for Robert Pinkos Obstructed the Interview*

Although Mr. Pinkos was scheduled to sit for an interview as part of our investigation, we were not permitted to conduct the interview and ask Mr. Pinkos questions due to Mr. Pinkos's counsel, Fred A. Schwartz, Esq.³ On December 9, 2019, we began cooperating with Mr. Pinkos's counsel to coordinate a time and date for Mr. Pinkos's interview. Mr. Pinkos's interview was eventually scheduled to occur on January 16, 2020.

Mr. Pinkos appeared for his interview on the morning of January 16, 2020 with both of his attorneys present. However, right before the interview was set to commence, Mr. Pinkos's counsel tried to impose inappropriate conditions for the interview, which he raised for the very

³ Mr. Pinkos is also represented by Allison B. Duffie, Esq.

first time that morning. Specifically, Mr. Pinkos's counsel requested that the interview be recorded on his personal cell phone. We informed counsel that we did not consent to him recording the interview on his personal cell phone, as it was inappropriate and inconsistent with the School Board's standard processes.⁴ Among other reasons, it is inappropriate for recordings to be made during an investigation of this type as it would allow for the types of questions asked in the interviews and witnesses responses to be leaked or disseminated to others, which could impact the integrity of the investigation.

Despite the presence of both attorneys at the interview, counsel purported explanation for wanting to record the interview was to ensure that Mr. Pinkos's statements given during the interview were not "manipulated" in our final report. We assured counsel that this would not occur and maintained that the interview would proceed appropriately in accordance with the School Board's standard processes and would not be recorded on counsel's personal cell phone. We reiterated that both attorneys would be present during the entire course of the interview and would witness Mr. Pinkos's statements and that counsel's concerns (which we did not believe to be legitimate) were not justified.

Mr. Pinkos, through his counsel, ultimately refused to proceed with the interview and answer our questions regarding his recollection of the events that occurred in the School District parking lot on the morning of November 8, 2019, as well as the allegations made against him concerning same. Instead, Mr. Pinkos's counsel submitted the IG Complaint as an attachment to an email, which we accepted and considered as part of our investigation. We informed counsel that Mr. Pinkos was free to reconsider his decision and proceed with the interview, but we did not receive a response. Accordingly, we completed our investigation and prepared this Report with all of the information made available to us, which included the IG Complaint.

b. Allegations in the IG Complaint Concerning the Events That Occurred on the Morning of November 8, 2019

Mr. Pinkos is a HR Manager in the School District's Employee and Labor Relations department. As a HR Manager, his direct supervisor is Ms. Evans-Paré, the Director of the Employee and Labor Relations department. On October 16, 2019, Mr. Pinkos met with Ms. Evans-Paré after he received an email from her earlier that day instructing him to complete a leave slip for the hours he spent attending the Hispanic Education Coalition Awards ("HCE Awards"). During this meeting, Ms. Evans-Paré again instructed Mr. Pinkos to complete a leave slip. Mr. Pinkos, however, advised Ms. Evans-Paré that he would not do so until he spoke with Dr. La Cava.

On October 18, 2019, Mr. Pinkos sent Dr. La Cava an email to schedule a meeting in several weeks after he returned from a vacation in Spain. As a result, the meeting was scheduled for November 8, 2019. On November 6, 2019, Mr. Pinkos received the email from Dr. La Cava

⁴ The School Board's Policy 3.25 states, in pertinent part, that "[a]ny complaint and any material relating to a personnel investigation shall be confidential until the conclusion of the investigation or until such time as the investigation ceases to be active. . . . An investigation or determination of probable cause is a nonadversary function to discover or procure evidence as part of the fact finding functions of the School Board and Superintendent."

described above, where Dr. La Cava informed him that the meeting was cancelled due to a scheduling conflict and instructed him to immediately bring any grievance to his direct supervisor. Mr. Pinkos responded that his issue was with his supervisor, Ms. Evans-Paré, and again requested to meet with Dr. La Cava since he was Ms. Evans-Paré's supervisor. Mr. Pinkos did not receive a response to his email however.

According to Mr. Pinkos, because he never received a reply from Dr. La Cava, he believed that he would not be able to report Ms. Evans-Paré's alleged wrongdoing to her supervisor, Dr. La Cava. It's not entirely clear from the IG Complaint whether this belief held by Mr. Pinkos is what motivated or prompted the events that occurred on the morning of November 8, 2019, in the parking lot. Regardless of what Mr. Pinkos's motivation may have been, he briefly mentions the events that occurred on the morning of November 8, 2019, in the IG Complaint. Specifically, the IG Complaint contains, in its entirety, the following statements concerning the events that occurred on the morning of November 8, 2019:

On November 8, 2019, at or about 8:20 AM, Mr. Pinkos parked his car in Fulton-Holland Educational Services Center (FHESC) parking lot and was on his way to enter the building when he noticed Dr. La Cava exiting his car. Dr. La Cava's parking spot is directly opposite the entry door to FHESC.

Mr. Pinkos walked by his car as he was getting out and asked if he was going to meet with him. Dr. La Cava responded, "I'm not going to meet with you."

Dr. La Cava then told Mr. Pinkos, "Meet with "Vicki."

Mr. Pinkos responded, "I already met with Vicki. Vicki is the problem. That's why I need to meet with you. Isn't that your job to meet with me?"

Dr. La Cava responded, "I'm not going to meet with you," as he pointed his finger at Mr. Pinkos.

Mr. Pinkos replied, "Don't wag your finger at me."

Dr. La Cava looked at his finger, presumably having been unaware of his gesturing, and then lowered his hand.

At this point, Dr. La Cava went to the back door of his car (driver's side) and said, "Don't confront me again at my car."

Mr. Pinkos replied, "We both need to take a step back."

Dr. La Cava then stated, "I'm going to hold back from saying what I'm thinking."

At this point, Mr. Pinkos walked away and entered FHESC.

Because we were prevented from interviewing Mr. Pinkos and asking him questions regarding his allegations as well as those allegations made against him, we cannot offer an opinion as to his credibility. Regardless of the ultimate truthfulness of Mr. Pinkos's allegations (which we do not determine), we did not see any material distinctions between his allegations concerning the events that occurred in the parking lot on November 8, 2019, as pleaded, and

those of the other eye witnesses. However, even though there are no apparent material distinctions, the IG Complaint also does not contain any allegations that refute, call into question, or contradict the eye witnesses' allegations concerning Mr. Pinkos's purported aggressive demeanor or loud voice.

A copy of the relevant excerpts from the IG Complaint concerning the November 8th altercation are attached as composite Exhibit A.

v. Vicki Evans-Paré

Ms. Evans-Paré has been employed at the School District for seventeen (17) years. She is the Director of Employee and Labor Relations. As the Director of Employee and Labor Relations, she oversees the entire department and supervises HR managers, including Mr. Pinkos, but reports directly to Dr. La Cava. Although Ms. Evans-Paré did not witness any of the events that occurred in the parking lot on the morning of November 8, 2019, we interviewed Ms. Evans-Paré because she apparently was the source of Mr. Pinkos's concern. Therefore, interviewing Ms. Evans-Paré would help determine whether the Grievance Procedure was the appropriate course for Mr. Pinkos to pursue under the circumstances.

According to Ms. Evans-Paré, after she learned that Mr. Pinkos and Jose Fred attended the HCE Awards without prior approval, she informed each of them that they should have submitted a Temporary Duty Elsewhere form beforehand in accordance with School Board Policy 3.65, "Assignment to Temporary Duty Elsewhere" (the "TDE Policy"). Ms. Evans-Paré claims that she consistently applies the TDE Policy against every employee that she supervises. Therefore, according to Ms. Evans-Paré, she instructed Mr. Pinkos to submit personal leave for the time spent at the HCE Awards because he failed to submit a TDE form in advance of attending.

However, Mr. Pinkos apparently did not want to comply. Specifically, according to Ms. Evans-Paré, Mr. Pinkos did not believe that he had to follow the TDE Policy because his prior supervisors never required him to submit a TDE form in advance of attending the HCE Awards. As a result, Mr. Pinkos requested a meeting with Dr. La Cava to discuss his concern about Ms. Evans-Paré and her instructions to submit personal leave. Ms. Evans-Paré shared with us that a meeting was scheduled and that she, Mr. Pinkos, Dr. La Cava, and Mr. Fred would be in attendance. However, the meeting was eventually cancelled by Dr. La Cava.

Ms. Evans-Paré's above statements regarding Mr. Pinkos and the TDE Policy issue were consistent with the statements made by Mr. Pinkos in the IG Complaint concerning the same matter. Despite interviewing Ms. Evans-Paré, we did not determine whether or not the TDE Policy applied or whether or not Mr. Pinkos should have been required to submit personal leave, as such was not relevant to the events that occurred on the morning of November 8, 2019. Ms. Evans-Paré's statement was necessary for determining whether the established Grievance Procedure was the appropriate mechanism for Mr. Pinkos to pursue given his purported concern.

III. APPLICABLE SCHOOL BOARD POLICIES

The School District maintains policies setting forth procedures for reporting, investigating, and resolving claims of employee misconduct. These policies include the "Grievance Procedure for Employees" (School Board Policy 3.31). A copy of the Grievance Procedure is attached as composite Exhibit "B." The Grievance Procedure makes clear that the "purpose of this procedure is to secure, at the lowest administrative level, equitable solutions to claim(s) arising from a violation, misapplication, or misinterpretation of School Board Policies or Administrative Directives" According to the Grievance Procedure, employees are required to follow a four-step process to resolve a grievable incident. Specifically, employees are required to attempt to resolve the grievable incident first with their immediate supervisor before attempting to resolve the incident with their supervisor's superior or Chief of Staff. The Grievance Procedure also makes clear that "[n]o retaliation or reprisals of any kind shall be taken by any member of the administration or other employee against the employee . . . in the grievance procedure by reason of such participation."

The School District also maintains a Code of Ethics policy (School Board Policy 3.02) that is "designed to protect the health, safety and general welfare of students and employees and to define unethical conduct justifying administrative or disciplinary action." *See* Code of Ethics at § 1, which is attached as composite Exhibit B. To that end, the Code of Ethics requires School District employees to demonstrate professional conduct and prohibits employees from engaging in conduct detrimental to the workplace. Specifically, employees are required to demonstrate "excellence, integrity and responsibility in the workplace" and "conduct that follows generally recognized professional standards." *See* Code of Ethics at §§ 4(a), 5(i). Further, employees are prohibited from engaging in "any conduct that impairs the ability to function professionally in his or her employment position or conduct that is detrimental to the health, welfare or discipline of students or the workplace." *See id.* at § 5(i).

IV. ANALYSIS AND RECOMMENDATIONS

A. Mr. Pinkos's actions were inappropriate and done in contravention to the Grievance Procedure.

It is clear that Mr. Pinkos did not follow the School District's established Grievance Procedure. The Grievance Procedure makes clear that the purpose of the Procedure is to "secure, at the lowest administrative level, equitable solutions to claim(s) arising from a violation, misapplication, or misinterpretation of School Board Policies or Administrative Directives, and to establish an orderly succession of procedures wherein these solutions may be pursued." Based on the nature of Mr. Pinkos's purported concern involving Ms. Evans-Paré and her alleged misapplication of the TDE Policy, Mr. Pinkos's concern fell squarely within the expressed purpose of the Grievance Procedure.

Accordingly, Dr. La Cava acted properly and consistent with the Grievance Procedure by instructing Mr. Pinkos to follow the Procedure to address his concerns about Ms. Evans-Paré. Mr. Pinkos, however, ignored Dr. La Cava's instructions and elected to act outside of the

established Grievance Procedure by confronting Dr. La Cava in the School District's parking lot. Mr. Pinkos's conduct was therefore inappropriate and in direct contravention of the Grievance Procedure.

B. Mr. Pinkos's behavior in the parking lot was unprofessional and violated the Code of Ethics.

Based on the information obtained during our investigation, we believe Mr. Pinkos's behavior exhibited in the parking lot on the morning of November 8, 2019, violated the Code of Ethics. As detailed above, the Code of Ethics requires School District employees to demonstrate "excellence, integrity and responsibility in the workplace" and "conduct that follows generally recognized professional standards." The Code of Ethics also prohibits employees from engaging in "any conduct that impairs the ability to function professionally in his or her employment position or conduct that is detrimental to the health, welfare or discipline of students or the workplace."

As detailed above, Mr. Pinkos's "aggressive" behavior was so concerning that Dr. La Cava believed that Mr. Pinkos could become violent. This sentiment was shared and corroborated by Ms. Todd who, prior to November 8, 2019, had no idea who Mr. Pinkos or Dr. La Cava were. Despite not knowing either individual, Ms. Todd shared that Mr. Pinkos's behavior was so concerning that she contemplated calling the School Police with Ms. Richardson because she believed Mr. Pinkos might start an actual fight with Dr. La Cava. Thus, Mr. Pinkos's behavior of initiating an aggressive and unprofessional confrontation with Dr. La Cava in the School District's parking lot was not within the School District's professional standards in the workplace and was a violation of the Code of Ethics.

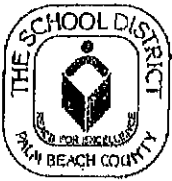
Not only was Mr. Pinkos's behavior unprofessional, it is the type of behavior that could lead to acts of violence and intimidation in the workplace and should not be tolerated, regardless of whether the reasons for the confrontation were justified or not. The Grievance Procedure is a controlled procedure made available by the School Board for School District employees to voice their grievable concerns and pursue the appropriate relief in a secure, civil, and professional manner. The Grievance Procedure greatly diminishes the possibility of grievable concerns ending in aggressive confrontations or violence, thereby protecting employees and preserving the welfare and safety of the workplace. Therefore, allowing Mr. Pinkos's behavior that he exhibited in the parking lot on November 8, 2019, to go unpunished would subvert the very purpose of the Grievance Procedure.

V. CONCLUSION

As set forth above, we believe that it would be appropriate for the School District to take disciplinary action against Mr. Pinkos for his behavior. We believe that the information obtained during the course of our investigation establishes that Mr. Pinkos's conduct was inappropriate as it was in contravention to the established Grievance Procedure. Moreover, Mr. Pinkos's behavior of confronting his supervisor's superior in the parking lot on the morning of November 8, 2019, regardless of whether he believed the reasons for the confrontation were justified or not,

was unprofessional and a violation of the Code of Ethics. The School District's Grievance Procedure is intended to provide employees with a safe and secure mechanism to bring forth their grievances in a professional manner, such that the potential for an unprofessional confrontation or violent altercation is diminished. Mr. Pinkos's behavior is the type of behavior that could lead to acts of violence in the workplace, which is precisely the sort of results that the Grievance Procedure is designed to thwart. Accordingly, Mr. Pinkos's behavior warrants appropriate disciplinary action.

COMPOSITE EXHIBIT A



THE SCHOOL DISTRICT OF
PALM BEACH COUNTY, FL
3300 FOREST HILL BOULEVARD, A-106
WEST PALM BEACH, FL 33406-5870
WWW.PALMBEACHSCHOOLS.ORG

Statement of Katrina Todd

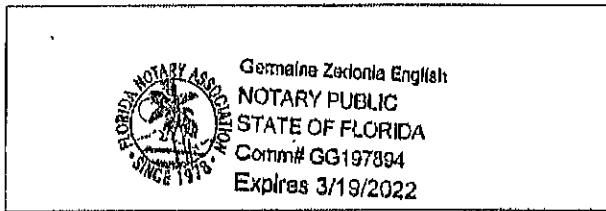
1. My name is Katrina Todd. I am over the age of 18 years old and I have personal knowledge of the information contained in this sworn statement. I have been employed with the School District of Palm Beach County since 2000. I am currently a Senior Purchasing Technician.
2. On November 8, 2019, I met with Germaine English, EEO Coordinator where the following statements and/or summary of my statements were made:
 - a. When I arrive today at Fulton-Holland Education Service Center (FHESC), I noticed a man standing at Dr. La Cava's car blocking his ability to exit his vehicle. I do not know the man's name but he was an older man with glasses and was dressed casually. This was around 8:35am. I slowed down as I approached the building because I was not sure but it appear to be heated conversation. As Dr. La Cava got out of his car, he said, "that was inappropriate for you to come to my car" to the person as he was walking away towards the building. The man turned around and went back to his car and said while touching his car "I guess now you're going to be pointing fingers at me". Dr. La Cave said something to the extent "I think this conversation is over". I then entered the building and ran into Jackie from the Certification Department. I stopped to speak to her and told her that there was an employee being aggressive outside. The man then walked in behind me and he spoke to Jackie. Dr. La Cava entered the building after the man and said to me that he may need to speak to me later and asked for my name.

3. I declare that I have read the foregoing statement and that the facts stated in it are true and correct.

Katrina Todd
Katrina Todd

11/8/19
Date

Subscribed and sworn to by Katrina Todd who appeared before me on the 8 day of November, 2019 and is personally known to me; or produced identification; or whose identity was verified through record of employment.



Germaine Zedonia English
Signature, Notary Public
Germaine Zedonia English
Printed Name of Notary
Notary Public, State of Florida, County of Palm Beach
My commission expires: 3/19/2022



THE SCHOOL DISTRICT OF
PALM BEACH COUNTY, FL
3300 FOREST HILL BOULEVARD, A-106
WEST PALM BEACH, FL 33406-5870
WWW.PALMBEACHSCHOOLS.ORG

Statement of Jacquelyn Richardson

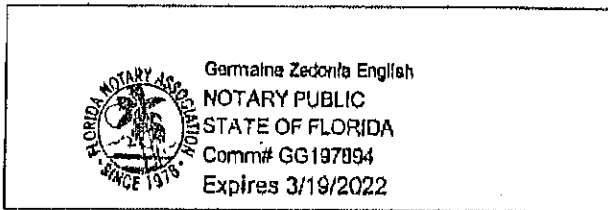
1. My name is Jackie Richardson. I am over the age of 18 years old and I have personal knowledge of the information contained in this sworn statement. I have been employed with the School District of Palm Beach County since 1982. I am currently a Senior Human Resources Analyst.
2. On November 8, 2019, I met with Germaine English, EEO Coordinator where the following statements and/or summary of my statements were made:
 - a. I was walking through the atrium outside of A-152 when Katrina Todd entered the building this morning. Katrina said that someone was fighting (verbal) & it looked like it was going to get aggressive. She was obvious concerned and I inquired as to whether we needed to call the police. At that time, Bob Pinkos, came into the building and spoke to me. I said "hi" and he went to his suite (A-140). Afterwards, Dr. La Cava came into the building and Katrina asked Dr. La Cava if he was okay. He responded that something to the extent of 'I can talk about it another time'. Katrina did tell me that a person said "Don't you come out and meet me at my car again".

3. I declare that I have read the foregoing statement and that the facts stated in it are true and correct.

Jacquelyn Richardson
Jacquelyn Richardson

11/8/19
Date

Subscribed and sworn to by Jacquelyn Richardson who appeared before me on the 8 day of November, 2019 and is personally known to me; or produced identification; or whose identity was verified through record of employment.



Germaine Zedonita English
Signature, Notary Public

Germaine Zedonita English
Printed Name of Notary

Notary Public, State of Florida, County of Palm Beach

My commission expires: 3/19/2022

On 11/8/2019, I parked my vehicle in my assigned spot between 8:35 and 8:45 and upon opening my driver side door, Mr. Bob Pinkos immediately came between my open door and myself and initiated a very animated and aggressive conversation while I was seated in my vehicle.

Mr. Pinkos, told me "you need to meet with me" in a very aggressive manner and tone.

I responded, "I will not be meeting with you and you need to get with your supervisor"

In a loud and aggressive tone and closer to my face, He responded, "Is it not your job to meet with me if there is an issue with my supervisor?"

At this time, he began to walk away and continued making loud comments that were inaudible.

Mr. Pinkos walked around my car, which gave me an opportunity to exit my car and immediately upon exiting my car, I made the comment, "You cannot speak to me this way"

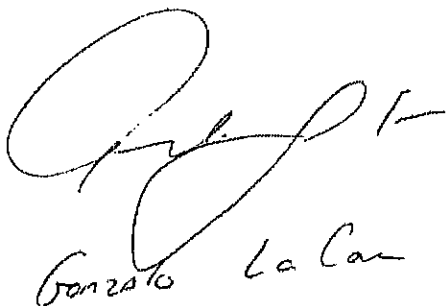
Mr. Pinkos responded, "you can wag your finger at me all you want"

Mr. Pinkos then proceeded to walk around the front of the car and put his hand on my door and continued speaking in a loud and aggressive fashion. I cannot recall the comments made by Mr. Pinkos as I was nervous about the situation and his behavior.

I told him that this conversation was over and he informed me that he was "very emotional" about the situation and he walked away.

At that moment, I gathered my personal belongings from my car entered building "A". I then proceeded to make contact with an eye witness who had been present during the confrontation. I asked her for her name and informed her that she may be asked to share what she saw in the parking lot. She stated her name was Katrina Todd from the purchasing department.

Due to the event with Mr. Pinkos, I requested and was granted access to park in the parking coral to ensure for my safety and ensure this type of incident would not reoccur. This incident has made it uncomfortable to work in the same building with Mr. Pinkos since we work in such close proximity.



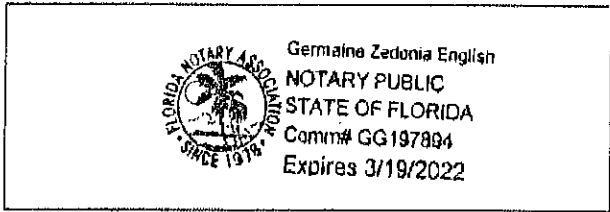
Gonzalo LaCar

The attached was written by Gonzalo La Cava. I declare that I have read the foregoing statement and that the facts stated in it are true and correct.

[Signature]
Gonzalo La Cava

11/12/2015
Date

Subscribed and sworn to by Gonzalo La Cava who appeared before me on the 12 day of November, 2015 and is personally known to me; or produced identification; or whose identity was verified through record of employment.



[Signature]
Signature, Notary Public

Germaine Zedonia English
Printed Name of Notary

Notary Public, State of Florida, County of Palm Beach

My commission expires: 3/19/2022

Oswald in part as a cover-up of improper actions at the highest levels of the District's administrators. Dr. Latson's termination based on not responding to a supervisor in a "timely" manner had/has a chilling effect on employees throughout the District and prevented a fuller inquiry as to the actions of others.

On October 16, at 2:19 PM, Mr. Pinkos received the following email from Ms. Evans-Pare:

It was brought to my attention that you attended the Hispanic luncheon for a half day on Friday. Please complete a leave slip for the hours you were gone. In the future, make sure that you request time off in advance.

Upon reading the email, Mr. Pinkos immediately made his way to Ms. Evans-Pare's office as he was deeply offended. He met with Ms. Evans-Pare and she explained that Dr. La Cava had notified her that Mr. Pinkos and another HR Manager, Jose Fred, were at the event. Mr. Pinkos explained that the Hispanic Education Coalition Awards was a two-hour program, not a half-day and he has participated in the event every year since its inception 5 years ago. No previous supervisor ever questioned his attendance, but rather encouraged it. The HEC Awards is a District sponsored event that provides tens of thousands of dollars in scholarships to students in need of assistance. The event is arguably the premier District sponsored event of the year and is attended by around 40 District administrators each year. Mr. Pinkos's attendance at the event is fulfilling his job responsibility and the District's mission.

At this year's event, Mr. Pinkos was sitting with Chairman of the Board Frank Barbieri who received an award for outstanding work for the Hispanic Community, Board member Marcia Andrews, Superintendent Dr. Donald Fennoy, Assistant Superintendent for Global Studies and Community Outreach Dr. Margarita Pinkos and the President of HEC, Dr. Joaquin Garcia.

Ms. Evans-Pare responded that Mr. Pinkos should have completed a leave form for personal time for his attendance at the event but not for a half a day as her email had stated, but only for one of the two hours. After all, it was a 2-hour event and one of the two hours would be covered by his daily scheduled lunch. Ms. Evans-Pare then stated she did not know where Mr. Pinkos was and that he is "like a teacher" and should have completed a leave form. Mr. Pinkos stated he is not a teacher, but an administrator that travels extensively throughout the county as part of his daily routine. Mr. Pinkos doubted any of the scores of administrators at the event completed a leave form. He then informed Ms. Evans-Pare that he told her personal secretary that he was attending the event. In addition, his calendar attested to his location had the HEC Awards entered as well. All supervisors throughout the District can access their subordinates' Google Calendars.

Ms. Evans-Pare still would not budge, insisting Mr. Pinkos take an hour of personal leave. Mr. Pinkos advised Ms. Evans-Pare that he would not do so until he spoke with Dr. La Cava as he would certainly understand.

Mr. Pinkos contacted Dr. La Cava's office soon thereafter to schedule a meeting. Dr. La Cava did not respond. The following day Mr. Pinkos saw Dr. La Cava in the atrium outside of their offices. He was on his phone so Mr. Pinkos gestured for him to call him and he nodded. When Dr. La Cava did not call, Mr. Pinkos sent him an email on October 18, which resulted in the following exchange.

Robert Pinkos <robert.pinkos@palmbeachschools.org>

*Fri, Oct
18,
12:26
PM*

to Gonzalo, Jose

Gonzalo,

I'll be in Spain for the next couple of weeks. Let's meet upon my return. I've blocked out Wednesday, November 6, on my calendar. Could you please send out a calendar invite for that date at a time of your choosing?

Jose Fred will also be attending. Same issue.

Thank you.

*--
Bob Pinkos
HR Manager*

Gonzalo La Cava <gonzalo.lacava@palmbeachschools.org>

*Oct 18,
2019,
12:32
PM*

to Vicki, Nickla, me, Jose

Bob,

I will have Vicki schedule this meeting to ensure that we are all on the same page regarding your concerns and expectations moving forward.

Thanks

Gonzalo S. La Cava, Ed.D.
Chief of Human Resources

Robert Pinkos <robert.pinkos@palmbeachschools.org>

*Oct 18,
2019,
12:34
PM*

to Gonzalo

And you will attend, right?

Gonzalo La Cava <gonzalo.lacava@palmbeachschools.org>

Oct 18,
2019,
1:59 PM

to me

Possibly

Based on the email exchange, Mr. Pinkos now began sensing that Dr. La Cava was trying to avoid him and that he was likely working with Ms. Evans-Pare to harass him by requiring a personal leave of absence for his attendance at the HEC Awards. The motive for the harassment was clearly his recusal from the Latson case, and refusal to rubber stamp a baseless investigation to circumvent the District's failure to properly and timely reprimand Dr. Latson. Mr. Pinkos understood that Ms. Evans-Pare's tantrum of August 19 was probably standing in the way for them (La Cava & Evans-Pare) to take disciplinary action against him for allegedly being insubordinate due to his recusal. He also understood that reporting Ms. Evans-Pare's misconduct at a meeting in the presence of Dr. La Cava gave cause for him (La Cava) to be reluctant to meet. It was also looking more likely that Ms. Evans-Pare's directive for Mr. Pinkos to put in for personal leave for a legitimate District sponsored event had its genesis with Dr. La Cava. Yet, another reason for apparent avoidance.

Upon his return from Spain, Mr. Pinkos received a calendar invite to meet on November 8, with Dr. La Cava, Ms. Evans-Pare, and Mr. Fred. He was now prepared to get to the bottom of the nonsense of directing him to put in for personal leave for attending the HEC Awards. Mr. Pinkos also planned to report the August 19th misconduct of Ms. Evans-Pare. This meeting needed to be accurately recorded. Therefore, Mr. Pinkos sent the following email on Wednesday, November 6, at 8:35 AM.

Robert Pinkos <robert.pinkos@palmbeachschools.org>

Nov 6,
2019,
8:35 AM

to Gonzalo, Vicki, Jose

Gonzalo & Vicki,

I noticed Friday's meeting is scheduled for 30 minutes' (10:30-11:00). I'm not confident that 30 minutes will be enough time. Could you please allow for one hour (10:30-11:30)?

I'm also requesting the meeting be audio recorded so that an accurate transcript can be typed afterwards.

Thank you.

Bob Pinkos
HR Manager

Then the following email exchange followed.

Gonzalo La Cava <gonzalo.lacava@palmbeachschools.org>

Nov 6,
2019,
9:19 AM

to Nickla, me, Vicki, Jose

Mr. Pinkos,

The meeting you requested has been cancelled due to a scheduling conflict. I suggest that you immediately bring any grievances or concerns to your direct supervisor so that she can address immediately and provide you with guidance. Have a wonderful day!

Gonzalo S. La Cava, Ed.D.
Chief of Human Resources

Robert Pinkos <robert.pinkos@palmbeachschools.org>

Nov 6,
2019,
10:27
AM

to Edward, Gonzalo, Jose

Gonzalo,

The issue Jose and I have is with Vicki. Both Jose and I have met with her individually. That's part of the issue.

As her supervisor, we are again requesting to meet with you.

As I had advised you in the past, this issue is important and remains so. Jose and I need to be heard. I would hope you would accommodate the time.

By you canceling Friday's meeting, do you advise we take up this issue with the Chief of Staff?

Please advise.

Thank you.

Bob

Mr. Pinkos received no email reply from Dr. La Cava. Instead, he received the following email from Ms. Evans-Pare, 38 minutes after he asked Dr. LaCava, "By canceling Friday's meeting, do you advise we take up this issue with the Chief of Staff?"

Vicki Evans-Pare <vicki.evans-pare@palmbeachschools.org>

Nov 6,
2019,
11:05
AM

to me, Jose, Gonzalo

In this instance, due to the fact that I was not advised in advance that you wished to attend this luncheon, I am standing by my request that you use personal leave for the time missed. In the future, should you wish to attend a District sponsored or community event that is outside of but related to your daily work, I expect to be asked in advance; supplied an explanation of how it is tied to your job; and provided with a completed TDE under Policy 3.65 to account for the absence and to establish that you were working during that event for liability purposes.

*Vicki Evans-Paré, Esq.
Director of Employee and Labor Relations*

At 11:40, Mr. Pinkos emailed Ed Tierney, Chief of Staff so that he could address his concerns.

Robert Pinkos <robert.pinkos@palmbeachschools.org>

Nov 6,
2019,
11:40
AM

to Edward, Jose

Ed,

When can we meet?

Bob

Chief of Staff Tierney never replied to this email.

In summary, Mr. Pinkos would not be able to report Ms. Evans-Pare's wrongdoing to her supervisor, the Chief of HR, Dr. Gonzalo or to the Chief of Staff. Ms. Evans-Pare continued to direct Mr. Pinkos to put in for personal time for an event he should have attended as per his job duties, responsibilities etc.

Mr. Pinkos was trying to report the wrongdoing of an employee and District administrators were stonewalling his efforts.

It should be noted that around late October and early November, Dr. Margarita Pinkos, Board member Marcia Andrews, and Dr. Garcia were trying to work with administrative leadership to end the nonsense of Ms. Evans-Pare's directive to Mr. Fred and Mr. Pinkos to put in for personal time for attending the HEC Awards. Dr. Pinkos had several conversations with Mr. Tierney during this period.

Here, Mr. Fred, unfortunately is collateral damage. It was Mr. Pinkos that Dr. La Cava and Ms. Evans-Pare wanted to punish for his recusal from the Latson case.

On November 8, 2019, at or about 8:20 AM, Mr. Pinkos parked his car in Fulton-Holland Educational Services Center (FHESC) parking lot and was on his way to enter the building when he noticed Dr. La Cava exiting his car. Dr. La Cava's parking spot is directly opposite the entry door to FHESC.

Mr. Pinkos walked by his car as he was getting out and asked if he was going to meet with him. Dr. La Cava responded, "I'm not going to meet with you."

Dr. La Cava then told Mr. Pinkos, "Meet with Vicki."

Mr. Pinkos responded, "I already met with Vicki. Vicki is the problem. That's why I need to meet with you. Isn't that your job to meet with me?"

Dr. La Cava responded, "I'm not going to meet with you," as he pointed his finger at Mr. Pinkos.

Mr. Pinkos replied, "Don't wag your finger at me."

Dr. La Cava looked at his finger, presumably having been unaware of his gesturing, and then lowered his hand.

At this point, Dr. La Cava went to the back door of his car (driver's side) and said, "Don't confront me again at my car."

Mr. Pinkos replied, "We both need to take a step back."

Dr. La Cava then stated, "I'm going to hold back from saying what I'm thinking."

At this point, Mr. Pinkos walked away and entered FHESC.

Upon checking his email soon thereafter, Mr. Pinkos noticed the monthly breakfast celebration was occurring in Suite A-106. Noticeably absent was Ms. Evans-Pare. Ms. Evans-Pare appeared towards the end of the breakfast by entering through Dr. La Cava's suite. At this time, Mr. Pinkos was speaking with HR Manager Brenda Johnson regarding the reassignment of an employee, but immediately brought Ms. Evans-Pare into the conversation.

COMPOSITE EXHIBIT B



Book	School Board Policies
Section	Ch. 3, Personnel
Title	Grievance Procedure for Employees
Code	3.31
Status	Active
Adopted	July 7, 2010

1. Purpose-- The purpose of this procedure is to secure, at the lowest administrative level, equitable solutions to claim(s) arising from a violation, misapplication, or misinterpretation of School Board Policies or Administrative Directives, and to establish an orderly succession of procedures wherein these solutions may be pursued. The provisions of this policy do not apply to employees covered by a collective bargaining agreement. No employees, including probationary employees, may use the grievance procedure in any way to appeal:

- a. A suspension or termination of employment;
- b. A non-renewal of a contract and/or a nonreappointment;
- c. The professional judgments and conclusions of the supervisor in conducting a performance evaluation; and/or
- d. The procedures and decisions made pursuant to this Policy.

No grievance shall be processed anonymously.

2. Definitions-- As used herein, the following terms have these meanings:

- a. A "grievance" is a written complaint which alleges a violation, misinterpretation, or misapplication of School Board Policy or Administrative Directives, excluding discrimination or harassment prohibited by and addressed in Policies 3.05 and 3.19.
- b. The term "employee" includes every employee, instructional or non-instructional, of the School Board of Palm Beach County.
- c. The terms "grievant" and "complainant" refer to an employee who alleges in writing that he/she has been subjected to a violation, misapplication, or misinterpretation of School Board Policies or Administrative Directives.
- d. "Accused/employee" refers to an employee who is alleged to have subjected another employee to a violation, misapplication, or misinterpretation of School Board Policies or Administrative Directives.
- e. The term "supervisor" means the principal, director, area superintendent, Assistant Superintendent, Superintendent of Schools or other department administrator who has the direct responsibility of supervising or managing the aggrieved employee and who has the authority to take action necessary to resolve the grievance. For purposes of this Policy, this term may also include a consultant retained by the Board to provide interim management assistance.
- f. The term "superior" as used herein refers to the supervisor of the aggrieved employee's immediate supervisor.
- g. A "chief officer" is the Chief of Staff, Chief Academic Officer or the Chief Operating Officer.
- h. The term "days" in this Policy shall mean work days unless calendar days are specified.

3. Procedure for Grievances -- The following grievance procedure applies when the grievance is based on an allegation of a violation, misapplication, or misinterpretation of School Board Policies or Administrative Directives. Failure of the grievant to appeal the grievance to the next level within the timeline set forth herein shall be deemed to be acceptance of the decisions rendered at that level. Failure at any step of this procedure to communicate the decision on a grievance within the specified timelines shall permit the grievant to appeal to the next level. The timelines specified at each level shall be considered a maximum except when extended in writing by mutual consent.

1. Level One : Informal Conference

Within ten (10) work days after the employee first knows or reasonably should have known of the grievable incident, the employee shall initially discuss the matter with the immediate supervisor with the objective of informally resolving the matter. The grievant shall inform the supervisor that he/she is availing himself/herself of the grievance process. The supervisor shall summarize the conversation in writing within ten (10) work days of the discussion, and that writing must be signed by the employee making the informal complaint or marked as "refused to sign", if appropriate.

2. Level Two : Filing a Written Grievance

- i. Within fifteen (15) work days after the informal conference described in Level One, if no satisfactory disposition is made, the employee may file a written grievance with the supervisor. The written grievance shall set forth specifically the event(s) upon which the grievance is based, citing the Policy and/or Directive alleged to be violated, the date the alleged infraction took place, and grounds upon which the grievance is made. The employee must sign and date the grievance.
- ii. Within fifteen (15) work days after receiving the written grievance, the supervisor shall schedule another meeting with the employee. Within fifteen (15) work days of the second meeting, and after investigating the allegations, the supervisor shall issue a written decision to the employee.

3. Level Three : Review by the Supervisor's Superior

- i. Within fifteen (15) work days after the supervisor's decision, if the employee is not satisfied with the supervisor's decision or if no decision has been issued, the employee may forward the written grievance and the supervisor's decision to the supervisor's superior or to the applicable chief officer. The written grievance shall set forth specifically the event(s) upon which the grievance is based, citing the Policy and/or Directive alleged to be violated, the date the alleged infraction took place, and grounds upon which the grievance is made. The employee must sign and date the grievance. If the grievance is not forwarded to the superior or chief officer within the designated time, the grievance is considered withdrawn from the grievance process and shall be so noted in the grievance file.
- ii. Within fifteen (15) work days after receiving the grievance, the superior or chief officer will schedule a meeting with the employee. Within fifteen (15) work days of that meeting, and after further investigating the allegations as appropriate, the superior or chief officer shall issue a written decision to the employee. A copy shall be provided to the supervisor.

4. Level Four : Appeal to the Applicable Chief Officer

- i. Within fifteen (15) work days after the superior issues a written decision, if the employee is not satisfied with the decision (or if no decision has been issued within fifteen (15) work days of the meeting), the employee may appeal the decision, in writing, to the Applicable Chief Officer. If the grievance is not forwarded to the Applicable Chief Officer within the designated time, the grievance is considered withdrawn from the grievance process and shall be so noted in the grievance file.
- ii. The Applicable Chief Officer/designee may appoint an ad hoc grievance review committee. The chair of the committee will be the highest-ranking District official on the committee. The committee will consist of:
 - A. one (1) member from District management, selected by the Superintendent;
 - B. one (1) member selected by the grievant; and
 - C. a third member selected by agreement of the first two (2) members. If the third member is not selected by the other committee members within seven (7) calendar days, the Superintendent/designee shall appoint a third member to serve on the committee.
- iii. In an effort to resolve the grievance, within fifteen (15) work days after the committee is designated, the committee shall meet with the grievant and the supervisor or superior of the person alleged to have

at the meeting by either the grievant or the supervisor/superior. The committee shall issue a written recommendation within fifteen (15) work days after the meeting, determining whether any violation has occurred, and if so, an appropriate remedy. A copy of the recommendation shall be provided to the grievant, supervisor or superior, the Director of Labor Relations, and the Superintendent.

- iv. The recommendation of the committee shall be forwarded to the Superintendent for review. The Superintendent/designee shall review the recommendation of the committee and the record of the grievance. If the Superintendent/designee finds that a meeting with the grievant would assist in the final determination, the Superintendent/designee may schedule a meeting for the purposes of this review. The Superintendent/designee's decision is the final and binding decision of the District.

4. Rights of Employees

- a. During any of the grievance levels, the employee may be represented by a person of the employee's choice once the grievance is filed with the supervisor. For grievances that are filed by employees who choose to be represented by legal counsel, the process will begin at the chief officer phase of Level 3 of the grievance process.
- b. No retaliation or reprisals of any kind shall be taken by any member of the administration or other employee against the employee, representative, or any other participant in the grievance procedure by reason of such participation.

5. General Provisions

- a. Grievance report forms for filing a grievance (PBSC 0114) shall be available on the School Board website. Employees are to be notified of the procedures in this Policy through its posting on the School Board Policies website.
- b. Failure of the employee to advance the grievance through the procedure within the time lines designated will result in immediate dismissal of the grievance.
- c. If a preliminary investigation is begun regarding a complaint, the written complaint and documents relating to the investigation are confidential, pursuant to Fla. Stat. §§ 119.07 (3) (p) & (u), 1012.33, and 1012.796, until the investigation is either concluded or ceases to be active.
- d. All records pertaining to a grievance may be filed in a separate grievance file and may not be kept in the official "personnel file" of the employee/applicant, but this grievance file will be treated as provided by Fla. Stat. §§ 119.07 and 1012.31. All decisions of management are to be forwarded to the labor relations department, which shall be designated as the custodian of those records for grievances. The grievance file is subject to disclosure pursuant to the Public Records law and Fla. Stat. § 1012.31.
- e. If a grievance is filed under the grievance procedure in a collective bargaining agreement, the employee shall not pursue the grievance under this procedure.
- f. The filing of a grievance shall not interfere with the right of the School Board to carry out its responsibilities, subject to the final decision on a grievance.

6. Superintendent, Chief Counsel, and District Auditor

- a. When the Grievant is a Direct Board Report.-- Employees who report directly to the Board (Superintendent, Chief Counsel, and District Auditor) shall file any grievance in writing with the Board Chair. The Chair should request appropriate District personnel to begin the investigation/ resolution process set forth in Section (3).
- b. When the Grievant is an Employee in the Office of a Direct Board Report.-- Employees of the Office of Superintendent, Office of District Auditor, and Office of Chief Counsel should file any initial grievance with their direct supervisor pursuant to Section (3) (unless the grievance is against a direct Board report, in which case subsection (c) below shall apply). If the grievance is not resolved at this level, the grievance may be appealed as set forth under Section (3).
- c. When the Accused is a Direct Board Report.-- When a direct Board report (the Superintendent, Chief Counsel, or District Auditor) is the accused, the grievant shall file the complaint in writing with the Board Chair, who shall take prompt action as specified below:
 - i. First, the Chair shall notify the accused of the complaint.

- ii. Second, the Chair shall notify the Board of the complaint. The Board shall determine if the complaint appears to merit formal investigation.
- iii. If the Board deems the complaint to merit formal investigation, the Board shall set the parameters for the investigation. The investigation should seek the accused/employee's response as well as the statements of the grievant and witnesses.
- iv. If a preliminary investigation is begun, the written complaint and documents relating to the investigation are confidential, pursuant to Fla. Stat. §§ 119.07 (3) (p) & (u), 1012.33, and 1012.796, until the investigation is either concluded or ceases to be active.
- v. To conduct the investigation, the Board may consider:
 1. retaining outside special counsel (which should be an attorney or law firm that is not currently retained by the Board and has not handled any matters for or against the Board within the past five years);
 2. requesting the personnel-investigation department of another Florida school district to conduct the inquiry;
 3. contracting with the DOE Office of Inspector General; or
 4. if applicable, referring the matter to the State Attorney's Office, the Commission on Ethics, or other applicable state agency.
- vi. The Board and the employee should receive the final investigative report at the same time.
- vii. Upon receiving the report, the Board shall determine whether any action is required. The accused/employee and/or the employee's representative shall have a right to address the Board at the meeting where the decision will be made.
- viii. Consistent with the employment contract, if informal action such as a reprimand is deemed necessary, such action may be reflected in the employee's evaluation and personnel file. In accordance with the employment contract, if formal action such as demotion, suspension, or termination is deemed necessary, the employee shall receive appropriate notice and opportunity for a hearing under Fla. Stat. §§ 120.569 and 120.57, and the Board's final order may be appealable pursuant to Fla. Stat. § 120.68.

STATUTORY AUTHORITY:	Fla. Stat. §§ 1001.41; 1001.42; 1001.43; 1012.23
LAWS IMPLEMENTED:	Fla. Stat. §§ 119.07 (3) (p) & (u); 1001.41; 1012.23; 1012.31; 1012.796
HISTORY:	3/11/87; 9/22/99; 11/11/02; 7/7/2010



Book	School Board Policies
Section	Ch. 3. Personnel
Title	Code of Ethics
Code	3.02
Status	Active
Adopted	May 6, 2009
Last Revised	June 7, 2017
Prior Revised Dates	5/06/2009; 06/07/2017

Policy 3.02 - Code of Ethics

1. Purpose and Authority

The School Board of Palm Beach County (Board) believes it is imperative that public officials and public employees act in the highest ethical manner and preserve the public trust. To carry out the important duties and responsibilities entrusted to the Board, Superintendent and Board/District employees, it is important that clear, comprehensive ethical requirements be established so that members of the public will have confidence in the operations of the Board and the management of the Palm Beach County School District (District). To ensure the citizens of Palm Beach County and the State of Florida a degree of accountability within the School District, this Code of Ethics is designed to protect the health, safety and general welfare of students and employees and to define unethical conduct justifying administrative or disciplinary action.

It is the Board's intent to create a culture that fosters trust, a commitment to excellence and responsibility, personal and institutional integrity, and avoids conflicts of interest and appearances of impropriety. Thus, the Board Members, the Superintendent, administrators, teachers and other employees of Palm Beach County Public Schools, as public servants and educators, are to be bound by this Code of Ethics. The term "employee" as used herein, applies to all these groups regardless of full, part time or interim status. This policy shall extend also to the District's guests, invitees, and volunteers while they are on District property or are participating in District-related activities.

All Board Members and employees shall adhere to this policy, the "Code of Ethics for Public Officers and Employees", as set forth in the Florida Ethics Code, Part III of Chapter 112, Florida Statutes, and the "Principles of Professional Conduct for the Education Profession in Florida", Chapter 6A-10.081, F.A.C., and the "Ethics in Education Act", Chapter 2008-108, Laws of Florida, as now or hereafter amended, which are incorporated by reference and made a part of this policy. This Code of Ethics shall be viewed as additive or supplemental to the above state laws, rules and regulations. To the extent this Code of Ethics is not in conflict with any laws, regulations or School Board policies, this Code of Ethics shall control. Specific authority for the adoption of this policy is provided by Sections 112.326 and 1001.42, Florida Statutes.

2. Application and Enforceability

The Code of Ethics applies to all Board Members and employees and extends to guests, invitees, and volunteers while they are on District property or are participating in District-related events. Violations of this Code of Ethics may result in administrative or disciplinary action, up to and including suspension, dismissal, or other actions as required by law. This Code may apply when the conduct of the employee occurs on or off District property, at a school sponsored event or non-school sponsored event.

3. Making Ethical Decisions

While this Code of Ethics provides general guidance, it does not provide a complete listing or a definitive answer to every possible ethical situation. It is the intention of the Board in enacting this policy that the use of good judgment, based on high ethical principles and following such precedent as may be established by the Florida Commission on Ethics and Florida Education Practices Commission, will serve as a guide in determining appropriate conduct in any circumstance. When making decisions, the Superintendent and District employees should use good judgment to fulfill the spirit as well as the letter of this Code of Ethics, and should:

- a. Evaluate the situation and identify ethical issues.
- b. Consult this Code of Ethics, state laws and regulations, and the School Board's Policies and apply them to the situation.
- c. Ask for guidance. In the event an individual is unsure of the proper course of action to be taken in a particular circumstance, guidance may be requested from the Chief Counsel, Chief Academic Officer or Chief of Schools, as appropriate.

4. Accountability and Compliance

Each employee agrees and pledges:

- a. To provide the best example possible; striving to demonstrate excellence, integrity and responsibility in the workplace.
- b. To obey local, state and national laws, codes and regulations.
- c. To support the principles of due process to protect the civil and human rights of all students and individuals.
- d. To treat all students and individuals with respect and to strive to be fair in all matters.
- e. To create an environment of trust, respect and non-discrimination, by not permitting discriminatory, demeaning or harassing behavior of students or colleagues.
- f. To take responsibility and be accountable for his or her acts or omissions.
- g. To avoid conflicts of interest or any appearance of impropriety.
- h. To cooperate with others to protect and advance the District and its students.
- i. To report improper conduct.
- j. To be efficient and effective in the delivery of all job duties.
- k. To cooperate during any investigations or proceedings.

5. Ethical Standards

a. **Abuse of Students** – We are committed to ensuring that employee-student relationships are positive, professional and non-exploitative. We will not tolerate improper employee-student relationships. Each employee should always maintain a professional relationship with students, both in and outside of the classroom. Unethical conduct includes but is not limited to:

- i. Committing any act of child abuse or cruelty, including physical and verbal abuse, or any act of child endangerment.
- ii. Exposing a student to unnecessary embarrassment or disparagement.
- iii. Excessive or unnecessary physical interaction with a student, including horseplay.
- iv. Using one's professional relationship or authority with students for one's personal advantage.
- v. Engaging in, or being convicted of, a crime involving children as provided in Section 1012.315, Florida Statutes, as now or hereafter amended.

- vi. Engaging in any sexually related behavior with a student with or without consent of the student. Sexually related behavior shall include, but not be limited to, such behaviors as sexual jokes; sexual remarks; sexual kidding or teasing; sexual innuendo; pressure for dates or sexual favors; inappropriate physical touching, kissing, or grabbing; rape; threats of physical harm; sexual assault and any sexual act as provided for in Section 1012.315, Florida Statutes.
 - vii. Engaging in bullying or harassing behavior on the basis of race, gender, sex, national origin, age, religion or disability, sexual orientation or gender identity in violation of School Board Policy Nos. **5.001** (Protecting Students from Harassment and Discrimination); **5.81** (Protecting Students from Sexual Harassment and Discrimination), as now or hereafter amended; and **5.002** (Anti-Bullying and Harassment) as now or hereafter amended; or, in violation of any related federal or state laws.
 - viii. Engaging in misconduct which affects the health, safety and welfare of a student(s).
 - ix. Soliciting, encouraging, participating or consummating an inappropriate written, verbal, or physical relationship with a student.
 - x. Furnishing tobacco, alcohol, or illegal/unauthorized drugs to any student or allowing a student to consume alcohol, or illegal/unauthorized drugs, contrary to School Board Policy Nos. **3.96** (Drug- and Alcohol-free Workplace) and **3.961** (Drug and Alcohol-free Workplace Policy for Employees Performing Safety-Sensitive Functions and Holders of Commercial Drivers Licenses), as now or hereafter amended.
- b. **Alcohol or Drugs – We are committed to holding each other responsible for our performance as School District employees and as individuals.** Employees should refrain from the use of alcohol or illegal or unauthorized drugs while performing their official duties. Unethical conduct includes but is not limited to:
- i. Being in the workplace, on school premises or at a school-related activity involving students while under the influence of, possessing, selling using, or consuming illegal or unauthorized drugs, contrary to School Board Policy Nos. **3.96** (Drug-and Alcohol-free Workplace) and **3.961** (Drug and Alcohol-free Workplace Policy for Employees Performing Safety-Sensitive Functions and Holders of Commercial Drivers Licenses).
 - ii. Being in the workplace, on school premises or at a school-related activity involving students while documented as being under the influence of, possessing, or consuming alcoholic beverages, contrary to School Board Policy Nos. **3.96** (Drug-and Alcohol-free Workplace) and **3.961** (Drug and Alcohol-free Workplace Policy for Employees Performing Safety-Sensitive Functions and Holders of Commercial Drivers Licenses). A school-related activity includes, but is not limited to, any activity sponsored by the school or school system (i.e. booster clubs, parent-teacher organizations, or any activity designed to enhance the school curriculum, i.e., science trip).
 - iii. Engaging in, or being convicted of or found guilty of, or entering a plea of guilty, regardless of adjudication of guilt, of any misdemeanor or felony crime involving the sale or possession of a controlled substance.
- c. **Misrepresentation or Falsification – We are committed to candor in our work relationships, providing other Board employees including supervisors, senior staff and Board members with accurate, reliable and timely information.** Employees should exemplify honesty and integrity in the performance of their official duties for the School District. Unethical conduct includes but is not limited to:
- i. Falsifying or misrepresenting professional qualifications, criminal history, college or staff development credit and/or degrees, academic award, and employment history when applying for employment and/or certification or when recommending an individual for employment, promotion or certification;
 - ii. Falsifying or misrepresenting information submitted on behalf of the School District to federal, state and other governmental agencies;
 - iii. Falsifying or misrepresenting information reported regarding the evaluation of students and/or

- iv. Failing to report all actual or suspected cases of child abuse, abandonment or neglect as required by Section 1006.061, Florida Statutes, as now or hereafter amended;
- v. Failing to report suspected or actual misconduct of employees that affects the health, welfare or safety of a student;
- vi. Falsifying or misrepresenting reported reasons for absences or leaves;
- vii. Falsifying, misrepresenting, or omitting information submitted in the course of an official inquiry/investigation; and
- viii. Knowingly reporting alleged misconduct of a District employee which affects the health, safety or welfare of a student which the reporting party knows to be false or incorrect.
- ix. Knowingly taking responsibility and credit for work performed or produced by others; or failing to acknowledge the work and contributions made by others, including any acts of plagiarism.

d. *Improper Remunerative Conduct* – We are committed to a practice of not accepting gifts or gratuities in violation of the State Code of Ethics or which give the appearance that the gift improperly influenced our decisions. We will not solicit students, parents, vendors, lobbyists or others for anything that provides us a personal benefit different than the public.

Unethical conduct includes but is not limited to:

- i. Soliciting students or parents of students to purchase equipment, supplies or services from the employee or to participate in activities that financially benefit the employee, contrary to School Board Policy Nos. **2.21** (School Requests of Payment from Students) and **2.16** (Fund-Raising Activities Relating to Schools), as now or hereafter amended.
- ii. Accepting gifts from vendors or potential vendors for personal use or gain where there may be the appearance of a conflict of interest or appearance of impropriety.
- iii. Tutoring students contrary to any applicable School Board Policy or collective bargaining agreement.
- iv. Referring a parent or student to a service, service provider or product in return for anything of value. Officers or employees making referrals as part of their official duties shall make referrals to more than one provider of the service or product, if available. For example, school counselors shall refer parents or students to more than one provider of medical services, if available. Additionally, an employee shall not refer a parent or student to any service, service provider, or product in which that employee has a financial interest, without first disclosing in writing the employee's interest to the parent or student.
- v. Soliciting or accepting money or any other thing of value including, but not limited to gifts, favors, services, or promises of future employment, in return for advice or assistance on matters concerning the operation of the business of the Board;

e. *Avoidance of Conflicts of Interest and Receipt of Improper Outside Income* – We are committed to declining outside income that might be perceived as inconsistent, incompatible or in conflict with our official duties. We will not make decisions or use our position for personal benefit or to gain an improper advantage. Employees are governed by the statutory provisions in the "Code of Ethics for Public Officers and Employees (Code of Ethics)," and certain statutes in the Florida School Code. As employees, you must comply with the provisions of the Code of Ethics and the "Principles of Professional Conduct for the Education Profession in Florida", Chapter 6A-10.081, F.A.C., and the provisions outlined herein.

A conflict of interest can exist anytime your position or decisions provide the District or yourself with a financial benefit or improper advantage. A conflict of interest shall be defined as a situation in which the employee's regard for a private interest tends to lead to a disregard of the employee's public duty or interest. We are permitted to receive outside income as long as it does not create a conflict with our work in the School District. Unethical conduct includes, but is not limited to, the employee:

with units of government as well as for profit and not for profit organizations such as charter schools.

- ii. An employee who has a personal or financial interest because of a relationship with such a business, governmental agency or not for profit organization must recuse him or herself from any decision concerning that entity, including any decision to contract or not to contract with the entity and the administration of the contract. The reason for the recusal must be stated in writing and filed with the Superintendent, or his or her designee, and the School Board Attorney prior to or at the time of the action requiring recusal.
- iii. Soliciting or accepting an Honorarium, which is related to the employee's job duties. "Honorarium" shall be defined consistent with Section 112.3149, Florida Statutes, as a payment of money or anything of value paid to the employee or on his or her behalf as consideration for an oral presentation or writing other than a book.
- iv. Advertising business or professional activities on school district property or use work hours, property or services to perform or promote personal business or professional activities, or to campaign or raise money for any candidates for political office.
- v. Participating in the review and approval of publications or materials for school district purchase by the office in which the employee is employed if the employee or a member of the employee's immediate family is the author/editor of or has any financial interest in the sale of such publications or materials.
- vi. Accepting outside income in any situation where a reasonable person in the community would conclude that the receipt of the income would be inconsistent, incompatible or in conflict with the employee's official duties with the school district.
- vii. Soliciting or accepting any personal gifts, favors or benefits of more than nominal value during a calendar year from any single person or organization that might benefit from the employee's decision. This provision does not apply to: (a) meals provided at an event at which the employee participates in a seminar or similar activity; (b) travel expenses and meals paid by a local, state, federal government agency; or (c) lawful campaign contributions.
- viii. Soliciting or accepting, directly or indirectly, any payments or other benefits under circumstances that would create in the mind of a reasonable person in the community the belief that such payments or benefits were provided with the intent to improperly influence the employee's actions. This provision does not apply to lawful campaign contributions.
- ix. Personally representing another person or entity or acting as an agent or attorney for compensation in connection with any matter in which the School District is interested while employed by the School District and for two (2) years after employment with the School District.
- x. Engaging in political activities prohibited by School Board Policy No. **2.59** (Political Activities on School Board Property).
- xi. Appointing, employing, supervising, promoting, evaluating or advancing an employee contrary to the provisions of School Board Policy No. **3.60** (Nepotism)
- f. **Public Funds and Property** – We are committed to ensuring that District facilities, equipment, supplies, or other District resources are used for District purposes only. Except for occasional and incidental personal use, we will not tolerate improper use of public resources, and will report and reimburse the District for costs associated with personal use. The provisions herein shall not be applicable to community or public use of District facilities pursuant to School Board Policy **7.18** (Community Use of School Facilities). Employees entrusted with public funds and property should honor that trust with a high level of honesty, accuracy, and responsibility. Unethical conduct includes, but is not limited to:
 - i. Failing to use public or school-related funds and School Board property for School District purposes and in a manner specified by School Board Policy, administrative procedures or guidelines or by federal or state laws;
 - ii. Failing to account for public funds collected from students, parents or other parties;

- iii. Submitting fraudulent requests for reimbursement of expenses or for pay;
- iv. Co-mingling public or school-related funds with personal funds or checking accounts; and
- v. Using school district property or school district funds without the necessary approval.

g. Confidentiality of Information - We are committed to abiding by all laws and School Board Policies concerning the confidentiality of student and personnel information, standardized test material, and other such information determined to be confidential by law. No current or former employee shall use or disclose, other than in the performance of his official duties and responsibilities, or as may be required by law, confidential information gained in the course of or by reason of his/her position of employment. Unethical conduct includes, but is not limited to:

- i. Sharing of confidential information concerning student academic and disciplinary records, health and medical information, family status income or assessments/testing results, unless disclosure is required or permitted by law or School Board Policy.
- ii. Sharing of confidential information restricted by state or federal law.
- iii. Threatening the integrity of student testing security, or failing to maintain student testing security, by examining, reading, revealing, or copying the passages, test items, or performance tasks; interpreting or reading test items or passages for students; changing or otherwise interfering with student responses to test items; causing achievement of schools to be inaccurately measured or reported; and copying or reading student responses.
- iv. Sharing of confidential information from a closed session of the School Board prior to such information becoming a public record subject to disclosure.

h. Criminal Acts - We are committed to employees abiding by federal, state and local laws and reporting criminal conduct. We will not tolerate criminal conduct and other conduct that damages the integrity or reputation of the School District. Unethical conduct includes but is not limited to:

- i. Committing or being convicted of felonies involving breach of public trust and other specified offenses as provided in Section 112.3173, Florida Statutes, as now or hereafter amended;
- ii. Committing, being convicted or found guilty of, or entering a plea of guilty, regardless of adjudication of guilt, of any crime involving moral turpitude, as defined by State Board of Education Rule 6A-5.056 "Criteria for Suspension and Dismissal", F.A.C., as now or hereafter amended;
- iii. Failing to report the arrest or conviction for criminal acts as provided in School Board Policy 3.13 (Self Reporting of Arrests and Convictions by School District Employees); or
- iv. Committing or being convicted of criminal acts.

i. Professional Conduct - We are committed to ensuring that our power and authority are used in an appropriate, positive manner that enhances the public interest and trust. Employees should demonstrate conduct that follows generally recognized professional standards. Unethical conduct is any conduct that impairs the ability to function professionally in his or her employment position or conduct that is detrimental to the health, welfare or discipline of students or the workplace. Unethical conduct includes, but is not limited to, the following:

- i. Failing to maintain any necessary certification or licensure required in the performance of job duties for the School District.
- ii. Shall not knowingly and willfully make false statements about a colleague.

employee, which affects the health, safety or welfare of a student.

- iv. Entering into a confidentiality agreement regarding terminated or dismissed instructional employees and school administrators, or personnel or administrators who are dismissed or resign in lieu of termination, based in whole or in part on misconduct that affects the health, safety or welfare of a student.
- v. Providing employment references or discussing the instructional personnel's or school administrator's performance with prospective employers in another educational setting, without disclosing the personnel's or administrator's misconduct.

2. Employee Exercising Contract Management Authority

No School Board official or employee shall exercise contract management authority where any relative or domestic partner of the official or employee is employed by or has contracts with any person doing work over which the official or employee has or exercises contract management authority. Contract Management Authority means personal involvement in or direct supervisory responsibility for the formulation or execution of a contract. This includes, without limitation, the preparation of specifications, evaluation of bids or proposals, negotiation of contract terms, and/or supervision of contract performance.

An employee who exercises contract management authority regarding any Board business or transaction shall not exercise such authority in connection with:

- a. Board business with an entity in which the official or employee has financial interest;
- b. Board business with a person with whom the employee has an employment relationship;
- c. Board business with a person with whom the employee has a business relationship; and
- d. Any contract in which the employee's spouse, other relative or domestic partner has a financial interest.

For the purposes of this section, the term "relative" shall be defined as provided in §112.312(21), Florida Statutes, as now or hereinafter amended. The term "financial interest" shall be defined as such financial benefit/asset or liability consistent with the provisions of Article II, §8, *Florida Constitution*, the Florida Code of Ethics, and the rules of the Florida Commission on Ethics.

3. Statutory Compliance

Those covered by this policy shall abide by any and all applicable state and federal laws and regulations that pertain to the matters addressed in this Code of Ethics.

4. Procedures for Reporting Ethical Violations and Misconduct

- a. **Reporting Procedures.** It is the responsibility of all District employees to promptly report any complaint alleging a violation of this policy and any applicable Florida ethics laws or State Board of Education ethic standards, including any complaint against instructional staff or school administrative staff that includes grounds for the revocation or suspension of a teaching certificate. Any and all complaints shall be promptly reported to the Office of Professional Standards. If the Director of Professional Standards determines that a preliminary investigation is needed, he or she will notify the Superintendent, and submit the complaint for investigation in accordance with this policy. If after preliminary investigation and consultation, the Director of Professional Standards determines that the available evidence provides a reasonable basis for a full investigation, a full investigation of the complaint shall take place in accordance with subparagraph (b) herein.

The person alleged to have committed the violation shall be notified of the complaint and of the investigation, and shall be given an opportunity to present evidence in response to the complaint, personally or through legal counsel as part of the investigation.

- b. **Investigation of Complaints.** Complaints of employee misconduct in violation of this policy and other relevant state laws are to be reported to the Superintendent as the chief executive officer of the School District. Such reports shall be investigated under the legal authority of the Superintendent subject to the provisions of Sections 1012.315, 1012.795 and 112.3188, Florida Statutes, until such investigation has been completed. Upon making a finding of a violation, the Superintendent shall take appropriate actions, including any disciplinary action. The Superintendent shall establish a mechanism for the receipt of complaints, including the reporting by a hotline or website.

Statutes, or personnel qualified and employed pursuant to Section 1012.39, Florida Statutes, that comes to an employee's attention and that includes grounds for the revocation or the suspension of a teaching certificate, or acts prohibited by the Ethics in Education Act, Chapter 2008-108, Laws of Florida, shall be reported to the Office of the Superintendent or the Office of Professional Standards. The willful failure by a school board employee to promptly report a complaint shall constitute cause of discipline of the employee as provided by law and Board policy.

The Office of the Superintendent or the Office of Professional Standards will work collectively with the Office of Inspector General and School Police to ensure complaints are received, reviewed and investigated, as follows: If the allegations are of criminal misconduct, the complaint shall be reported to and investigated by the School Police as provided herein and reported to the Superintendent. If the allegations are of fraudulent conduct, including the misappropriation or misuse of District funds, the complaint shall be investigated by the Inspector General and reported to the Superintendent and School Board for proper disposition.

The Superintendent shall ensure that all alleged misconduct against instructional staff or school administrative staff are timely filed in writing with the Florida Department of Education. The Superintendent or his designee shall make such reports in accordance with state law and rules. If a report concerns the Superintendent, it shall be reported to the Board and the Board Chair shall file the report.

- ii. **Reporting of Possible Criminal Conduct** -- A violation of criminal statutes alleged to have been committed by a District employee or volunteer, whether the conduct shall constitute a felony or a misdemeanor, shall be reported to the appropriate law enforcement agency or the School Police and the Superintendent for investigation. The School Police shall be authorized to investigate and report violations of criminal statutes to the Superintendent and any appropriate law enforcement agency. The Office of Professional Standards shall determine if the allegations of criminal conduct constitute a breach or violation of School Board Policy, this Code of Ethics provision, or professional standards consistent with the provisions in subparagraphs 4(a) and (b) of this policy. The investigative records shall be considered public records subject to confidentiality requirements provided by law pending completion of such active investigation and any resulting investigation by law enforcement agencies. Violations of criminal statutes alleged to have been committed by the Superintendent, as a constitutional officer, should be reported directly to the appropriate law enforcement agency.
- iii. **Giving False or Fraudulent Evidence** -- In all proceedings, including administrative hearings and litigations in which the School Board is an interested party, and including the reporting of violations of this Ethics Code, professional standards breaches, or criminal law violations as described in this policy or the Ethics in Education Act, the evidence presented by District employees shall be truthful. Misrepresentation of factual evidence, including the presenting of false, fraudulent, intentionally misleading or untruthful evidence in any such proceedings or report is declared to be a violation of this policy. Any person making such a misrepresentation of factual evidence is subject to discipline in accordance with this policy.
- iv. **Reporting and Final Disposition** -- At the conclusion of the investigation, an appropriate report setting forth all pertinent facts and circumstances will be prepared by the investigative unit and transmitted to the Superintendent or his designee. Based upon the findings presented in the investigative report, the Superintendent, or his designee, may take action in accordance with the School Board policies or state laws and rules.
- c. **Reports to Other Appropriate Agencies.** It is not the intention of this policy to prevent the filing of reports or complaints to appropriate agencies pursuant to their standards. In instances in which the right to file complaints directly with those agencies exists, the filing of a complaint pursuant to this policy is available as an alternative form of reporting.
- d. **Immunity for Making Report or Disclosure of Information.**

 - i. An instructional employee or school administrator who in good faith promptly reports the misconduct of other instructional personnel or school administrators, or an employee who in good faith promptly reports misconduct of other employees, which affects the health, safety, or welfare of a student, or violations provided in Chapter 2008-108, Laws of Florida, shall have immunity from liability as described in §768.095, Florida Statutes, or as provided in §§ 20.202 and 1006.061, Florida Statutes.

- ii. An employee disclosing information in good faith about a former or current instructional employee or school administrator of the District, in accordance with the Ethics in Education Act, Chapter 2008-108, Laws of Florida, to a prospective employer, upon the request of the prospective employer of the former or current employee, is immune from liability for such disclosure to the extent as provided to the School District under §768.095, Florida Statutes.
- e. **Reassignment or Removal from Workplace Pending Outcome of Investigation.** The Superintendent may reassign or remove from the workplace an employee alleged to have violated this Code of Ethics. Any reassignment or removal shall be made in the best interests of the School District and the students it serves. In deciding whether an employee should be reassigned or removed from the workplace while an investigation proceeds or is completed, the Superintendent shall consider but not be limited to the following:
- i. Whether the reported misconduct is ongoing or is likely to reoccur.
 - ii. Whether the reported misconduct poses a risk to a student(s) or School District employee(s).
 - iii. Whether the reported misconduct endangers the School District.
 - iv. Whether the employee may impede or obstruct the investigation.

5. Actions Prohibited

- a. The School Board, its employees and agents, are prohibited from taking retaliatory action or adverse personnel action against any employee who reports violations or discloses information under this policy.
- b. The provisions of this section shall not be applicable when an employee or person discloses information known by the employee or person to be false.
- c. No remedy or other protection under this policy applies to any person who has committed or intentionally participated in committing the violation or suspected violation for which protection under this policy is being sought.

6. Post-Membership and Post-Employment Restrictions

In accordance with the Florida Code of Ethics, the following provisions shall govern the conduct of former School Board members and employees. For the purposes of this paragraph, "personally represent another person or entity for compensation" shall mean the actual physical attendance on behalf of a client in a School Board or School District proceeding, the writing of letters or filing of documents on behalf of a client, and personal communications made with the officers or employees of the School Board or School District on behalf of a client, as provided in §112.312(22), Florida Statutes, as now or hereafter amended.

- a. No former School Board member may personally represent another person or entity for compensation before the School Board or School District for a period of two (2) years following the vacation of the School Board member's office, pursuant to the provisions of §112.313(13), (14), Florida Statutes, as now or hereafter amended.
- b. No former employee of the School District may personally represent another person or entity for compensation before the School Board or School District for a period of two (2) years following the termination of his or her employment with the School District, pursuant to the provisions of §112.313(13), Florida Statutes, as now or hereafter amended.

7. Acknowledgement/Certification of Code of Ethics

Each employee will be required to annually sign an Acknowledgement/Certification Form in substantially the form and substance attached as Exhibit "A", which is incorporated herein by reference, acknowledging that the employee has received compliance training and agrees to abide by this Code of Ethics as well as the state laws and School Board policies and regulations cited in the Code. Failure to sign the Acknowledgement/Certification Form will not excuse a failure to comply with the Code of Ethics. The Acknowledgement/Certification Form shall be completed in accordance with the process determined by the Office of Professional Standards.

8. Ethics and Compliance Training

Employees shall receive annual compliance training on Code of Ethics. The training program may include online courses, video presentations, bulletins and newsletters. Exempt employees may take the course during their regular duty hours. Non-exempt employees must take the course during their regular duty hours unless requested by the employee and permission is received from the appropriate supervisor/administrator for overtime/comp time per School Board Policy 6.12 or the applicable collective bargaining agreement.

Exhibit A

Code of Ethics

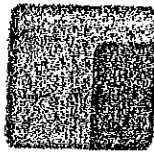
Online Acknowledgment Form will be signed electronically by each employee.

I, the undersigned, _____,

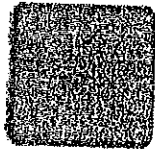
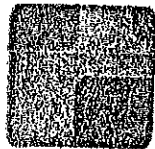
hereby certifies as follows:

1. I have completed the mandatory annual compliance training on School Board Policy 3.02 (Code of Ethics).
2. I am aware that School Board Policy 3.02 (Code of Ethics) incorporates by reference The Code of Ethics for Public Officers and Employees, Chapter 112, Part III, Florida Statutes; the Principles of Professional Conduct for the Education Profession in Florida, State Board of Education Rule 6A-10.081, F.A.C.; and the "Ethics in Education Act", Chapter 2008-108, Laws of Florida.
3. I am aware that School Board Policy 3.02 (Code of Ethics) is available to me in print format on the School District of Palm Beach County's website.
4. I agree to abide by and comply with School Board Policy 3.02 (Code of Ethics) throughout my employment with Palm Beach County School District.

STATUTORY AUTHORITY:	Fla. Stat. §§ 1001.41(1) and (2); 1001.42(28); 112.313; 1012.23(1); 1001.32(2)
LAWS IMPLEMENTED:	Fla. Stat. §§ Ch. 112, Part III; 435.04(2); 1012.315; 1012.795; 1012.796; Ch. 2008-108, L.O.F.
STATE BOARD OF EDUCATION RULE:	F.A.C. 6A-10.081
HISTORY:	5/06/2009; 06/07/2017



The School District of Palm Beach County



The Discipline Process

A Guide for Principals and Department Heads



EXHIBIT
tabbier
EP 3

The Discipline Process
A Guide for Principals and Department Heads

Discipline is effective when it is fair, consistent and timely.

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SETTING THE STAGE FOR SUCCESS

Outlining Rules and Expectations

The goal of employee discipline is to foster a positive work environment whereby all staff members are treated in a fair and equitable manner. In order for you to set the foundation to achieve that goal, it is important that your staff understand workplace rules and your expectations from the beginning. Workplace rules can easily be spelled out in an employee handbook; however, to reinforce your expectations, you should cover them in a staff meeting early in the school year.

Coaching and Correcting – Reinforcing the Rules

When you have a discipline infraction, it is important to remember that not all rule violations require the full gambit of the discipline process. Some employees only need verbal coaching to correct their behavior. For example: "Jane, I really need you to be here on time. When you're late, we have parents waiting at the locked door in the morning" – may be all that Jane needs to hear to realize that you noticed she's been late and that her performance needs to improve.

This type of corrective coaching is a measure that should be taken before beginning the Steps of Corrective Discipline. However, in case the behavior continues, you should make a note of the date that you first verbally addressed the issue.

For minor infractions, you could make a note on your calendar: "Spoke with JB re: late".

For more serious infractions, you should document the incident with a memorandum. This corrective memorandum is called a Memorandum of Specific Incident (MSI) and it is NOT a REPRIMAND. This memo should be written immediately after the behavior occurs. It should specify the behavior that violated the rule; explain the rule and your expectation; and be maintained for future reference.¹ The Memorandum of Specific Incident is slightly more official than just a verbal request to improve; however, it should not be considered discipline of any kind.

¹ A Memorandum of Specific Incident may not be filed in a folder that is indexed by the employee's name. All MSI's should be filed by school year (or semester) in a single file which is ordered chronologically.



Carrot Top High School
1234 Bunny Rabbit Lane
Looney Tunes, Florida 00000
1-561-000-0000

Sample – Memorandum of Specific Incident

MEMORANDUM OF SPECIFIC INCIDENT

TO: Jack Ball
FROM: I.M. The, Principal
DATE: June 03, 2008
RE: POLICY AND PROCEDURES (Tardiness)

During the last two weeks, I observed that you reported to school late on the following days: May 18, 19, 20, 28, and May 30, 2008. You arrived in the parking lot between 7:40 a.m. and 7:48 a.m. on the above mentioned dates.

School hours are posted in the Faculty Handbook. Teachers' duty day begins at 7:30 a.m. and ends at 3:00 p.m.

You are directed to adhere to the Handbook on a daily basis.

Failure to comply with this directive will be considered insubordination and may result in disciplinary action up to and including termination.

Employee Signature of Receipt: _____ Date: _____

INVESTIGATING A COMPLAINT

Due Process

The Discipline Process begins when simple verbal correction is not enough – or the level of the infraction exceeds that which can be dealt with in any other manner. The first step is to provide the employee the benefit of *Due Process* which is nothing more than acting on the principle that all discipline proceedings must be conducted in a manner that is fair and without malice. As a supervisor, your responsibility to the employee includes, but is not limited to:

- Conducting a fact-finding interview of all parties involved in the allegation,
- Conducting a pre-disciplinary meeting (PDM) with employee and employee's representative,
- Determining appropriate disciplinary action,
- Documenting disciplinary action,
- Administering disciplinary action and
- Informing the employee that he/she may submit a written rebuttal.

Do not let your fear of the employee's Union Representative or Attorney prevent you from correcting discipline problems at your school. Employees' rights are designed to protect them from abuse or maltreatment, not guarantee them the right to be insubordinate or to violate policy. This manual will serve as a guide to inform you of the various rights of the different Union Groups working within the Palm Beach County School District and provide you with the necessary tools for handling discipline problems at your site.

INVESTIGATING A COMPLAINT

Gathering the Facts

When you receive a complaint, you must conduct interviews with all of the parties that are involved. Potential witnesses could include:

- Complainant,
- Victim (if not the complainant),
- Co-Workers,
- Third Parties (i.e. students, parents, suppliers).
- Subject of the Complaint.

In order to identify more witnesses, you should ask each person involved in the complaint whom they believe might have more information to add. In addition, with each interview, it is imperative that you remind all parties involved that they are not to discuss the interview, allegation or complaint with any other person.

When Conducting an Interview

- Be objective.
- Do not disclose too much information to a witness.
- Do not discuss your opinion or conclusions with witnesses.
- Give the witness the opportunity to share everything he/she knows.
- Ask open-ended questions.
- At the beginning and end of every interview, remind the interviewee not to discuss the incident with anyone.

Examples of Interview Questions

- What happened?
- When did it occur?
- Where did it happen?
- Who was present?
- Who else may have witnessed the event?
- What is his/her relationship (social/historical/ physical proximity) to the subject?

Written Notice of Charge of Wrongdoing

For CTA

Any information which may be relied upon to take action against an employee will be shared promptly with said employee and his/her Association representative as soon as possible. Copies of any written information/correspondence that is related to the action of the employee or the investigating administrator(s) will be provided promptly to the employee and his/her Association representative (Article II (M) (3)).

Furthermore, per Article II (F) (9) (a): No action shall be taken against an employee on the basis of a complaint by a parent/guardian or student or other individual, nor shall any notice thereof be

INVESTIGATING A COMPLAINT

Written Notice of Charge of Wrongdoing

included in an employee's personnel file, unless the matter is first reported to the employee in writing. The employee shall have the right to attach a statement to the written complaint. Before any complaint is determined to be valid, it will be discussed with the employee in a conference. Once the investigation has been conducted, the employee shall be advised of any valid complaint.

For AESOP

An employee against whom action is to be taken under this Section shall have the right to review all of the information relied upon to support the proposed action and shall be given a copy upon request. No adverse action may be taken against an employee on the basis of any document which has not been previously provided to that employee (Article 3 (C) (4)).

For Florida Public Services Union (formerly NCF&O)

Written Notice shall be provided as soon as possible after the investigation has begun, to include specific charges against the employee.

Sending the Employee Home

Reassignments are designed to remove employees from situations where they are a danger to themselves or others or where they are obstructing an investigation. These reassignments are not punishment in and of themselves and should NEVER be used as discipline. That is not to say that a Principal should not send an employee home who needs a cooling off period. Principals have the authority to send an employee home for a period of one day. When necessary, an Area Superintendent can add an additional two days to the separation period. This was designed to allow for time to investigate an incident, not to act as an escalation to a disciplinary suspension. When using this tool, the Principal should be aware of the possible stigma associated with "being suspended" and the punitive perception of this action.

Interviewing the Subject of the Complaint

- Schedule an Investigative interview with the subject.
- Prior to interviewing the subject, inform him/her as to the nature of the allegation.
- If the employee requests a union representative – allow the employee to contact one (see *Weingarten Rights* on next page).
- Interview, review and discuss.
- Ask if the subject has any further information, such as names of possible witnesses.
- Direct the subject, as with all other witnesses, not to discuss the matter with ANYONE.
- Failure to comply might, in itself, be grounds for disciplinary action.

INVESTIGATING A COMPLAINT

Weingarten Rights

EMPLOYEE'S RIGHT TO UNION REPRESENTATION

The right of employees to have union representation at investigatory interviews was announced by the U.S. Supreme Court in a 1975 case (*NLRB vs. Weingarten, Inc.* 420 U.S. 251, 88 LRRM 2689). These rights have become known as the *Weingarten* rights.

Employees have *Weingarten* rights only during investigatory interviews. An investigatory interview occurs when a supervisor questions an employee to obtain information which could be used as a basis for discipline or asks an employee to defend his or her conduct.

If an employee has a reasonable belief that discipline or other adverse consequences may result from what he or she says, the employee has the right to request union representation. Management is not required to inform the employee of his/her *Weingarten* rights; it is the employee's responsibility to know and request.

The Supreme Court has also ruled that during an investigatory interview, management must inform the union representative of the subject of the interview. The representative must also be allowed to speak privately with the employee before the interview. During the questioning, the representative can interrupt to clarify a question or to object to confusing or intimidating tactics.

While the interview is in progress, the representative cannot tell the employee what to say; but he may advise the employee on how to answer a question. At the end of the interview, the union representative can add information to support the employee's case.



Carrot Top High School
1234 Bunny Rabbit Lane
Looney Tunes, Florida 00000
1-561-000-0000

Sample - Charge of Wrongdoing

NOTICE OF CHARGE OF WRONGDOING

TO: Elmer Fudd
FROM: I.M. The, Principal
DATE: September 4, 2008
RE: PARENT COMPLAINT

On Tuesday, September 3, 2008, I was advised by the parent of Bugs Bunny that you have consistently used inappropriate and derogatory language when addressing her son in class. Furthermore, yesterday afternoon another staff member reported to me that you were heard making critical remarks about students with long ears in the teacher's lounge.

A full investigation into this matter is being conducted. For the time being, Bugs Bunny will be assigned to another class and you will continue to work your normal schedule. I am instructing you not to speak to and/or attempt to contact any witnesses or other parties involved in this investigation to discuss any matters or material in any way related to the allegations/investigation. Any attempt to do so could result in disciplinary action being taken against you.

I will be conducting interviews with the various student and staff witnesses this week. As this allegation could lead to potential disciplinary action, I will be contacting you to schedule a time to take your statement.

Employee Signature of Receipt: _____ Date: _____

Sample Leave/TDE for Sending an Employee Home



THE SCHOOL DISTRICT OF PALM BEACH COUNTY
**Leaves/Temporary Duty Elsewhere (TDE)
 Application**

EMPLOYEE ID
 1234567

NAME (Last, First, Middle Initial) AtYall POSITION/CLASSIFICATION Secretarial Clerk II
 SCHOOL DEPARTMENT NAME Carrot Top High School SCHOOL DEPT. NO. 1234

I. Request for Leave of Absence

I hereby apply for Leave of Absence on the following duty days. (List dates absent, identifying 1/2 days with A.M. or P.M.)
 Total duty hours absent:

PAID LEAVE (choose one only)

- Sick (S)
- Personal (Charged to Sick Leave) (P)
- Line-of-Duty Injury or Illness (LOD/ILI)
- Vacation - 12 month positions only (A)
- Jury Duty / Paid Witness Duty (J)
- Half Sick / Half Workers Comp. (V)
- Other (Explain) _____

UNPAID LEAVE (choose one only)

- Extended Illness
- Maternity / Recovery / Child Care
- Other Personal (Explain) _____
- Personal (To be charged to an employee and submitted by Principal / Department Head due to improper procedures)

II. Request for Temporary Duty Elsewhere (TDE) (T)

List date(s) of Temporary Duty Elsewhere 8.0

Justification

Administrative Action

Destination

Provide funding information below for the following:

1. Substitute teacher required? Yes No

2. Total estimated travel cost _____

3. Other costs (such as registration) _____

	DEPT	FUND	FUNG	ACCOUNT	PROG	BUDG MGR	LOCAL CODE	AWARD YR	PROJECT
1.									
2.									
3.									

III. Employee Signature/Approval Signatures

SIGNATURE OF PERSON MAKING REQUEST _____ DATE _____

I certify that funds are available in the accounts shown above for the specified amount(s).
 Area Superintendent signature required ONLY for Principal's Leave/TDE Application.

Approved Disapproved

SIGNATURE OF SUPERVISOR _____ DATE _____

Approved Disapproved

SIGNATURE OF AREA SUPERINTENDENT (Principal Leave/TDE only) _____ DATE _____

PBSD 0032 (Rev. 7/15/2003)

INVESTIGATING A COMPLAINT

Criminal Investigations vs. Site Investigations

If the instructions for conducting an interview sound a little like police work to you – it's not by accident. Criminal and non-criminal investigations are conducted using many of the same tools, objective interviews, leading questions, and confidentiality.

Who Should Investigate?

Principal or Department Head - Examples of Site Investigations

- Classroom Discipline (non-physical)
- Grade Discrepancies
- Code of Ethics Violations
- Misuse of District Time, Equipment or Technology
- Violation of Departmental Policies and/or Faculty Handbook
- Neglect of Duty
- Interpersonal Conflicts
- Employee Misconduct
 - Insubordination
 - Verbal Confrontation between Employees or between Employee and Student
 - Attendance
- Non-Criminal Parent Complaints

If you uncover facts or allegations of potential criminal activity, please contact the Employee Relations Hotline immediately.

357-5999 PX 2-5999

School Police Department - Examples of Criminal Allegations

- Arrest or Criminal Charges
- Assault/Battery
- Burglary/Theft
- Child Abuse
- Possession of Weapons
- Sexual Allegations
- Stalking
- Substance Abuse

The Employee Relations Hotline is your link to assistance with discipline complaints. This hotline will be available 24/7 with employees who can connect you to the help you need upon receiving a complaint.

INVESTIGATING A COMPLAINT

Documentation

Documentation is an important part of the discipline process. Having appropriate documentation is one way to demonstrate that an employee received Due Process for the disciplinary action. Supervisors should keep in mind, however, that these documents are open to public inspection under the Sunshine Law. Investigative documents become public record upon completion of the investigation. Memorandums, Reprimands and Rebuttals become public record ten to fifteen days after they are received by the subject minus any redacted information due to allowable exemptions. Examples of allowable exemptions include student/parent names, addresses and other related information which identifies involved the juveniles involved in the investigation.

Verbal Correction and Coaching

Personal Knowledge

Memorandum of Specific Incident

Personal Knowledge – Credible Witness – Documented Performance

Verbal Reprimand with Written Notation

Personal Knowledge – Credible Witness – Documented Performance – Statements of Subject Employee – Pre-Disciplinary Meeting Notes

Written Reprimand

Personal Knowledge – Credible Witness – Documented Performance – Statements of Subject Employee – Prior Discipline – Severity of Behavior – Pre-Disciplinary Meeting Notes

Suspension/Termination

Prior Disciplinary Action – District Level Investigation

Records Retention:

Calendar notations and counseling notes are considered to be:

EMPLOYEE CONDUCT COUNSELING RECORDS

GS1-SL Item #206

This record series documents initial coaching or counseling of an employee regarding performance or behavior issues which may lead to disciplinary action if not corrected. If disciplinary action is taken, this record becomes part of the employee's disciplinary case file.

RETENTION:

- Record copy. One (1) anniversary year after final action.
- Duplicates. Retain until obsolete, superseded, or administrative value is lost.

Memoranda of Specific Incident, though corrective in nature, are not a step in the discipline process; therefore they are considered to be:

CORRESPONDENCE AND MEMORANDA: ADMINISTRATIVE

GS1-SL Item #17

This record series consists of routine correspondence and memoranda of a general nature that are associated with administrative practices but that do not create policy or procedure, document the business of a particular program, or act as a receipt.

RETENTION:

- Record copy. Three (3) fiscal years.
- Duplicates. Retain until obsolete, superseded, or administrative value is lost.

INVESTIGATING A COMPLAINT

Verbal Reprimands with Written Notation, when not required to be a part of the personnel file (See Steps of Progressive Discipline), are considered to be Informal Discipline and should be maintained in the same manner as the Disciplinary Case File.

DISCIPLINARY CASE FILES: EMPLOYEES

GS1-SL Item #98

This record series documents the investigation of allegations of employee misconduct and/or violation of department regulations or orders, state or federal statutes, or local ordinances. The series may include, but is not limited to, statements by the employee, witnesses, and the person filing the complaint. Cases include both formal and informal disciplinary proceedings relating to allegations that were determined as sustained, not sustained, unfounded, or exonerated. "Formal Discipline" is defined as disciplinary action involving demotion, removal from office, suspension, or other similar action. "Informal discipline" is defined as any disciplinary action involving written and verbal reprimands, memoranda, or other similar action. These records are filed separately from the employee personnel file, but the final action summary becomes part of the personnel file.

RETENTION:

- a) Record copy. Five (5) anniversary years after final action.
- b) Duplicates. Retain until obsolete, superseded, or administrative value is lost.

Written Reprimands and final action summaries should be submitted to the administrative office to be included in the personnel file.

INVESTIGATING A COMPLAINT

The Findings

After the Investigation is Complete

Once you have interviewed all of the witnesses and looked at all of the documented evidence, it's time to make a decision. There are three possible outcomes for any complaint:

Substantiated

The available evidence clearly showed that the charges were true.

Unsubstantiated

The available evidence was not conclusive. The evidence did not clearly point to "guilt" or "innocence".

Unfounded

The available evidence clearly showed the charges to be unsupported by the evidence.

A finding that is Unsubstantiated or Unfounded completes the investigation. It means that you don't have enough cause for disciplinary action. The employee should be informed of these findings and that the investigation is complete. The investigatory file should still be maintained for a period of five years (See Disciplinary Case Files: Employees).

The Substantiated Complaint

In court, there is a standard by which allegations are judged called a Standard of Proof. For criminal court proceedings the Standard of Proof is ...*beyond a reasonable doubt*. For discipline matters, the standard of proof is a slightly reduced standard. To substantiate the case, the evidence should be *clear and convincing*.² Clear and Convincing evidence means that the allegation(s) must be substantially more likely to have occurred than to not have occurred.

When you find that a complaint is substantiated, the next phase of the disciplinary process is the Pre-Disciplinary Meeting.

² For AESOP the evidence only needs to be sufficient through a balance of probabilities (known also as preponderance of the evidence). This means that there should be a greater than 50% chance that an allegation is true.



Carrot Top High School
1234 Bunny Rabbit Lane
Looney Tunes, Florida 00000
1-561-000-000

Sample Letter – Investigation Unfounded

June 22, 2008

Hand Delivered

Mr. Bugs Bunny
1111 Cherry Top Lane
Looney Tunes, FL 00000

Re: Investigative Findings - No Probable Cause

Dear Mr. Bunny:

Please be advised that the investigation into the facts surrounding the allegation listed below has been completed. After review, this allegation has been determined to be unfounded. Therefore the case is considered closed without probable cause for disciplinary action.

Allegation: Inappropriate Use of the Word Gamete

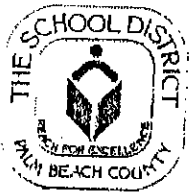
Please be advised that the investigative file is now closed. Pursuant to Section 1012.31, Florida Statutes, when an investigation is concluded, all materials related to the investigation shall be treated as public record, subject to disclosure upon request, minus any allowable exemptions. In addition, you have the right to inspect this public record and to submit any written rebuttal information for enclosure into the public record within ten days of the receipt of this letter.

Thank you for your cooperation in this matter.

Sincerely,

I.M. The
Principal, Carrot Top High School

Employee Signature of Receipt: _____ Date: _____



THE SCHOOL DISTRICT OF
PALM BEACH COUNTY, FLORIDA

JAMES P. KELLY, ESQUIRE
CHIEF OF POLICE

ANN KILLETS
CHIEF ACADEMIC OFFICER

ANGELETTE GREEN, DIRECTOR
DEPARTMENT OF EMPLOYEE RELATIONS
3370 FOREST HILL BOULEVARD A-115
WEST PALM BEACH, FL 33406-5870
561-434-8893 Fax: 561-434-8178
www.palmbeach.k12.fl.us

Sample - Return to Site for Action

May 8, 2008

Ms. I.M. The, Principal
Carrot Top High School
1234 Bunny Rabbit Lane
Looney Tunes, Florida 00000

RE: Bugs Bunny, Case 7001543

Dear Ms. The:

The attached investigation is being turned over to you for your review. Please take the disciplinary action that you deem appropriate.

Please call me if you have any questions.

Sincerely,

Angelette Green

Angelette Green, Director
Department of Employee Relations

AG: mb

attachment

THE PRE-DISCIPLINARY MEETING (PDM)

Before a decision is made regarding the level of discipline that will be meted out to an employee, the employee has a right to a Pre-Disciplinary Meeting. During this meeting, the employee will be allowed to tell his/her version of events and present other information that he/she believes should be considered when making this determination. These are called *Loudermill Rights* (see *Loudermill Rights* below).

LOUDERMILL RIGHTS

Cleveland Board of Education v. Loudermill (1985)

Loudermill Rights are associated with actions pertinent to suspension without pay, involuntary demotion, or involuntary termination when just cause is required. Prior to being disciplined, "The ...tenured public employee is entitled to oral or written notice of the charges against him (or her), an explanation of the employer's evidence, and an opportunity to present his (or her) side of the story."

This right is known as the "Loudermill Right" based upon the 1985 U.S. Supreme Court decision in the case of *Cleveland Board of Education v. Loudermill*.

- Unlike Weingarten, the employer has an obligation to inform the employee of his/her Loudermill Rights.
- The employee has a right to speak or not to speak at the Loudermill (or pre-disciplinary) hearing³. Also, the employee has a right to union representation and the union steward may speak on behalf of the employee. What the employee says can be used against him/her. What the Union Steward says can't be used against the employee.
- Remember to take notes at the meeting and put them in your file. Suggest that the union steward do the same.

Supervisors should:

- Advise the subject of the need for a meeting in writing and provide a copy of the file.
- Remember to properly redact the file to remove any names/identifiers of students and parents.
- Always have a second administrative staff member (Assistant Principal, Head Secretary, etc.) present to document the meeting.
- Allow for a representative to be present (but remember YOU are in charge).
- Do not tape record the meeting or allow it to be taped by anyone else.
- Thank the subject for cooperating.
- State the proposed range of discipline.
- Provide a synopsis of the case against the subject and allow for exculpatory evidence⁴ or explanations.
- Allow the subject or the representative to make a statement or ask questions at the end of the meeting.
- Advise the subject that a decision and the proposed discipline will be forthcoming.

³ At the District Level the *Garrity Rule* can be exercised in order to compel an employee to speak in a hearing.

⁴ *Exculpatory Evidence* is the evidence which clears or tends to clear the



evidence favorable to the accused, accused of guilt.

Carrot Top High School
1234 Bunny Rabbit Lane
Looney Tunes, Florida 00000
1-561-000-0000

Sample -- Notice of PDM

April 08, 2008

Hand Delivered or Certified Mail and Regular U.S. Mail

Mr. Bugs Bunny
1234 Rabbit Hole Lane, Apt #3
Looney Tunes, FL 33411

Re: Pre-Disciplinary Meeting

Dear Mr. Bunny:

The purpose of this letter is to inform you that an administrative personnel investigation is nearly completed with public records implications resulting therefrom. This investigation is based on one or more of the following allegation(s) and/or policy(ies).

Allegation(s) and/or Policy(ies) Violations

- Failure to exercise best professional judgment

Florida Administrative Code
6B-1.001.(1) Code of Ethics of the Education Professionals in Florida

Pre-Disciplinary Meeting

A copy of the investigative file including any written complaint and/or report is attached for your inspection and review. You will be given an opportunity to respond to the aforementioned allegation(s) at a Pre-Disciplinary Meeting. You should produce any documents that you believe would be supportive of your position, or rebut information in the material provided with this letter. The purpose of the Pre-Disciplinary Meeting is to discuss the outcome of the investigation and provide you an opportunity to explain or rebut the findings in the investigation. Therefore, you are directed to attend a Pre-Disciplinary Meeting for the record at Carrot Top High School on the following date and time.

Pre-Disciplinary Meeting

4:00 p.m. on Friday, April 20, 2008

Please be reminded that you have the right to bring a representative to this Pre-Disciplinary Meeting. In addition, we will explain the steps that are involved in processing and resolving your case. The potential consequences, should the allegation(s) be substantiated, range from verbal reprimand with written notation up to and including termination. However, if you fail to attend this Pre-Disciplinary Meeting, we will take the allegation in the investigation to be true; and, therefore, you may be subject to disciplinary action, up to and including a recommendation for termination.

Public Records Notification

Pursuant to Section 1012.31, Florida Statutes, when an investigation is concluded, all materials related to the investigation shall be treated as a public record, subject to disclosure on request, minus any redacted information due to allowable exemptions. This letter is to inform you that the investigative materials and this letter will be released, upon request, minus any redacted information due to allowable exemptions, ten (10) days following your receipt of this document/or

if this document was mailed but not retrieved, possibly fifteen (15) days after the date of this document or when the investigation is concluded, whichever occurs later.

Page 1 of 2

Bunny, Bugs

Pre-Disciplinary Meeting Notice

Written Rebuttal Information

You have the right to inspect these materials relating to the investigation, to submit and attach any written rebuttal information to me as a response to any materials in the file, and to seek an informal inquiry into any material you believe to be false.

Should you have any questions, please contact me at (561) 000-0000.

Sincerely,

I.M. The, Principal
Carrot Top High School

cc: Representative Name, Title

Attachment

Employee Signature of Receipt: _____ Date: _____



Carrot Top High School
1234 Bunny Rabbit Lane
Looney Tunes, Florida 00000
1-561-000-000

Sample PDM Summary Notes

June 22, 2008

FORM F

Hand Delivered

Mr. Bugs Bunny
1111 Cherry Top Lane
Looney Tunes, FL 00000

Re: Pre-Disciplinary Meeting Summary

Dear Mr. Bunny:

As you are aware, you attended a pre-disciplinary meeting on the following date and time:
Pre-disciplinary Meeting 2:00 PM on Monday, June 16, 2008

A copy of the investigation report was presented to you in advance of the meeting. During the meeting, you were able to respond to the allegations presented. In summary, you are alleged to have violated or been non-compliant with the following applicable standards of behavior.

Allegation(s) and/or Policy(ies) Violated

- ♦ Conversion of co-worker's property and/or funds
- ♦ Theft of monies
- ♦ Ethical Misconduct

Florida Administrative code

- ♦ 6B-1.001, (1), Code of Ethics of the Education Profession in Florida

Florida Statute

Title XLVI, Crimes

- ♦ Chapter 812.014, Theft, Robbery and Related Crimes

The Pre-Disciplinary Meeting was held to give you the opportunity to provide additional information, dispute, explain or elaborate on the information within the investigation report. The enclosed summary identifies those in attendance at the meeting, including your representative, if in attendance, and the facts and/or information or documents you presented. If any new material has been received, a copy is enclosed for your review.

The Summary will be considered by the District along with the investigation report in reaching a decision as to whether the allegations (s) are unfounded, unsubstantiated or are substantiated and a recommended discipline (if applicable). You will be advised of the finding and discipline, if any, that is recommended or is to be imposed.

Public Records Notification

You were previously advised that pursuant to Section 1012.31, Florida Statutes, the investigative

report concerning this matter and its contents are considered public record at the conclusion of the investigation.

Page 1 of 3

Written Rebuttal Information

You have the right to inspect these materials relating to the investigation, to submit and attach any written rebuttal information to me as a response to any materials in the file, and to seek an informal inquiry into any material you believe to be false.

Sincerely,

I.M. The, Principal
Carrot Top High School

cc: Joe Black, Classroom Teachers Association

Attachment

Employee Signature of Receipt: _____ Date: _____

Pre-Disciplinary Meeting Summary

Employee Name:

Bugs Bunny

Pre-Disciplinary Meeting Date:

Monday, June 16, 2008 2:00 PM

In Attendance:

Bugs Bunny
Joe Black, Classroom Teachers Association
I.M. The, Principal

Facts, information and/or documents presented for consideration:

1. Bugs Bunny stated he had the opportunity to review the report that was provided to him on June 13, 2008.
2. Bugs Bunny admitted to stealing a co-worker's money out of her locker.
3. Bugs Bunny stated he is experiencing financial hard times and that is why he took the money.
4. Bugs Bunny admitted to stealing \$25.00 from his co-worker.
5. Bugs Bunny has made financial restitution to his co-worker; and no criminal charges are being filed.
6. Bugs Bunny stated this is the first time he has been in any trouble; and he hopes the District would show leniency in deciding disciplinary action.

STEPS OF PROGRESSIVE DISCIPLINE

Classroom Teachers Association (CTA) Article II § M

Site Level Disciplinary Actions

Verbal Reprimand with Written Notification

- A Verbal Reprimand with Written Notation does not become a part of the employee's personnel file.
- A formal grievance can be filed with the Principal or Area Superintendent.
- After twelve months the notation shall not be used to the further detriment of the employee.
- A written rebuttal may be attached to the notation.

Written Reprimand

- Must be signed by the giver and the receiver of the reprimand.
- Will be filed in the employee's personnel file.
- A formal grievance can be filed with the Principal or Area Superintendent.
- A written rebuttal may also be placed in the personnel file.

District Level Disciplinary Actions

Suspension without Pay

- Is grievable through the Department of Labor Relations
- Length is determined by cause.
- Notice and specifics must be in writing.
- Information is filed in the employee's personnel file.
- Recommended by the Employee Investigative Committee (EIC) to the Superintendent.
- Is actionable by the School Board.

Termination

- Is grievable through the Department of Labor Relations.
- Recommended by the Employee Investigative Committee to the Superintendent.
- Is actionable by the School Board.

Skipping Disciplinary Steps

May do so in cases which clearly constitute a real and immediate danger to the District or the actions/inactions of the employee constitute such clearly flagrant and purposeful violations of reasonable school rules and regulations.

STEPS OF PROGRESSIVE DISCIPLINE

Association of Educational Secretaries and Officer Personnel (AESOP) Article 3 & C

Site Level Disciplinary Actions

Verbal Reprimand with Written Notification

- A Verbal Reprimand with Written Notation does not become a part of the employee's personnel file.
- Not grievable.
- Previous charges or disciplinary actions that have been brought forth by the District may be cited against the employee if those previous acts are reasonably related to the existing charge. All previous charges or disciplinary actions must have been shared with the employee.

Written Reprimand

- Must be signed by the giver and the receiver of the reprimand.
- Will be filed in the employee's personnel file.
- Not grievable.
- A copy of the reprimand must be mailed to the employee by certified mail return receipt.
- Previous charges or disciplinary actions that have been brought forth by the District may be cited against the employee if those previous acts are reasonably related to the existing charge. All previous charges or disciplinary actions must have been shared with the employee.

District Level Disciplinary Actions

Suspension Without Pay

- Is grievable through either PERC or DOAH, but not both.
- Length is determined by cause.
- Information is filed in the employee's personnel file.
- Recommended by the Employee Investigative Committee to the Superintendent.
- Is actionable by the School Board.

Termination

- Is grievable through either PERC or DOAH, but not both.
- Recommended by the Employee Investigative Committee to the Superintendent.
- Is actionable by the School Board.

Skipping Disciplinary Steps

May do so in cases that constitute a real and immediate danger to the District or other flagrant violation.

Steps of Progressive Discipline

Florida Public Services Union (FPSU – Formerly NCF&O) Article 17-Regular (Group B)
Article 13-Paraprofessional II (Group D)
Article 15 Supervisory (Group F)

Site Level Disciplinary Actions

Verbal Reprimand with Written Notification

- Becomes a part of the employee's personnel file.
- Is grievable through either the Department of Administrative Hearings or the Department of Labor Relations. Such choice must be made within fifteen days of written notification of disciplinary action and the District must be notified accordingly.
- Shall not be used to the further detriment of the employee unless there is another reasonably related incident by that same employee within a 24 month period.

Written Reprimand

- Must be signed by the giver and the receiver of the reprimand.
- Will be filed in the employee's personnel file.
- Must be sent by certified mail to the employee
- Is grievable through either the Department of Administrative Hearings or the Department of Labor Relations. Such choice must be made within fifteen days of written notification of disciplinary action and the District must be notified accordingly.

District Level Disciplinary Actions

Suspension Without Pay

- Is grievable through either the Department of Administrative Hearings or the Department of Labor Relations. Such choice must be made within fifteen days of written notification of disciplinary action and the District must be notified accordingly.
- Length is determined by cause.
- Notice and specifics must be in writing.
- Information is filed in the employee's personnel file.
- Recommended by the Employee Investigative Committee to the Superintendent.
- Is actionable by the School Board.

Termination

- Is grievable through either the Department of Administrative Hearings or the Department of Labor Relations. Such choice must be made within fifteen days of written notification of disciplinary action and the District must be notified accordingly.
- Recommended by the Employee Investigative Committee to the Superintendent.
- Is actionable by the School Board.

Skipping Disciplinary Steps

May do so in cases which clearly constitute a real and immediate danger to the District or the actions/inactions of the employee constitute such clearly flagrant and purposeful violations of reasonable school rules and regulations.

Types of Progressive Discipline

Union Group	Verbal Reprimand	Written Reprimand	Suspension	Skipping Steps
Palm Beach County Classroom Teachers Association (CTA) Article II §M	Verbal Reprimand with Written Notation - not be placed in the personnel file - not used after 12 months of the action/inaction leading to discipline.	Written Reprimand - dated - signed - filed in personnel file	Suspension without Pay - length determined by just cause - Notice and specifics must be in writing - dated - signed - filed in personnel file	May do so in cases which clearly constitute a real and immediate danger to the District or the actions/inactions of the employee constitute such clearly flagrant and purposeful violations of reasonable school rules and regulations.
Florida Public Services Union (Formerly NCF&O) Article 17-Regular Article 15-Supervisor Article 13-Paraprofessional II	Verbal Reprimand with Written Notation - placed in personnel file - may not be used after 24 months	Written Reprimand - dated - signed - filed in personnel file upon receipt of a copy to employee by certified mail	Suspension without Pay - length determined by just cause. - Notice and specifics must be in writing - dated - signed - filed in personnel file	May do so in cases which clearly constitute a real and immediate danger to the District or the actions/inactions of the employee constitute such clearly flagrant and purposeful violations of reasonable school rules and regulations.
Association of Educational Secretaries and Office Personnel (AESOP) Article 3 §C	Verbal Warning (Written Notification) - not filed in personnel file	Written Reprimand - dated - signed - filed in personnel file	Suspension without pay with Board Approval	May do so in cases that constitute a real immediate danger to the District or other flagrant violation.

Discipline Process Overview

Incident Occurs and is Reported



Site Administrative Review
Notification of Employee
Investigation into the "who, what, where, when and why"



Determination of Allegations and Findings

Unsubstantiated
End of Complaint

Substantiated

Unfounded
End of Complaint



Pre-Disciplinary Meeting
Opportunity for the Employee to Respond



Site Disciplinary Action
Verbal Reprimand (With Written Notation)
Written Reprimand



Employee Investigative Committee



Board Action



Carrot Top High School
1234 Bunny Rabbit Lane
Looney Tunes, Florida 00000
1-561-000-000

Sample Verbal Reprimand

June 11, 2008

Jack Ball
1111 Laffy Lane
Greenacres, Florida 00000

Re: Verbal Reprimand (Written Notation)

Dear Mr. Ball:

This correspondence is given to you as a Written Notation of Verbal Reprimand for conducting personal business on District time, misuse of District technology (E-Mail) and abusive comments regarding co-workers.

Specifically, during the period of May 15, 2008 through May 30, 2008, you were engaged with a fellow co-worker in sending and receiving electronic E-mail messages between the two of you. These E-mail messages were transmitted utilizing School District equipment and were transmitted during your scheduled work time. Further, this correspondence between the two of you was of a personal nature not connected with your work duties. In addition, some of the comments that you made were of a disparaging and abusive nature; and when shared with those co-workers, they found them offensive and inappropriate at best. Please be aware such actions on your part, even if there was no intent in doing harm, violate School District Policy and bring into question your professional integrity and ethics.

You are directed to cease such conduct immediately. Further, you are to desist from engaging in the same or similar actions in the future. Failure to do so will result in further disciplinary action, up to and including termination.

Please be advised that the above referenced case and related investigation file are considered to be closed. Pursuant to Section 1012.31, Florida Statutes, when an investigation is concluded, all materials related to the investigation shall be treated as a public record, subject to disclosure upon request, minus any allowable exemptions. In addition, you have the right to inspect this public record and submit any written rebuttal information for enclosure into the public record within ten days after receipt of this letter.

Sincerely,

I.M. The, Principal
Carrot Top High School

cc: Joe Black, Union Representative
Personnel File (If a member of Florida Public Services Union)

Employee Signature of Receipt: _____ Date: _____



Carrot Top High School
1234 Bunny Rabbit Lane
Looney Tunes, Florida 00000
1-561-000-0000

Sample Written Reprimand

June 25, 2008

Mr. Bugs Bunny
1111 Cherry Top Lane
Looney, Florida 00000

Dear Mr. Bunny:

Re: Written Reprimand

This correspondence is being given to you as a **Written Reprimand** for ethical misconduct and conversion of a co-worker's property and/or funds.

Specifically on June 9, 2008, you were seen by two employees going through the locker of Jane Smith, a fellow co-worker. An investigation was conducted by School Police; and it was determined that you had in fact stolen twenty-five dollars from Ms. Smith. Theft, regardless of the amount, is considered a crime in the State of Florida and a violation of Board Policy.

You are directed to cease such conduct immediately. Further, you are to desist from engaging in the same or similar conduct in the future. Failure to do so will result in further disciplinary action, up to and including a recommendation for termination.

Please be advised that the above referenced case and related investigation file are considered to be closed. Pursuant to Section 1012.31, Florida Statutes, when an investigation is concluded, all materials related to the investigation shall be treated as a public record, subject to disclosure upon request, minus any allowable exemptions. In addition, you have the right to inspect this public record and submit any written rebuttal information for enclosure into the public record within ten days after receipt of this letter.

Sincerely,

I.M. The, Principal
Carrot Top High School

cc: Dr. Suzie Shoelaces, Area Superintendent
Joe Black, Classroom Teacher Association Representative
Personnel File

Employee Signature of Receipt: _____ Date: _____

I Scenario

Use of Physical Force

You have just been informed that first grade teacher Regina Rabbit grabbed student April Cotton by the front of the shirt and pushed her through the door.

Describe the steps you would take in this matter as Supervisor.

2 Scenario

Inappropriate Comments Sexual in Nature

You have just been informed that Coach Jane Day was overheard making sexually explicit comments to football player Roger Dean during first hour physical education class.

Describe the steps you would take in this matter as Supervisor.

3 Scenario

Profanity

You have just been informed that biology teacher Kite Fly cursed at student Jack Blue during a heated argument during lab time.

Describe the steps you would take in this matter as Supervisor.

Scenario

4

Theft

You have just been informed that cafeteria worker Jane Scotch was seen removing money from the cash register inside the cafeteria and placing the monies in the pocket of her pants.

Describe the steps you would take in this matter as Supervisor.

5 Scenario

Inappropriate Sexual Relationship

You have just been informed by high school student Jill Day that she and math teacher Richie Little have been involved in a nine month sexual relationship.

Describe the steps you would take in this matter as Supervisor.

6 Scenario

Lack of Supervision

You have just been informed that two high school students were alleged to have exposed their genital organs inside the classroom of Mrs. White as she worked on the classroom's computer during instruction time.

Describe the steps you would take in this matter as Supervisor.

7 Scenario

Attendance

Teacher Mickey Maus has been late 13 times and missed 80 hours of scheduled work days.
Describe the steps you would take in this matter as Supervisor.

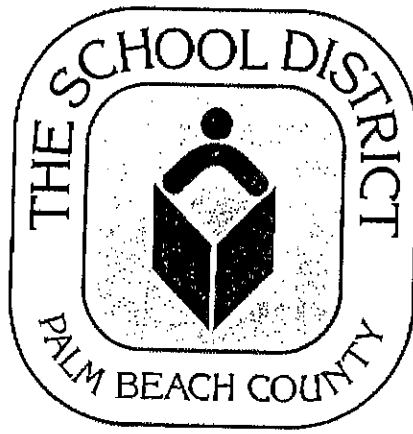
8

Scenario

Excessive Force

You have just been informed that teacher Morgan Freeman restrained two students who were engaged in a physical fight outside in the courtyard. The parent of one of the students is now complaining that his son was scratched on the arm during the restraint.

Describe the steps you would take in this matter as Supervisor.



**The School District of Palm Beach County
Division of Human Resources**

**Office of Professional Standards
Standard Operating Procedures**



Efficient, Effective and Thorough

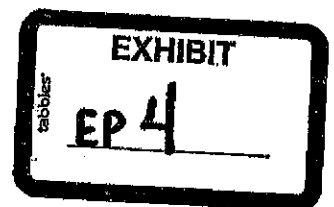


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OFFICE OF PROFESSIONAL STANDARDS

Introduction

The Office of Professional Standards ("OPS") is committed to ensuring that all Palm Beach County School District employees maintain and promote high performance standards and do so in the spirit of equity and in compliance with due process. It is our objective to ensure students of Palm Beach County are educated by highly qualified teachers and all employees adhere to the Code of Ethics.

OPS provides a number of services to personnel throughout the District. Our staff is available to provide resources, support, and training to administration in the following areas:

-
- Employee Discipline
 - Drug & Alcohol Free Workplace Issues
 - Employee Assistance Program Referrals
 - Applicant Criminal Background Checks
 - Self-Reporting of Arrests/Convictions
 - Job Abandonment
 - Employee Misconduct
 - FL DOE Discipline Reporting
 - Equal Opportunity in Employment ("EEO")
 - Americans with Disabilities ("ADA")
 - Title IX (Involving Adults)
-

OPS provides district administrators with the assistance of a Human Resource Manager to investigate and assist with all of the aforementioned issues in order to ensure equitable outcomes throughout the District. We are proud to promote professional responsibility and ethics in the spirit of equity, compliance and due process. Our office is an integral part of ensuring that District employees meet the highest standards of integrity and professionalism.

Overview

This manual is meant to serve as a guide to our processes. It is not meant to address every employment issue that may arise within our purview. If you have any questions or would simply like clarification on an issue, feel free to call an OPS Human Resource Manager for assistance.

Special Thanks

We would like to take this opportunity to thank our colleagues at the School Districts of Miami-Dade County and Osceola County for contributing language from their procedure manuals to make this document a reality.

I. SETTING THE STAGE FOR SUCCESS

Outlining Rules and Expectations

The goal of employee discipline is to foster a positive work environment whereby all staff members are treated in a fair and equitable manner. In order for you to set the foundation to achieve that goal, it is important that your staff understand workplace rules and your expectations from the beginning. Workplace rules can easily be spelled out in an employee handbook; however, to reinforce your expectations, you should cover them in a staff meeting early in the school year. Remember, the key to successful employees can be summed up with four (4) pre-disciplinary steps: setting clear expectations, providing necessary training, coaching, and giving positive constructive feedback. Sometimes, even after working through these four steps, the employee needs more. This is where the Office of Professional Standards can assist.

Coaching and Correcting – Reinforcing the Rules

When you have a discipline infraction, it is important to remember that not all initial rule violations require disciplinary consequences. Some employees only need verbal coaching to correct their behavior.

For example: *“Jane, I really need you to be here on time. When you’re late, we have parents waiting at the locked door in the morning”* – may be all that Jane needs to hear to realize that you noticed she’s been late and that her performance needs to improve.

This type of corrective coaching is a measure that should be taken before beginning the steps of Progressive Discipline. For minor infractions, you should make a note on your calendar: “Spoke with JB re: late”. For more serious infractions, you should document the incident with a memorandum. This corrective memorandum is called a **Written Directive (“WD”)** and it is ***NOT*** a step in Progressive Discipline. (See Appendix ____.) It is not punitive. It is coaching. To be clear WD’s should be utilized to :

- Clearly communicate in a formal written way to an employee what policy or procedure the employee is expected to follow;
- Serve as a reminder as to existing procedures and policies;
- Support the employee’s compliance; and
- Ensure effective and efficient employee management.





In crafting a WD, it’s important to remember the following best practices:

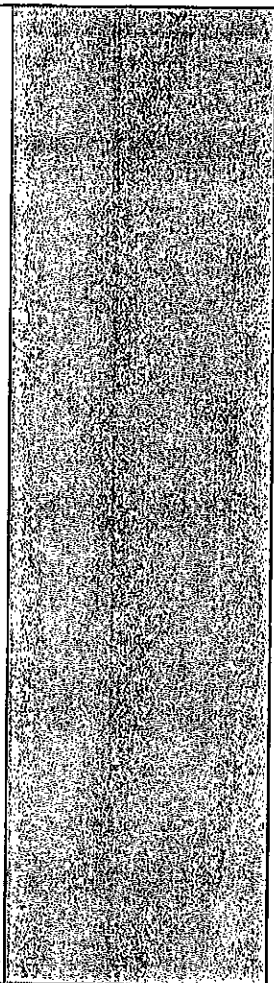
1. Prior to writing the directive, the matter should be discussed with the employee first to provide an opportunity for the employee to give their statement or respond to the allegations. This should occur immediately after the incident is brought to your attention.
2. Once the matter is discussed with the employee and the employee responds or declines to respond, the manager can decide whether or not disciplinary action is necessary. If the alleged actions (or inactions) of the employee did occur but disciplinary action is not warranted, you should proceed with drafting a WD.
3. The directive should be written immediately after the meeting occurs. It should specifically list the behavior(s) that are of concern; and explain your expectation(s). You should also reference any information that the employee brought to your attention that would mitigate the need for disciplinary action.

Again, remember the WD’s are for coaching and notification purposes. This document is not considered discipline but should be maintained. All WD’s should be maintained in a correspondence file – not indexed by the employee’s name but chronologically, by school year (or grading period) in a single file.

Guidance to Review Before Disciplining an Employee

The Schools Board is a party to six (6) Collective Bargaining Agreements with four (4) Unions. It is important for administrators to be aware of the sections and language relative to the disciplinary process. This chart serves as a summary of the various rights of the different Union Groups working within the Palm Beach County School District. It is always best, however, to read the entire contractual provisions and call if you need any clarification.

			
AESOP	CTA	FPSU/SEIU	PBA
<p>Article 3: Employee Rights and Responsibilities Section C: Progressive Discipline</p>	<p>Article II: Rights and Responsibilities Section F: Employee Authority and Protection Section M: Discipline of Employees (Progressive Discipline)</p>	<p>Article 17: Discipline of Employees (Progressive Discipline)</p>	<p>Pursuant to the Police Officers Bill of Rights, investigations may only be conducted by sworn law enforcement officers. Internal Affairs investigates incidents and possible suspicious law breaking and professional misconduct attributed to officers on the force. OPS plays no part in the disciplinary process for PBA unit members.</p>

<p>Disciplinary action may not be taken against an employee except for just cause and this must be substantiated by sufficient evidence by the Superintendent or Designee which supports the recommended disciplinary action.</p> <p>All allegations pertaining to a disciplinary action shall be investigated. Actions under this Section shall be initiated after all the facts have been made known to the official responsible for taking the actions.</p> <p>An employee against whom action is to be taken under this Section shall have the right to review all of the information relied upon to support the proposed action and shall be given a copy upon request. No adverse action may be taken against an employee on the basis of any document which has not been previously provided to that employee.</p>	<p>Section F, #9n: No action shall be taken against an employee on the basis of a complaint ..., nor shall any notice thereof be included in an employee's personnel file, unless the matter is first reported to the employee in writing. The employee shall have the right to attach a statement to the written complaint. Before any complaint is determined to be valid, it will be discussed with the employee in a conference. Once the investigation has been conducted, the employee shall be advised of any valid complaint.</p> <p>Section M: (1) ... disciplinary action may not be taken against an employee except for just cause, and this must be substantiated by clear and convincing evidence, which supports the recommended disciplinary action. (2) ...an employee shall be provided with a written notice of wrongdoing, setting forth the specific charges against that employee prior to taking any action. (3) Any information, which may be relied upon to take action against an employee, will be shared promptly with said employee and his/her Association representative as soon as possible.</p>	<p>(1) ... disciplinary action may not be taken against an employee except for just cause, and this must be substantiated by clear and convincing evidence, which supports the recommended disciplinary action. (2) ... an employee shall be provided with a written charge of wrongdoing, setting forth the specific charges against that employee as soon as possible after the investigation has begun. (3) Any information, which may be relied upon to take action against an employee, will be shared promptly with said employee and his/her Association representative as soon as possible. ... (5) Only previous disciplinary actions ... may be cited if these previous actions are reasonably related to the existing charge.</p>	
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II. INVESTIGATING A COMPLAINT

The disciplinary process begins when corrective coaching has been unsuccessful or the circumstance or nature of the transgression warrant definitive consequences. The most important step to remember is to provide the employee with due process.

Due Process

Due Process is a legal term which simply means that the employee is provided with an opportunity to be heard and the disciplinary process is conducted in a fair, impartial, and reasonable manner. From the administrator's or HR manager's perspective, this means that he/she/they must:

- Notify the employee of the allegations, if appropriate;
- Interview all individuals involved in or witness to the allegation(s);
- Conduct a pre-determination meeting (PDM) with the employee and his/her/their representative;
- Determine appropriate disciplinary action, if necessary;
- Document any actions taken (discipline or corrective coaching);
- Administer the disciplinary action; and
- Inform the employee of the right to provide a rebuttal.

Do not let the fact that the employee has a Union Representative or Attorney prevent you from addressing employment issues. Due Process rights are designed to protect employees from abuse or maltreatment, not guarantee

them the right to be insubordinate or to violate policy.

Office of Professional Standards Investigatory Process

Every case is different; however, a complaint generally will follow down a prescribed path:

- | | |
|---|--|
| 1. Complaint Intake | suspension or termination only |
| 2. Assignment to Appropriate Investigatory Unit | 10. Hold Predetermination Meeting ("PDM") |
| 3. Notification of Allegation of Wrongdoing | 11. Finalize Investigative Report |
| 4. Interview of Complainant/Gathering evidentiary materials | 12. Employee Investigatory Committee ("EIC" - in cases of suspension or termination only |
| 5. Interview of Witnesses/Gathering evidentiary materials | 13. Superintendent Review - in cases of suspension or termination only |
| 6. Interview of Subject Employee | 14. Board Action - in cases of suspension or termination only |
| 7. Follow-up Interviews as needed | 15. Issue Discipline |
| 8. Prepare Investigative Report | |
| 9. Review for Legal Sufficiency - in cases of | |

Complaint Intake

Investigations in OPS are triggered by a complaint from a school site, department, school police, Office of Inspector General ("OIG"), employees, outside agencies and/or the general public. It should be noted that complaints filed by applicants or employees must be filed as soon as possible but no later than **three hundred (300)** calendar days after the last act of prohibited conduct occurred. Complaints filed by parents and/or students must be filed within **one hundred eighty (180)** calendar days of the last act of prohibited conduct. Exceptions may be made if exigent circumstances exist.

DOE Reporting

OPS is mandated to submit all legally sufficient complaints to the Florida Department of Education ("FLDOE") within 30 days after the allegations come to the District or school's attention. To be legally sufficient, the complaint must contain ultimate facts which show that a violation involving one or more of the grounds for disciplining a certified educator has occurred.



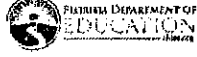


Assignment to Appropriate Investigatory Unit

Once a complaint is received by OPS, the allegations are reviewed to determine if a basis for an investigation is alleged, if the information provided is sufficient to commence an investigation, and if OPS is the appropriate department to handle the complaint. (Anonymous complaints will be investigated only if the allegation(s), on the face of the complaint, is sufficiently alleged.) Based on the initial evaluation by either the HR manager or the Director of OPS, the complaint may be retained by OPS for investigation; turned over to ("TOT") to the worksite; referred to the OIG or School Police; referred to another agency; or closed, as no action is required.

To that end, at any point during an investigation, the process could involve more than one investigatory authority - including agencies outside of the District.. Pursuant to state law and School Board policy, all District employees are required to cooperate with all investigating authorities and to participate in the process.

The following chart explains the investigatory authorities of the most common involved parties.

Investigatory Authorities

				
School Police	DCF	Office of Professional Standards	FL DOE	Office of the Inspector General
Investigate cases that are criminal in nature such as Arrest or Criminal Charges, Assault/Battery, Burglary/Theft, Child Abuse, Possession of Weapons, Sexual Allegations, Stalking, Substance Abuse while on District Property.	Investigate cases that are alleged to have caused harm to children. 	Administer the steps of progressive discipline, investigate EEO complaints, assist with ADA accommodations, conduct criminal background checks, coordinate mandatory EAP referrals, manage job abandonments, self-reporting of arrests, and ensure a drug-and alcohol-free workplace.	Ensure certified educators are held to standards of conduct as outlined in the Florida Statutes and State Board of Education Rule.	The School Board of Palm Beach County established the Office of Inspector General (OIG) to incorporate a full-time program of investigation, audit, inspection, and program review. The OIG also assists in improving operations, including deterring and identifying fraud, waste, abuse, and illegal acts.

Infractions that may result in written directives, verbal reprimands or even written reprimands should be investigated and addressed at the worksite. Cases in which discipline will be imposed must still follow the applicable procedures for detailed herein. If needed, HR managers are available to assist with these issues. Some examples of issues best addressed at the worksite are:

- | | |
|--|---|
| <ul style="list-style-type: none"> • Classroom Discipline (non-physical) • Grade Discrepancies • Misuse of District Time, Equipment or Technology • Violations of School/Department Handbooks • Neglect of Duty • Interpersonal Conflicts (Non Violent) • Insubordination | <ul style="list-style-type: none"> • Verbal Confrontations between Employees • Verbal Confrontations between Employees and Students • Attendance • Non-Criminal Parent Complaints • Evaluational or Instructional Issues |
|--|---|

If the behaviors are repeated or the incident is serious, OPS must be involved.

It is important to have the right person serve as the investigator. There are cases when an administrator or HR manager should inform the applicable Chief, Regional Superintendent or Director that he/she/they need to recuse themselves from serving in this capacity. The standard for recusal is as follows:

- The investigator has a direct and significant personal involvement with the complainant, the subject of the complaint or critical witness, or

- The investigator was substantially involved in the conduct that is the subject of the investigation;
- The investigator and/or a member of his/her/their household has a specific and substantial interest that would be directly affected by the outcome of the investigation; or
- The case involves specific parties, a reasonable person with knowledge of the relevant facts would question the employee's impartiality.

Any OPS investigator who believes that one of the aforementioned conditions applies will be required to complete an Affidavit of Recusal detailing the circumstances surrounding their decision to disqualify themselves. (See Attached as Appendix ____.) The Affidavit will be provided to the Director of Professional Standards within twenty-four (24) hours of the employee's determination that a disqualification/recusal is required.

If the case remains with OPS, the complaints will be assigned an OPS case number and a HR manager to serve as the investigator. The HR manager will complete an Intake Form containing all the relevant details available at the time. (See Attached as Appendix____.) Anonymous complaints are reviewed and may only be investigated if there is sufficient information to proceed without anything further. Cases will be assigned to a HR manager based upon the location where the alleged action(s) or inaction(s) occurred.

Notification of Allegation of Wrongdoing

The employee should, in most cases, be informed that a complaint was made and an investigation has been opened. There are exceptions to this rule such as when school police or outside law enforcement is involved or the complaint alleges sexual harassment or a violation of Title IX. It is important for the employee to be put on notice of the allegations. The employee should be provided with a copy of the complaint by the Principal/Supervisor (if handled at the worksite) and/or by the HR manager. When the complaint was not provided in writing, an HR manager may assist in completing the Intake Form. (See Attached as Appendix ____.) If the complaint involves students/parents, you may initially redact the names; however, you will need to provide the names after they sign a FERPA notice. (See Attached as Appendix ____.)

It is the responsibility of the worksite supervisor, or HR manager as applicable, to notify the employee in writing within two (2) business days of the complaint. In this context, a business day refers to a day when the employee at issue is actively working. The written notification to the employee must identify the nature of the alleged incident(s) and the investigatory authority that will be handling the matter.

Notwithstanding the notification requirements above, the employee may not be notified if the alleged incident is one that is not appropriate for the employee to be notified (e.g., theft of School Board property or other illegal activity that may require police surveillance; or if notifying the employee may cause an immediate threat of danger to the public/students/employees; detrimental impact to the health, safety, or welfare of the community, or destruction of evidence).

The Notification of Allegation of Wrongdoing must be reduced to writing within forty-five (45) days of the school system administration becoming aware of the facts reflected in the materials. Additional information related to this Notification (i.e. the investigative report and any subsequent disciplinary action) will be utilized to clarify and/or amplify the initial notification.

Gathering Evidence and the Interview Process

An effective investigation should develop a thorough factual record to support the decision as to whether or not disciplinary action is warranted; determine whether the employee's actions/inactions violates any laws, rules, regulations, procedures or policies; and, when necessary, support the level of discipline contemplated.

Prior to any interviews, it is important to ensure that you have gathered all the facts possible to plan the investigation.

The investigative plan should include a list of potential interviewees, possible documentary evidence, applicable Collective Bargaining Agreement provisions and an anticipated timeframe for completion.

The order of interviews will be determined on a case-by-case basis. For some allegations, it is preferable to interview the subject of the complaint (the "subject") first. In others, it would be detrimental to the collection of evidence to interview the subject at any point other than as the last witness. Potential witnesses could include:

- Complainant,
- Victim (if not the complainant),
- Co-Workers,
- Third Parties (i.e. students, parents, suppliers)
- Subject of the Complaint

In order to identify more witnesses, each person involved in the complaint should be queried as to whom they believe might have more information to add. In addition, with each interview, it is imperative that you remind all parties involved that they are not to discuss the interview, allegation or complaint with any other person.

Early in the investigation, you should determine whether or not students may be involved in the investigation. If so, the employee will need to sign the FERPA letter. (See Appendix ____). This letter explains the confidential nature of the identity of students and the responsibilities to maintain that confidentiality. All identifiers for the student's (or parent's) name, will be replaced with a generic title (i.e. student 1, parent of student 1, etc.) The key will be provided to the employee once the signature is obtained for the record. The parent(s) will also be notified that their child's name was referenced in a witness statement and a personnel matter was discussed with them. (See Appendix ____)

When conducting an interview with any party, it is important for the investigator to remember the following:

- Be objective
- Do not disclose too much information to a witness to avoid tainting their recollection
- Do not discuss your opinion or conclusions with witnesses
- Give the witness the opportunity to share everything he/she knows
- Ask open-ended questions
- Request any and all documents related to the incident/allegation
- At the beginning and end of every interview, remind the interviewee not to discuss the incident with anyone

The last interview of the process is generally the subject of the complaint. The following are important steps to remember:

- Schedule an investigative interview with the subject. It is important to work with the employee, and his/her/their representative if applicable, to find an agreed upon date. The HR manager will provide at least three dates/times. Any delays due to a representative's unavailability will not be considered when calculating the time associated with completing the investigation.
- Prior to interviewing the subject, ensure that the Notification of Allegation of Wrongdoing was provided previously.
- Schedule an investigative interview (See Appendix ____.) with the subject to get their version of what occurred.
- If the employee requests a union representative – allow the employee to contact one (see *Weingarten Rights* below).
- Interview, review and discuss.
- Ask if the subject has any further information, such as names of possible witnesses.
- Direct the subject, as with all other witnesses, not to discuss the matter with ANYONE.
- Failure to comply might, in itself, be grounds for disciplinary action.

After every investigative interview, a summary of the information gathered from the witness shall be prepared as a witness statement. The witness shall be given two (2) business days in which to review, make any corrections and sign the statement. Exceptions for exigent circumstances may be granted; however, unavailability of a representative may not extend the deadline more than one (1) day.

What are Weingarten Rights? The right of employees to have union representation at investigatory interviews was announced by the U.S. Supreme Court in a 1975 case (*NLRB vs. Weingarten, Inc.* 420 U.S. 251, 88 LRRM 2689). These rights have become known as the *Weingarten* rights. Employees have *Weingarten* rights **only** during investigatory interviews. An investigatory interview occurs when a supervisor questions an employee to obtain information which could be used as a basis for discipline or asks an employee to defend his or her conduct. If an employee has a reasonable belief that discipline or other adverse consequences may result from what he or she says, the employee has the right to request union representation. ***Management is not required to inform the employee of his/her Weingarten rights; it is the employee's responsibility to know and request.***

The Supreme Court has also ruled that during an investigatory interview, ***management must inform the union representative of the subject of the interview.*** The representative must also be allowed to speak privately with the employee before the interview. During the questioning, the representative can interrupt to clarify a question or to object to confusing or intimidating tactics.

While the interview is in progress, the representative cannot tell the employee what to say; but he may advise the employee on how to answer a question. At the end of the interview, the union representative can add information to support the employee's case.

It is important to note that ***investigatory interviews with the subject employee are not necessary when the allegation is related to a violation of the Drug and Alcohol Free Workplace and/or an Off-Duty Arrest.***

Administrative Reassignments

At every stage of the investigatory process, the assessment of whether an employee needs to be administratively reassigned will be made - and reassessed. In some cases, the very nature of the allegation may warrant a reassignment. In other cases, the determination may not be made until after more information is gained from witnesses. There are also times when the initial determination may be reversed due to new information.

Reassignments are designed to remove employees for various reasons that include, but are not limited to the following:

- To provide a "Cooling Off" period as determined by the HR Manager/Principal/Director
- To prevent disruptions on the campus or in the community due to the nature of the allegation
- To avoid the possibility of continuing-liability-for-the-District
- To prevent interference with the ongoing investigation

These reassignments are not punishment in and of themselves and should **NEVER** be used as discipline.

Principals/Directors have the authority to send an employee home for a period of one (1) full day. When necessary, an Instructional or Regional Superintendent/Applicable Chief can add an additional two (2) days to the reassignment period. This additional time is to allow for the investigation to move forward sufficiently to determine if the employee can return to the worksite or if a longer term reassignment is necessary. When using this tool, the Principal/Director should be aware of the possible stigma associated with "being suspended" and the punitive

perception of this action. All reassignments should be done as a collaborative effort in conjunction with key District officials, such as the Director of the Office of Professional Standards.

Upon such a reassignment, the employee should be advised of the process if they need to be absent, they must obtain advance permission via a LOA from the School/Worksite/Department using Form 0032 or by entering their time request to be absent in PeopleSoft.

Legal Sufficiency

If, after substantiating the complaint, it is more likely than not that the employee may be disciplined through a suspension or termination, the case must be reviewed for legal sufficiency. The attorneys with the office of General Counsel will review the case at this time to determine whether the investigation up to this point would be legally defensible to support disciplinary action. This step may need to be repeated again at the Pre-Determination Meeting.

Just Cause

Generally post-probationary employees may be disciplined for just cause. In situations where disciplinary action may be necessary, it is of paramount importance that the District/Supervisor provides due process, follows progressive discipline, and be able to provide just cause for the level of discipline administered. The following tests are applicable in determining whether an employee had just cause for disciplining an employee.

1. Did the District give the employee forewarning or foreknowledge of the possible or probable disciplinary consequences of the employee's conduct? (Through School Board Policy, Rules, Regulations, Directives, etc.)
2. Was the District's rule or managerial order reasonably related to the orderly, efficient, and safe operation of the business?
3. Did the District, before administering discipline to an employee, make an effort to discover whether the employee did, in fact, violate or disobey a rule or order of management?
4. Was the District's investigation conducted fairly and objectively?
5. At the investigation, did the "judge" obtain substantial evidence or proof that the employee was guilty as charged?
6. Has the District applied its rules, orders, and penalties evenhandedly and without discrimination to all employees?
7. Was the degree of discipline administered by the District in a particular case reasonably related to (a) the seriousness of the employee's proven offense, and (b) the record of the employee in his/her service with the agency?

Pre-Determination Meeting

When you find that a complaint is substantiated, the employee has a right to review the investigation and be heard before a decision is made regarding the level of discipline that will be meted out to an employee. This opportunity is referred to as a Pre-Determination Meeting ("PDM"). *The employee will be notified in writing of the need for a PDM. (See Appendix [redacted]) The letter must stipulate the subject(s) to be addressed and cite the employee's right to representation. OPS will provide at least three (3) options for the date, time and location of the meeting within the notice. Additionally, a copy of the full investigation must be provided with the notice, remembering to properly redact the file to remove any names/identifiers of students and parents. (See FERPA letter and key referenced*

above.) Absent any exigent circumstances, the written notification must be provided to the employee at least forty-eight (48) hours in advance of the first available date/time for the PDM.

If you are aware prior to scheduling the PDM that the employee is represented by a Union, Association or Attorney, you must copy the representative on the notice and investigative file. Again, OPS will provide at least three (3) options within the initial letter but will work to find an agreeable date, time and location. If the union, association or legal representative is unavailable, OPS will continue to provide options until an agreement is reached. For all meetings in which the employee is bringing an attorney as a representative, an attorney from the Office of General Counsel must be present.

Once a time, date and location is set, the employee will be directed to attend the meeting through a PDM Notice. (See Appendix ____.) Employee's may be required to sign for receipt of the notice. If the employee refuses to sign, a witness can attest to the fact that the notice was provided to the employee.

In all PDM's, the site administrator should be present; however, his/her/their role is limited. The administrator is there to be a witness and assist with note taking. They are not there to answer questions from the employee or the representative. It is vital to remember that the purpose of the PDM is to allow the employee to tell his/her version of events and present other information that he/she believes should be considered when making this determination. The employee has a right to speak or not to speak at the PDM. Also, the union representative/attorney may speak on behalf of the employee. An employee may bring more than one representative; however, only one has the right to speak on behalf of the employee. While what the employee says can be used against him/her, what the representative says cannot be used against the employee.

The employee should be notified that the purpose of the PDM is to provide an opportunity to address the allegations and the investigative report. The employee has three (3) options:

1. The employee can elect not to speak or provide any information;
2. The employee may provide a written statement in lieu of providing information verbally; and/or
3. The employee may verbally provide any explanation or defenses to the allegations and investigative report.

The HR manager (or administrator) overseeing the meeting should ask three (3) questions at the onset:

1. Did you receive the Pre-Determination meeting notice and investigatory report?
2. Did you have an opportunity to review the documents?
3. Would you like to have the opportunity to provide a response?

Do not record the meeting and do not allow the meeting to be recorded. At the start of the meeting, provide a synopsis of the case against the subject and the range of discipline that may be considered. Inform the attendees that this is the employee's opportunity to provide any exculpatory evidence or explanations. At the end of the meeting, thank the employee and his/her/their representatives for participating. Finally, advise the subject employee that a decision and the proposed discipline will be forthcoming.

After the meeting has concluded, the PDM summary should be prepared based upon the notes and information provided at the meeting. The summary must accurately reflect the proceedings. Any directives provided to the employee should be explicit and easily understood. The PDM summary should be signed and dated by the employee to acknowledge receipt within forty-eight (48) hours of receipt. If the employee refuses to sign the PDM Summary, a witness can attest to the fact that the employee received the document on a specific date and was given the opportunity to review the content. (See Appendix ____.)

Garrity Rights

In 1967, the US Supreme Court ruled in Garrity vs. New Jersey that an employee cannot be required to incriminate themselves. The typical Garrity warning informs the employee that he/she/they is being asked to provide information as part of an administrative investigation. It further provides that the interview is voluntary and the employee does not have to answer questions if the answers would tend to implicate him/her in a crime. No disciplinary action will be taken solely for refusing to answer questions; however, the case will move forward without the employee's side of the story. OPS will not provide a waiver of the right to utilize any information in a subsequent criminal proceeding in an effort to secure cooperation in the administrative proceeding. Any decision to grant such a waiver must be made by the Director of Professional Standards in collaboration with School Police. HR Managers and Principals/Directors do not have the authority to grant a Garrity waiver for an employee in an investigation on their own.

The Findings

Once you have interviewed all of the witnesses and looked at all of the documented evidence, it's time to make a decision. There are three possible outcomes for any complaint: *Substantiated, Unsubstantiated or Unfounded*.

Substantiated means that the available evidence clearly showed that the charges were true. Unsubstantiated means that the available evidence was not conclusive. The evidence did not clearly point to "guilt" or "innocence". Unfounded means that the available evidence clearly showed the allegations to be unsupported by the evidence. In those cases, the subject is issued a No Probable Cause ("NPC") Letter

A finding that is *Unsubstantiated* or *Unfounded* completes the investigation. It means that you don't have enough evidence to warrant disciplinary action. The employee should be informed of the outcome through an administrative closure letter. (See Appendix ____.) At that point the investigation is complete. The investigatory file should still be maintained for a period of five years (See the District's record retention schedule, Disciplinary Case Files: Employees).

A finding that is *Substantiated* means that disciplinary action is warranted. To reach this finding, you must have proven that the employee violated some policy, procedure or rule by a certain standard of proof. The standard of proof merely means the degree of proof required for any fact at issue. For discipline matters, the standard of proof varies based on the employee group and the applicable Collective Bargaining Agreements. For AESOP, PBA, Staff and Miscellaneous employees, the evidence to support disciplinary action must be *sufficient*. Sufficient evidence means that, taking into consideration all relevant factors and circumstances, the evidence supports a reasonable belief that it is more likely than not that the allegations are true. For CTA and SEIU employees, the evidence must be *clear and convincing*. Clear and Convincing evidence means that the allegation(s) must be substantially more likely to have occurred than to not have occurred.




Absent unusual circumstances, including but not limited to illness/absence of an individual involved in the investigative process; worksite closure due to holiday, breaks or emergencies; and/or unavailability of the employee's representative, OPS will forward a completed investigative report, including a determination of Unfounded, Substantiated or Unsubstantiated to the employee within forty-five (45) business days from the date the Notification of Allegation of Wrongdoing was received by the employee.

III. ADMINISTERING PROGRESSIVE DISCIPLINE

Progressive Discipline is like stairs leading to an exit. You must take one step at a time in most cases. Each incident leads to the next step. Only in the more serious cases may we skip one, or multiple steps. Just remember, you can't get to the exit without taking the first step.

Progressive Discipline by Collective Bargaining Agreement

Every Collective Bargaining Agreement has specific rules for each level of discipline. The following is a guide to each level.

Unit			
	AESOP	CTA	FPSU/SEIU
Article	Article III §C	Article II §M	Regular - Article 17 Supervisor - Article 15 ECP/ParaII - Article 13
Steps	<ol style="list-style-type: none"> 1. Verbal Reprimand with Written Notation 2. Written Reprimand 3. Suspension 4. Termination 		
Standard of Proof	Sufficient Evidence	Clear and Convincing Evidence	Clear and Convincing Evidence
Related Discipline	Prior discipline must be reasonably related to the existing case	No relationship required between prior discipline and existing case	No relationship required between prior discipline and existing case
Verbal Reprimand with Written Notation	<ul style="list-style-type: none"> • Does not become a part of employee's official personnel file. • Not grievable. • Previous charges/disciplinary actions may be cited if reasonably related to the existing charge and shared with the employee. 	<ul style="list-style-type: none"> • Does not become a part of employee's official personnel file. • Grievable. • After twelve months the notation shall not be used to the further detriment of the employee. • A written rebuttal may be attached to the notation. 	<ul style="list-style-type: none"> • Placed in employee's official personnel file. • Grievable. • Shall not be used to the further detriment of the employee unless there is another reasonably related incident by that same employee within a 24 month period.
Written Reprimand	<ul style="list-style-type: none"> • Signed by the giver and the receiver of the reprimand. • Filed in the employee's official personnel file. • Not grievable. • A copy of the reprimand 	<ul style="list-style-type: none"> • Signed by the giver and the receiver of the reprimand. • Filed in the employee's official personnel file. • Grievable. • A written rebuttal may also be placed in the personnel 	<ul style="list-style-type: none"> • Must be signed by the giver and the receiver of the reprimand. • Filed in the employee's official personnel file. • Must be sent by certified mail to the employee • Grievable.

	<ul style="list-style-type: none"> must be mailed to the employee by certified mail return receipt. • Previous charges/disciplinary actions may be cited if reasonably related to the existing charge and shared with the employee. 	file.	
Suspension	<ul style="list-style-type: none"> • Grievable through either Dept. of Labor, PERC or DOAH. Election must be made within 15 days of written notification of disciplinary action and the District must be notified accordingly • Length is determined by cause. • Filed in the employee's official personnel file. • Is actionable by the School Board. 	<ul style="list-style-type: none"> • Grievable through the Dept. of Labor Relations or DOAH. Election must be made within 15 days of written notification of disciplinary action and the District must be notified accordingly • Length is determined by cause. • Notice and specifics must be in writing. • Filed in the employee's official personnel file. • Is actionable by the School Board. 	<ul style="list-style-type: none"> • Is grievable through either the Dept. of Labor or DOAH. Election must be made within 15 days of written notification of disciplinary action and the District must be notified accordingly. • Length is determined by cause. • Notice and specifics must be in writing. • Filed in the employee's official personnel file. • Is actionable by the School Board.
Termination	<ul style="list-style-type: none"> • Grievable through either Dept. of Labor, PERC or DOAH. Election must be made within 15 days of written notification of disciplinary action and the District must be notified accordingly • Is actionable by the School Board. 	<ul style="list-style-type: none"> • Grievable through the Dept. of Labor Relations or DOAH. Election must be made within 15 days of written notification of disciplinary action and the District must be notified accordingly • Is actionable by the School Board. 	<ul style="list-style-type: none"> • Grievable through the Dept. of Labor Relations or DOAH. Election must be made within 15 days of written notification of disciplinary action and the District must be notified accordingly. • Is actionable by the School Board.

For non-bargaining unit employees, the facts must be supported by sufficient evidence; but, for any prior discipline to be used for progressive discipline purposes, it must be reasonably related to the allegations at issue. t

Progressive Discipline must be followed except in cases which clearly constitute a real and immediate danger to the District, a District employee, and/or a child/children; or the actions/inactions of the employee clearly constitute flagrant or purposeful violations of reasonable school rules and regulations. In those instances, steps may be skipped. Discipline may be instituted at a higher level regardless of prior disciplinary action.

OPS has a variety of templates for the various levels of discipline for administrators to use. Each must be tailored to meet the specific circumstances of the allegation(s) at issue. All of the templates are included in the Appendices of this document. NOTE: Disciplinary action should be completed in partnership with the Office of Professional Standards assigned HR Manager.

Suspensions and Terminations

Pursuant to Florida Statutes, only the School Board may suspend an employee without pay or terminate his/her/their employment. Due to the serious implications of imposing such disciplinary action, there are certain procedures that must be followed after the PDM has been held and the PDM summary signed.

Employee Investigatory Committee ("EIC") Review

When an investigatory unit has determined that an allegation(s) is Substantiated and could warrant a suspension or termination of employment, OPS schedules an Employee Investigatory Committee ("EIC") meeting. The EIC is composed of the Deputy Superintendent or his/her/their designee, the Chief of Human Resources, the Director of OPS, the responsible HR manager, a representative from the Office of General Counsel, the appropriate Regional/District office representative, and the worksite administrator. The EIC is responsible for reviewing the entire investigatory file and reaching consensus on what discipline should be suggested to the Superintendent.

Prior to the presentation of the investigatory file to the EIC, the Office of General Counsel again reviews the investigative file for *Legal Sufficiency*.

Superintendent Review

After the EIC meeting, the determination by the EIC will be communicated to the Superintendent at the first available opportunity. The Superintendent will make the final determination as to the discipline, if any, to be imposed as a result of the investigation.

Board Action

The Superintendent will make the recommendation to the School Board for any disciplinary action of a suspension or termination of employment. Once the recommendation is made to the School Board and approved, the employee will have fifteen (15) business days to provide notification of an intent to appeal the decision. If the employee makes a timely request for an appeal of a suspension, the disciplinary action will be stayed pending the outcome of the appeal. If the employee makes a timely request for an appeal from a termination, the employee will be placed in an unpaid suspended status pending the outcome of the appeal.

Upon Board Action, the case will be considered administratively closed.

IV. OTHER INVESTIGATIONS

Reasonable Suspicion Drug/Alcohol Testing

From time to time, OPS will be informed that an employee is suspected of being under the influence of drugs or alcohol while at work. In order to act on this information you must first verify that the reporting party has been trained. If the reporting party is not trained under Policy 3.96, they must locate another administrator on campus or in the Regional office who is trained and if available to provide an observation. If no trained administrator is available, a HR manager may be dispatched to the school to conduct the observation. Should a HR manager not be available, a nearby school trained administrator may need to assist. This will now be the reporting employee.

The reporting employee must be able to describe what they are seeing. The behavior can not be something that was "reported" to them, it must be something that they observed. The reporting employee should be able to give you at least three indicators that the person is under the influence. The reporting employee must document their observations on Form 2373. (See Appendix ____.)

Once the form is received by OPS, the HR manager will verify the criteria is sufficient to warrant a reasonable suspicion drug/alcohol test and dispatch the lab to the worksite. As a side note, if the reporting employee has verbally provided strong criteria for the test, the lab can be dispatched prior to receiving the completed Form 2373. When in doubt; however, wait for the paperwork.

To Dispatch the Lab in the North, South, and Central Regions, email the following information to travis@nms123.com and tyler@nms123.com: the employee's name, contact person at the school/site, name of the school/site, address, directions and the phone number for the contact person at the school/site. After sending the email, call NMS to confirm that someone is on the way: (561) 967-8884 Ext. 101, 103, or 147. For cases in the West Region, call (561) 992-4888. Once you have confirmation that NMS is on the way, inform the school/site.

The administrator will need to notify the employee. The conversation with the employee must be in a private/semi-private location. The employee should be told that the administrator, "has a reason to suspect the employee is under the influence." Once the employee is informed, a failure to cooperate in any way (including leaving the premises) is considered as a "refusal to test" and the employee will be treated as if the test results were positive.

Employees should be monitored while they are waiting for the lab. During this time the employee can arrange for a ride home or contact their union rep, if they choose. If they need to eat, drink or go to the bathroom they should be allowed to do so. The employee should be reminded, however, that the lab tech will need urine to test upon arrival. To that end, the lab tech will need a restroom for the test - a private one is better for confidentiality.

While the test is underway, the administrator, or HR manager, should prepare the assignment to home letter. (See Appendix ____.) After the test is completed, the employee should receive the letter and leave the site; however, he/she/they should be strongly discouraged from driving themselves. The site administrator may offer to contact a friend, family member or ride share service. If the employee insists on driving the school/site can inform the employee that law enforcement will be called -- either school police or a local authority.

It is important to provide support to all involved in this process. Each situation is different. Additionally, this is a delicate and sometimes scary process. Support from administration/human resources can make all the difference.

OPS must be provided with a complete and signed observable behaviors checklist and a signed copy of the assignment home letter after the test is complete.

If the test is **NEGATIVE**, OPS will contact the employee and principal/supervisor to advise that there was no violation of the Drug and Alcohol Free Workplace Policy. The observed and documented behaviors that were exhibited should be addressed either through a suggested referral to EAP and/or, if warranted, a disciplinary investigation.

If the test is **POSITIVE**, OPS will contact the employee and principal/supervisor to inform that there was a violation of the Drug and Alcohol Free Workplace Policy. OPS will coordinate a mandatory EAP referral to address the documented behaviors/test results. The HealthAdvocate representative will provide an appropriate date of return to work for the employee and notify the school/site. OPS will also open a discipline case. Pursuant to District practices, the first positive test will result in a written reprimand and a second positive test will result in a recommendation for termination of employment. For certificated employees, OPS is required to provide FLDOE Professional Practices Service ("PPS") with the actual quantitative levels of any positive drug tests; therefore, the HR manager will request this information from the lab after a positive test result is received.

Violations of the Drug and Alcohol Free Workplace Policy do not go to EIC for consideration. These cases are presented directly to the Superintendent.

Off-Duty Arrests

Self-Reporting Requirements

School Board Policy 3.13 requires all employees to self-report any arrests and/or criminal charges in writing to their immediate supervisor or OPS *within forty-eight (48) hours of said arrest and/or criminal charges*. If a supervisor receives such a report, he/she/they should provide the information to OPS as soon as possible via facsimile to (561) 434-8178. (See Appendix ____.) Criminal Traffic Violations include, but are not limited to: leaving the scene of an accident; false information regarding an accident; operating a motor vehicle without a license or while license is suspended; driving while under the influence or with an unlawful blood alcohol level; failure to sign or accept a summons; and/or fleeing and eluding police officers or reckless driving. Only District employees who drive District-owned/operated or controlled vehicles, or are required to hold a valid driver's license or a commercial driver's license ("CDL"), are required to report minor traffic violations when they occur with any vehicle.

Policy 3.13 also requires the employee to notify their supervisor the outcome of the arrest/criminal charge including any conviction; finding of guilt; withholding of adjudication; commitment to a pretrial diversion program; or entering a plea of guilty, guilty in your best interest, or Nolo Contendere for any criminal offense other than a minor traffic violation (if not required to report the arrest/charges as detailed above). Minor Traffic Violations are defined as a non-criminal violation that may require community service hours, under §316.027(4), Fla. Stat., but is not punishable by incarceration, and for which there is no right to trial by jury or right to court-appointed counsel. *The employee must make this report within forty-eight (48) hours after the final judgement has been entered.*

Beginning _____, the District will transition to an electronic process where employees will use an Application on PeopleSoft to self-report arrests/criminal charges/update convictions, finding of guilt, withholding of adjudication, commitment to a pretrial diversion program, or entering a plea of guilty, guilty in your best interest, or Nolo Contendere for any criminal offense other than a minor traffic violation. The Standard Operating Procedures will be updated at that time. Additionally, a step by step video that will guide employees on how to self-report will be posted on the District Hub.

Irrespective of any self-reporting of the arrest, the School District Police department provides notification of any arrests (referred to as and Arrest Notification or a "Hit") to OPS via LaserFiche. Upon receipt of a Hit, OPS locates the employee ID and employment status based upon the information contained in the Hit. If the employee is classified as seasonal, temporary, intern, student teacher, guest instructor, or probationary, OPS will call the Principal/Director and recommend that the employee is dismissed. If the recommendation is accepted, the employee is marked as a person of interest in PeopleSoft and must be reviewed by OPS prior to any rehiring.

For active "permanent" employees, an Off-Duty Investigation is opened. The employee will receive a Notification of Alleged Wrongdoing. (See Appendix ____.) The self-reporting of the arrest form is reviewed. The details of the arrest and any prospective judicial activity is noted. The case is also reported to FLDOE for any certificated employees. The charges are also reviewed for any which are deemed as disqualifying under Florida Statutes §§435.04 and/or 1012.315. If the charge(s) indicated on the Hit is also listed within either or both of the aforementioned statutes, it is considered a disqualifying offense. In those cases, the employee may not be in a position which could place him/her/them in contact with students. OPS sends an email to the Principal/Director informing him/her/them of the arrest and requests that the employee be reassigned to a non-student contact environment. If that is not possible at the employee's worksite, OPS will assist with the reassignment. Until a reassignment can be found, the employee may be reassigned home by the Principal/Director for one (1) day and the Regional Superintendent/Chief for an additional two (2) days.

These cases are routinely reviewed and monitored for any activity within the justice system. If, at any time, a charge, which was disqualifying, is reduced to a non-disqualifying offense, the employee will be directed to return to their worksite. The case, however, will remain open and tracked until there is a final court disposition.

Once the final court disposition is filed, the case is reviewed for any policy violation(s). Should no policy violation exist, the employee will be issued an Administrative Closure letter. (See Appendix ____.) If any policies were violated, a PDM Packet is generated consisting of the following: Notice of Alleged Wrongdoing (See Appendix ____), draft PDM Notice, and entire investigative file with any legally required redactions. The packet is then provided to a HR manager to process as he/she/they would do with any other disciplinary cases. (See Pre-Determination Meeting p ____.)

If the criminal charge(s) is dismissed, abandoned, no file or Nolle Prose without entering into a PTI; but, the employee failed to report the arrest, conviction, or entry into a Pre-Trial Diversion program, the employee will face disciplinary action of a verbal reprimand with written notation. This will also be administered through the PDM process by a HR manager. In cases where the employee is adjudicated guilty or adjudication is withheld, the employee will face disciplinary action of at least a written reprimand. The employee may also face more serious disciplinary action based upon violations of policies other than 3.13 related to the underlying events which led to the criminal charges. Again, this will be administered through the PDM process by a HR manager.

Employee Assistance Program ("EAP") Referrals

There are two ways to types of referrals to EAP; Suggested Referrals and Mandatory Referrals.:

Suggested Referral

If the employee has a problem in their personal life that is affecting their work life, the supervisor can suggest to the

employee that they contact EAP. The supervisor can provide information about the EAP program to the employee (see Appendix ____). There should be articulable reasons for providing the suggested referral. Some reasons may include a marked change in the employee's demeanor and reaction to ordinary workplace challenges, a sudden change in attendance and timeliness, a drastic change in physical presentation, and/or the employee's comments to coworkers related to personal life challenges. The employee has the option to contact EAP but faces no consequences if he/she/they decline. This process can, and should, be handled at the worksite.

Mandatory Referral

If the employee's issues rise to a level that intervention from a mental health professional is necessary, the HR manager can assist with directing an employee to receive assistance from EAP. Supervisors must provide detailed, written documentation which provides answers to the following questions:

- What specific behaviors has the supervisor personally witnessed?
- When did the behaviors begin and how frequently do they occur?
- How are the behaviors affecting the employee's work?
- What interventions have been offered or attempted?
- What are the specific concerns?
- Have others witnessed these specific behaviors?

You will often hear the EAP Provider ("HealthAdvocate") talk about the difference between a Fitness for Duty and a Mandatory Referral. For OPS, there is no difference. For the HealthAdvocate there is. HealthAdvocate will determine if the specific reasons for the referral are serious enough to indicate that the employee cannot function in their job. If that is the case, HealthAdvocate can have the employee evaluated to determine fitness for duty. If the documentation does not rise to that level, HealthAdvocate will assist the employee with the personal, family and/or work-related issues through therapy, counseling and other support services.

Upon receiving the documentation from the supervisor which supports the request for a mandatory referral to EAP, OPS will review the information to determine if a Mandatory EAP referral is warranted. If the HR manager believes a Mandatory EAP referral may be warranted, he/she/they will complete the Manager Consult Form provided by HealthAdvocate. (See Appendix ____.) OPS will provide a copy of documentation as well as the form to HealthAdvocate via email. The HR manager will direct the employee in writing to contact HealthAdvocate within forty-eight (48) hours of receipt of the letter. (See Appendix ____.)

HealthAdvocate will notify the applicable HR manager that the employee called or did not call. (If the employee does not call HealthAdvocate within 48 hours, OPS will follow up with the employee). The District does not receive any further information related to the care/treatment the employee receives. HealthAdvocate will notify OPS whether or not the employee may return to work when that determination can be made. This compliance letter will be provided to the employee. The HR manager will then notify the worksite supervisor of the employee's work status. Once the employee has been deemed fit to return to work by successfully completing the EAP plan, HealthAdvocate will notify the HR manager. The employee will then be provided with a return to work letter. (See Appendix ____.)

If the employee refuses to comply with the mandatory referral or is declared to be unfit to return to work, the employee may face disciplinary action up to and including termination of employment.

V. PUBLIC RECORDS

Documentation is an important part of the discipline process. Having appropriate documentation is one way to demonstrate that an employee received Due Process for the disciplinary action. Supervisors should keep in mind, however, that these documents are **open to public inspection under the Sunshine Law**. Investigative documents become public record upon completion of the investigation. **Verbal Correction and Coaching, Notice of Charge of Wrongdoing, Memorandums, Reprimands and Rebuttals** become public record ten to fifteen days after they are received by the subject minus any redacted information due to allowable exemptions. Some examples of allowable exemptions include student/parent names, addresses and other related information which identifies the juveniles involved in the investigation.

The School District of Palm Beach County has a Records Retention Schedule located on its website. The following are excerpts from the schedule that relate to the work of OPS.

EMPLOYEE CONDUCT COUNSELING RECORDS (GS1-SL Item #206)

This record series documents initial coaching or counseling of an employee regarding performance or behavior issues which may lead to disciplinary action if not corrected. If disciplinary action is taken, this record becomes part of the employee's disciplinary case file. **RETENTION:** a) Record copy. One (1) anniversary year after final action. b) Duplicates. Retain until obsolete, superseded, or administrative value is lost.

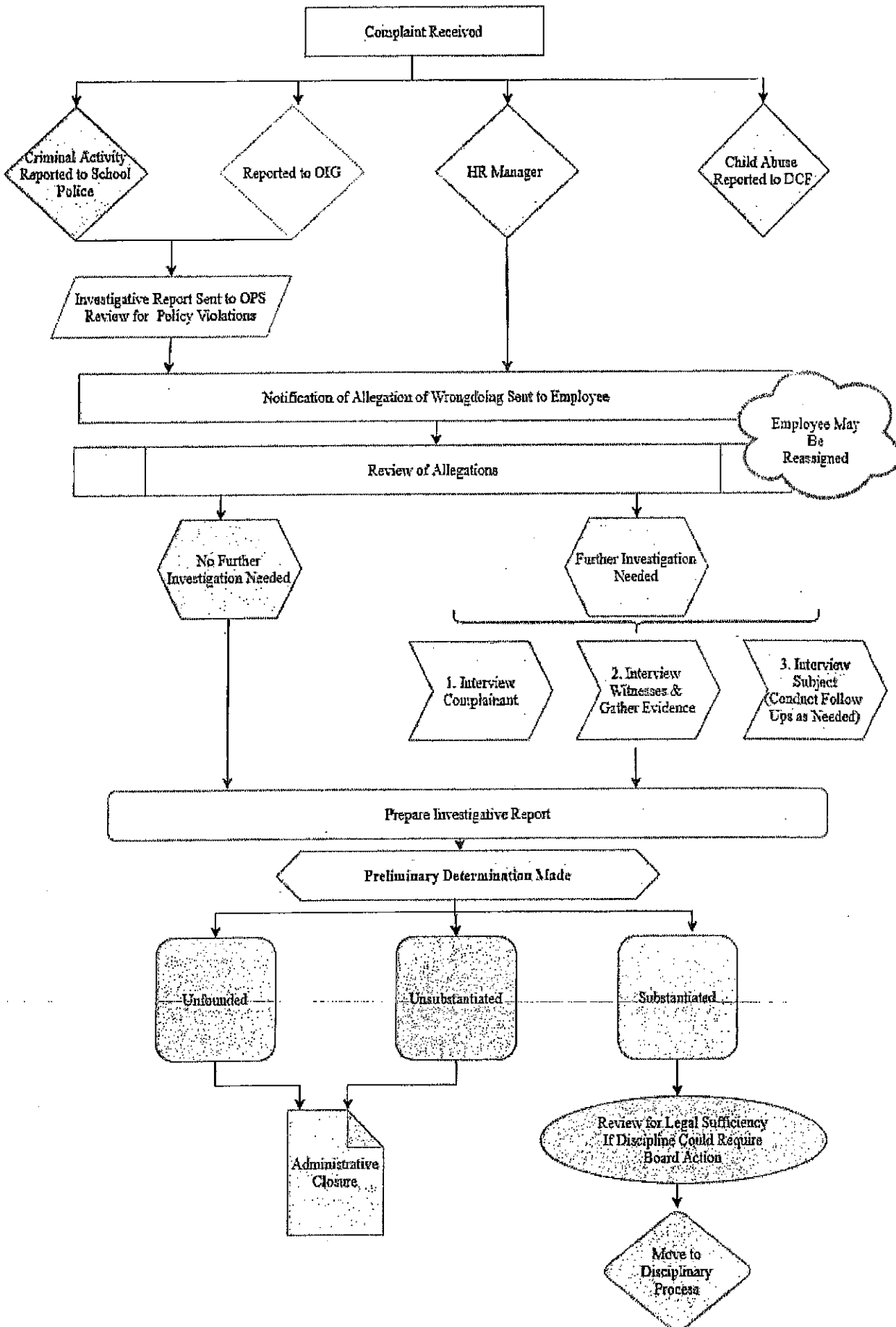
CORRESPONDENCE AND MEMORANDA: ADMINISTRATIVE (GS1-SL Item #17)

This record series consists of routine correspondence and memoranda of a general nature that are associated with administrative practices but that do not create policy or procedure, document the business of a particular program, or act as a receipt. **RETENTION:** a) Record copy. Three (3) fiscal years. b) Duplicates. Retain until obsolete, superseded, or administrative value is lost.

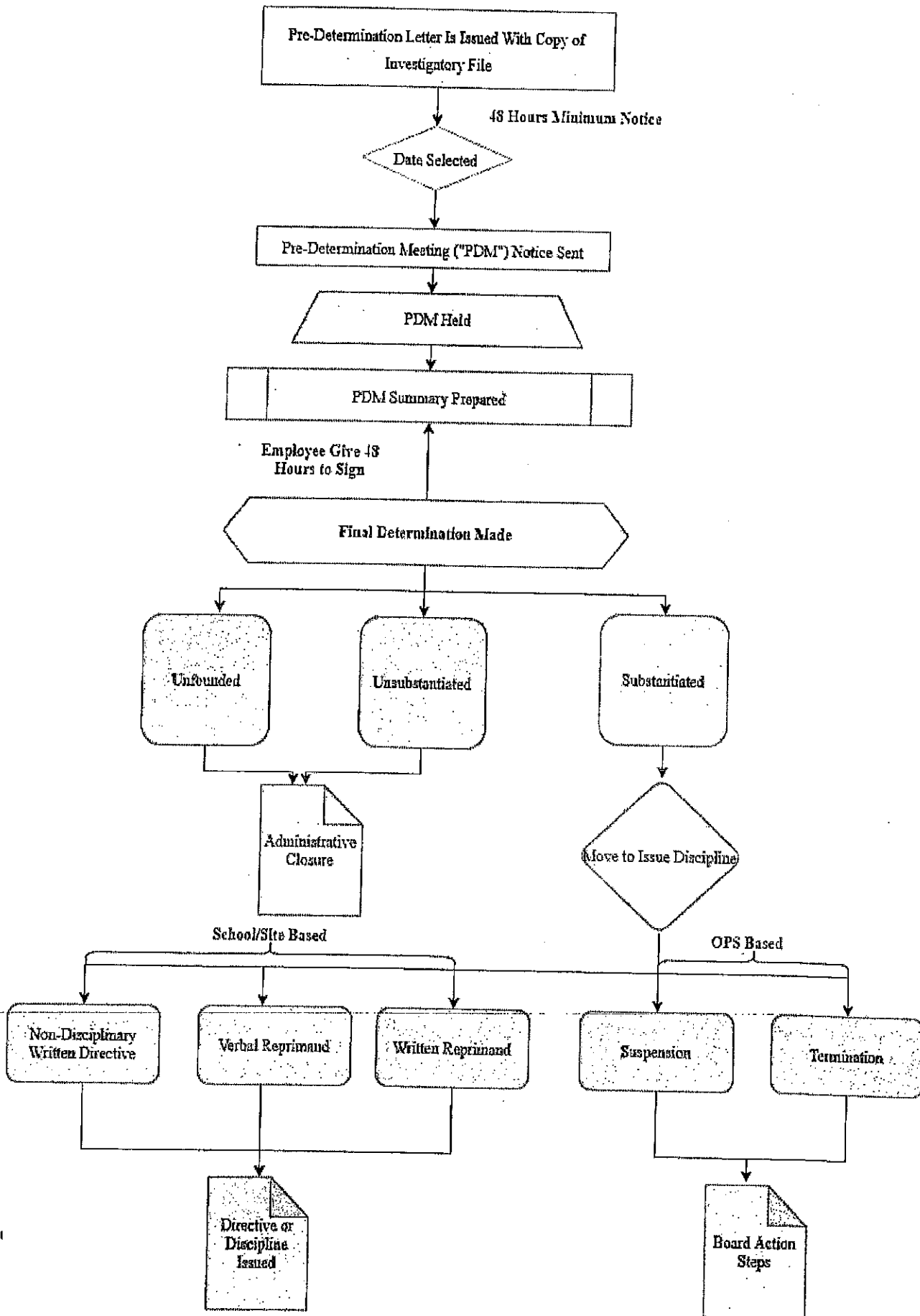
DISCIPLINARY CASE FILES: EMPLOYEES (GS1-SL Item #98)

This record series documents the investigation of allegations of employee misconduct and/or violation of department regulations or orders, state or federal statutes, or local ordinances. The series may include, but is not limited to, statements by the employee, witnesses, and the person filing the complaint. Cases include both formal and informal disciplinary proceedings relating to allegations that were determined as sustained, not sustained, unfounded, or exonerated. "Formal Discipline" is defined as disciplinary action involving demotion, removal from office, suspension, or other similar action. "Informal discipline" is defined as any disciplinary action involving written and verbal reprimands, memoranda, or other similar action. **These records are filed separately from the employee personnel file, but the final action summary becomes part of the personnel file.** **RETENTION:** a) Record copy. Five (5) anniversary years after final action. b) Duplicates. Retain until obsolete, superseded, or administrative value is lost.

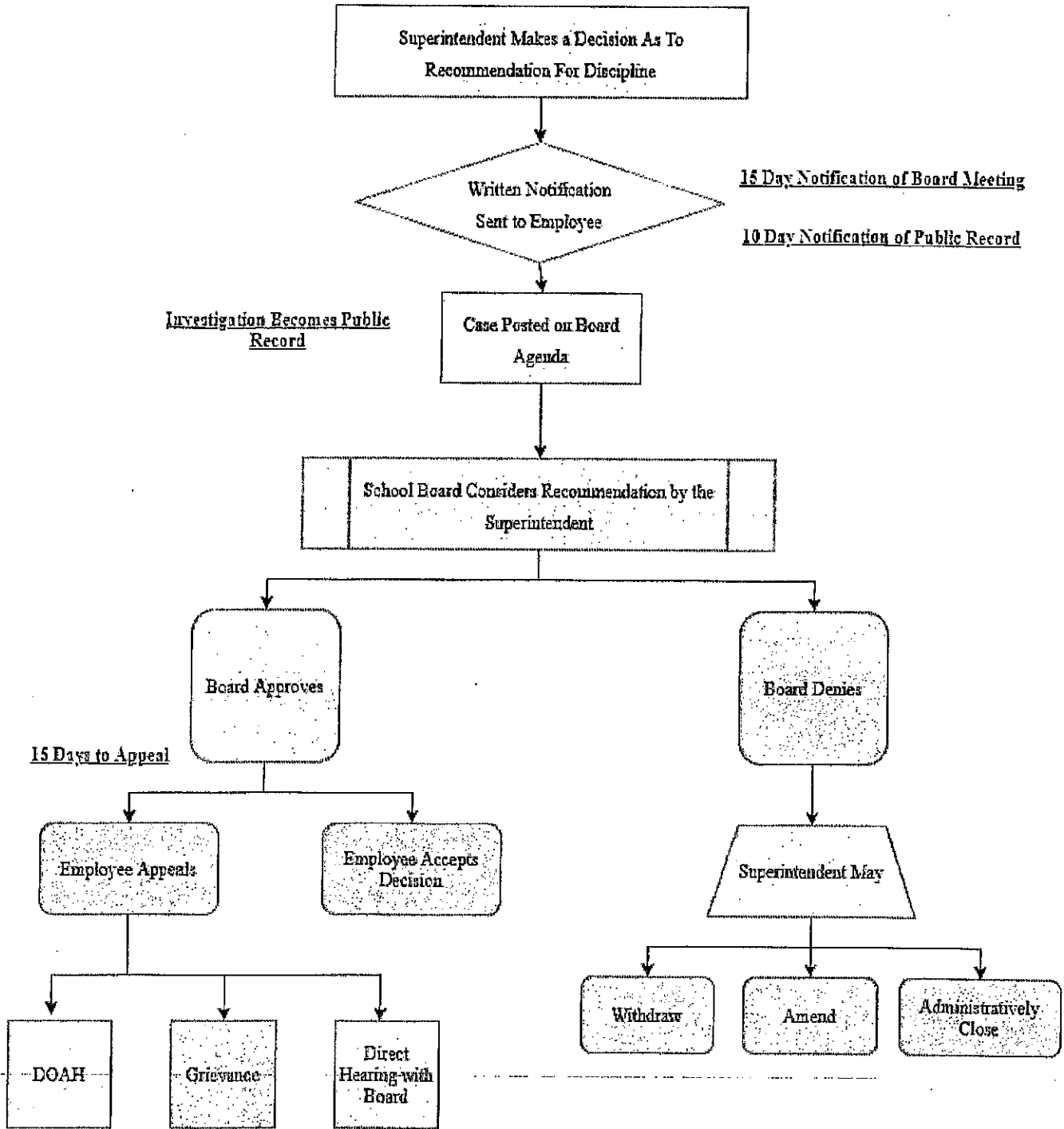
Investigative Process



Disciplinary Process

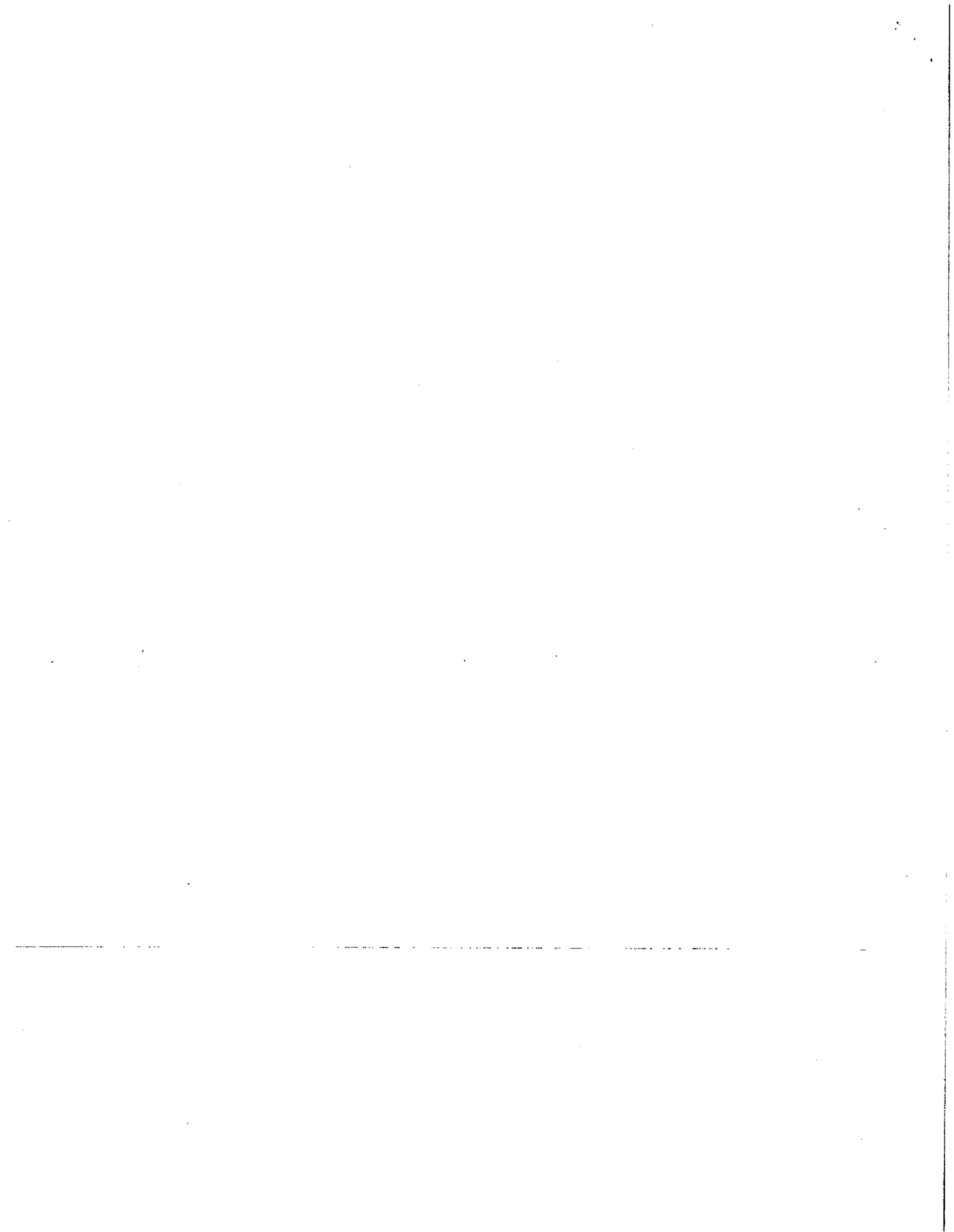


Board Action Steps



Appendices: (To be Added)

Written Directive
Affidavit of Recusal
OPS Intake Form
FERPA Notice
FERPA Letter
FERPA Parent Notification
Sample Investigative Interview
PDM Scheduling Letter
PDM Notice
PDM Summary
Administrative Closure
Articulate Suspicion Checklist
OPS Reassignment to Home Letter
Self-Reporting Form
Notification of Alleged Wrongdoing
EAP Packet
EAP Referral
EAP Referral Letter
EAP Return to Work Letter





OPS SOP

6 messages

Vicki Evans-Pare <vicki.evans-pare@palmbeachschools.org>

Tue, Dec 7, 2021 at 4:58 PM

To: Cary High <cary.high@palmbeachschools.org>, Teresa Michael <teresa.michael@palmbeachschools.org>

Bcc: Gonzalo La Cava <gonzalo.lacava@palmbeachschools.org>

Have you or Cary had an opportunity to review our Standard Operating Procedures Manual? The link was sent to you right before the Thanksgiving break. I was afraid it might have been missed. (<https://docs.google.com/document/d/14Ny2wMWSbbsPYScfWCNIFmIWiwpQK5iV/edit?usp=sharing&oid=104966421634992682947&rtopof=true&sd=true>)

The lawyers have reviewed it and found no real substantive issues. I would very much like your comments so that I may move this forward.

Vicki Evans-Paré, Esq.
Director of Professional Standards
vicki.evans-pare@palmbeachschools.org
(561) 434-8873

Around here, however, we don't look back for very long. We keep moving forward, opening new doors, and doing new things, because we're curious and curiosity keeps leading us down new paths. -- Walt Disney



Teresa Michael <teresa.michael@palmbeachschools.org>
To: Vicki Evans-Pare <vicki.evans-pare@palmbeachschools.org>
Cc: Cary High <cary.high@palmbeachschools.org>

Wed, Dec 8, 2021 at 12:57 PM

Good afternoon Vicki,
The OIG is limited in our ability to participate in the development of your internal policy. If the OIG takes part in producing the SOP we will not be independent. The OIG, we may be called upon to review, audit, investigate issues involving your SOP and we would be prohibited as we would be considered as reviewing our own work and our objectivity could/would be called into question.
Teresa

[Quoted text hidden]

...

Report Fraud, Waste & Abuse

Hotline: 855.561.1010 or
submit online: palmlakeadvisors.com

ALWAYS BE CONFIDENTIAL. ALWAYS

Teresa A. Michael, CPA, CGA, CFE
Inspector General
Office of Inspector General
3318 Forest Hill Blvd, Suite C-306
West Palm Beach, FL 33406

Phone: (561) 434-7335
E-mail: Teresa.Michael@palmbeachschools.org

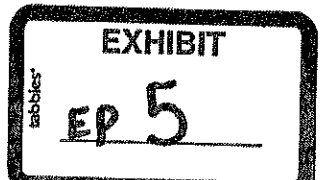
Vicki Evans-Pare <vicki.evans-pare@palmbeachschools.org>
To: Gonzalo La Cava <gonzalo.lacava@palmbeachschools.org>

Wed, Dec 8, 2021 at 2:06 PM

FYI.

Vicki Evans-Paré, Esq.
Director of Professional Standards
vicki.evans-pare@palmbeachschools.org
(561) 434-8873

Around here, however, we don't look back for very long. We keep moving forward, opening new doors, and doing new things, because we're curious and curiosity keeps leading us down new paths. -- Walt Disney



[Quoted text hidden]

To: Teresa Michael <teresa.michael@palmbeachschools.org>

Cc: Cary High <cary.high@palmbeachschools.org>

Bcc: Gonzalo La Cava <gonzalo.lacava@palmbeachschools.org>, Jean Middleton <jean.middleton@palmbeachschools.org>

I guess I misunderstood the conversations that we have been having. We have met several times to discuss our procedures, including complying with the 45 day rule, and how they would mesh with your vision of the clearinghouse. It was my understanding that your input was desired so that any issues your department might have would be addressed before we move forward with publishing and training administration on our processes. If that is not the case, we will move forward without your input. To that end, do we need to continue to hold meetings on the complaint clearinghouse and its alignment with District processes? It is certainly not our desire to jeopardize your independence.

Thank you for your attention. Have a nice evening.

Vicki Evans-Paré, Esq.
Director of Professional Standards
vicki.evans-pare@palmbeachschools.org
(561) 434-8873

Around here, however, we don't look back for very long. We keep moving forward, opening new doors, and doing new things, because we're curious and curiosity keeps leading us down new paths. -- Walt Disney






[Quoted text hidden]

Teresa Michael <teresa.michael@palmbeachschools.org>
To: Vicki Evans-Paré <vicki.evans-pare@palmbeachschools.org>
Cc: Cary High <cary.high@palmbeachschools.org>

Wed, Dec 8, 2021 at 5:36 PM

Good evening.
The OIG identifies issues, makes recommendations and/or suggestions. However, we have to be cautious as to acting as part of management. The centralized reporting policy is a District wide policy that has a direct impact on how the OIG functions. Your Internal Procedures govern the activity of your staff and how your unit operates. It is not an unwillingness to participate, I wish I was able to do more. If you have any questions or would like to discuss further please let me know.
Thank you,

[Quoted text hidden]


Report Fraud, Waste & Abuse

Helpline: 888.561.1010 or
 submit online: fldoe.org/abuse

IMMEDIATELY CONFIDENTIAL/SECURE

Teresa A. Michael, c/o. cmi.cpe
 Inspector General
 Office of Inspector General
 3318 Forest Hill Blvd, Suite C-306
 West Palm Beach, FL 33406

Phone: (561) 434-7335
 Email: Teresa.Michael@palmbeachschools.org



Vicki Evans-Paré <vicki.evans-pare@palmbeachschools.org>
To: Gonzalo La Cava <gonzalo.lacava@palmbeachschools.org>

Thu, Dec 9, 2021 at 3:51 PM

FYI

Vicki Evans-Paré, Esq.
Director of Professional Standards
vicki.evans-pare@palmbeachschools.org
(561) 434-8873

Around here, however, we don't look back for very long. We keep moving forward, opening new doors, and doing new things, because we're curious and curiosity keeps leading us down new paths. -- Walt Disney



----- Forwarded message -----
From: Teresa Michael <teresa.michael@palmbeachschools.org>
Date: Wed, Dec 8, 2021 at 5:36 PM
Subject: Re: OPS SOP
To: Vicki Evans-Paré <vicki.evans-pare@palmbeachschools.org>
Cc: Cary High <cary.high@palmbeachschools.org>



Your **BEST** Choice!

POL-IG1
April 7, 2021

POLICY 1.092

Agenda Item #POL-IG#1 I recommend the Board adopt the proposed revised Policy 1.092, entitled "Inspector General."

[Contact: Teresa Michael, PX 47335.]

CONSENT ITEM

This Policy was presented to the Board at a workshop on 12/09/2020 and First Reading on 1/13/2021 and postponed to 2/3/2021 for First Reading.

The purpose of the proposed changes to Policy 1.092 are to align District policies for consistency and clarity, ensure the policy is in line with industry Best Practices, and to enhance the effectiveness of the OIG to better serve the School District of Palm Beach County. The changes are as follows:

- Section 6.a - Employee Responsibilities- Adds a requirement for employees to report "known" ethical misconduct (as required by the Fraud Policy). The change also adds examples of ethical misconduct as found in the Code of Ethics and prohibits retaliation. Currently, the Fraud Policy 2.61 requires ethical misconduct to be reported to the OIG, but the IG Policy 1.092 is silent on ethical issues.
- Section 6.b - Adds the requirement for District staff to cooperate fully with the OIG and provide complete, truthful and accurate information. Current IG Policy is silent on this issue, however, this requirement is vital to the integrity and effectiveness of the OIG functions and work products.
- Section 6.c. - Adds an educational requirement. Specifically, it will add a requirement that all employees review the OIG Policy annually. In addition, New Employees during orientation will be required to review the policy. (Note: The method for training would be coordinated with Staff Development.) Currently the policy stands silent on staff training and therefore may be an impediment to the effectiveness of the OIG as well as cause a matter to go unresolved/addressed.
- Section 8.a - Adds a requirement regarding Referrals to Internal Units. Providing a response, updates and status reports for matters referred to District Offices by the OIG.
- Section 9.d. - Delays the posting of Substantiated and Unsubstantiated Investigative Reports until such time that all required investigations are completed. Removes the requirement to post Unfounded Investigative Reports on the OIG website. The change will not affect Audit Reports as those will continue to be posted on the OIG website. Summaries of each investigation will remain part of the IG


EXHIBIT

EP 6

Annual Report which is posted on the District website. (Note: Completed and Approved Investigative Reports will continue to be subject to Public Records Requests as applicable for Florida law).

Legal Signoff:

The Office of General Counsel has reviewed proposed Policy 1.092 and finds it legally sufficient for adoption by the Board.



Attorney Signature

February 12, 2021
Date

Blair Littlejohn
Printed Name

1 **Policy 1.092 - Inspector General**

2 **1. Purpose**

3 a. The School Board of Palm Beach County (Board) desires to incorporate
4 a full-time program of investigation, audit, inspection, and
5 performance review to provide increased accountability, promote fiscal
6 responsibility, assist management in the establishment and
7 maintenance of effective systems of control and provide increased
8 oversight in improving District operations, and to assist in improving
9 operations, including deterring, and identifying, fraud, waste, abuse
10 and illegal acts. To ensure that all District operations be carried out
11 with honesty, integrity, efficiency and legal compliance, the Board
12 established the Office of Inspector General, which shall be independent
13 of the District's operations to assure that no interference or influence
14 external to the office adversely affects the independence and
15 objectivity of the Inspector General and Office of Inspector General.

16 **2. Definitions**

17 a. "*Abuse*" means behavior that is deficient or improper when compared
18 with behavior that a prudent person would consider a reasonable and
19 necessary operational practice given the facts and circumstances. The
20 term includes the intentional or improper use of District resources that
21 can include the excessive or improper use of one's position, in a
22 manner contrary to its rightful or legally intended use, or the misuse
23 of authority or position in wrongdoing that had an impact on either the
24 complainant (adverse loss) or subject (personal gain).

25 b. "*Fiscal misconduct*" is the deliberate action by an individual to
26 misrepresent or conceal the facts of a business transaction. Fiscal
27 misconduct includes fraud, embezzlement, the theft of goods or
28 services, and the abuse of District resources (including assets,
29 personnel or funds and property from outside entities) to secure an
30 unfair or personal gain. Financial or fiscal mismanagement that results
31 in a financial loss to the District may also constitute fiscal misconduct.
32 Failure to reasonably safeguard District assets, properly supervise
33 budgets under one's control, and duly adhere to applicable Board
34 policies may also constitute fiscal misconduct, if such failure leads to
35 financial loss to the District to jeopardize District resources. Likewise,
36 manipulation of District data and documentation to allow spending
37 where funds do not exist, or intentionally misreporting District
38 transactions may constitute fiscal misconduct. Suspected fiscal
39 misconduct is a reasonable belief or actual knowledge that fiscal
40 misconduct has occurred or is occurring.

41 c. "*Fraud*" has the meaning as provided in Policy 2.61 (Fraud).

42 d. "Waste" means the act of using or expending District resources
43 unreasonably, carelessly, extravagantly, or for no useful purpose. The
44 term also includes improper practices not involving prosecutable fraud.

45 e. "Wrongdoing" means any activity that may be the subject of an
46 Inspector General investigation, and includes misconduct, improper
47 conduct, and inappropriate conduct.

48 **3. Establishment of Office of Inspector General; Resources; Staff**

49 a. There is hereby established an office to be known as the Office of
50 Inspector General as an independent office of the School Board. The
51 head of the office shall be the Inspector General. The Inspector General
52 will conduct investigations, audits, inspections or other reviews in
53 accordance with those professional standards that relate to fields of
54 investigation and auditing in government environments.

55 b. To promote the independence and objectivity of the investigative and
56 audit functions of the Office of Inspector General, the Inspector
57 General shall be peer reviewed through the Association of Inspectors
58 General, Association of Local Government Auditors or other
59 appropriate organization. A copy of the peer review shall be provided
60 to the Board for evaluation purposes along with input from the Audit
61 Committee on the internal audit function in accordance with School
62 Board Policy 1.091. The District administration, individual Board
63 members, the Superintendent, or District Staff shall not prevent,
64 impair, or prohibit the Inspector General from initiating, carrying out,
65 completing, or presenting timely any investigation, audit, inspection or
66 review consistent with this policy.

67 c. The Inspector General shall establish the organizational structure
68 appropriate for carrying out the responsibilities and functions of the
69 Office of Inspector General.

70 d. The Inspector General shall have, subject to appropriation by the School
71 Board, the power to recommend to the Board the appointment,
72 employment or removal of, and to supervise and evaluate, such
73 assistants, employees and personnel for the efficient and effective
74 administration of the activities of the office. However, the staff in the
75 Office of Inspector General shall report directly to the Inspector
76 General, and report to the Board through the Inspector General.

77 e. The Inspector General shall establish internal operating procedures
78 and personnel procedures as deemed necessary for the efficient and
79 effective administration of the activities of the Office of Inspector
80 General. Such internal operating procedures shall be presented for
81 review and comment to the Audit Committee. The Inspector General
82 is responsible for administering and enforcing the staff's compliance

83 with this policy, School Board policies and procedures, and the office's
84 internal operating procedures.

85 f. Although the Inspector General and staff function independently of the
86 Superintendent, the Inspector General and his/her staff shall comply
87 with all the rules, policies, procedures and guidelines which govern
88 District employees including without limitation the rules regarding
89 payroll, personnel and travel, unless said compliance shall, in the sole
90 opinion of the Inspector General, impede the ability of the Inspector
91 General to carry out its functions, authority and powers as set forth in
92 this policy. Upon such a determination by the Inspector General, the
93 Inspector General shall present such matter to the Board for a final
94 determination.

95 g. The Office of Inspector General shall be impartial and free of
96 organizational and political pressures that limit its objectivity in
97 selecting areas to be investigated, audited, inspected or reviewed in
98 implementing its annual work plan.

99 i. Neither the Inspector General nor any employee of the Office of
100 Inspector General shall engage in any political campaigns or
101 activities of the School Board, and shall not make financial
102 contributions to any such campaigns.

103 ii. Neither the Inspector General nor any employee of the Office of
104 Inspector General shall conduct or supervise an investigation,
105 audit, inspection or review on any activity or program for which
106 s/he was responsible or in which s/he was employed for the
107 preceding five (5) years.

108 h. The Board will provide the funding to operate the Office of Inspector
109 General and will establish its budget on an annual basis as part of the
110 Board's annual budgeting process. Each year, the Inspector General
111 shall prepare with input from the Audit Committee a proposed annual
112 budget for provision to the Board and the Superintendent detailing
113 employee salary and benefit costs and operating expenses. Upon
114 recommendation by the Audit Committee and approval by the Board,
115 the budgeted amount will be allocated accordingly.

116 i. The Office of Inspector General shall provide staff support to the Audit
117 Committee.

118 **4. Appointment, Term, Removal, Vacancy, Qualifications, and**
119 **Evaluation of the Inspector General**

120 a. Appointment. The Inspector General shall be appointed by a majority
121 vote of the entire membership of the School Board with input by the
122 Audit Committee. The Inspector General shall be selected consistent

123 with the provisions herein and without regard to political affiliation and
124 consistent with the provisions herein.

125 b. Term of Appointment. The Inspector General shall serve for a term of
126 four years, which may be renewed at the discretion of the Board. The
127 term and other terms and conditions of the appointment shall be
128 provided for in a written agreement, shall be consistent with the terms
129 included in contracts of other contractual employees of the Board, and
130 shall be consistent with the provisions of this policy. At least four (4)
131 months prior to the end of each contract term, the Board shall
132 determine whether or not to renew the contract for an additional four
133 (4) years and shall promptly notify the Inspector General of its
134 decision.

135 c. Removal. Prior to the expiration of his or her term of office, the
136 Inspector General may be removed only for cause based upon the
137 following: neglect of duty, malfeasance, abuse of power or authority,
138 discrimination, ethical misconduct, failure to obtain or maintain
139 certification as a certified Inspector General as provided herein, or
140 other good cause. The Board shall give written notice to the Inspector
141 General of the cause of his or her intended removal. Within ten (10)
142 working days after receipt of the notice, the Inspector General may file
143 with the Board a request for a hearing on the cause for removal. If no
144 such request is made within the ten working days, the Inspector
145 General shall be deemed to have resigned his or her office as of the
146 end of the tenth working day after receipt of the notice of removal for
147 cause. If the Inspector General files a request for hearing, the Board
148 shall convene a hearing on the cause for removal of the Inspector
149 General, at which the Inspector General may appear, be represented
150 by counsel and be heard. The hearing shall be convened within thirty
151 (30) days after receipt of the request therefore and conclude no later
152 than forty-five (45) days thereafter. The Board's notice of intended
153 removal shall constitute the charge against the Inspector General.
154 Removal of the Inspector General for cause after the hearing shall
155 require the affirmative vote of a super majority of the members of the
156 Board.

157 d. Vacancy. In case of a vacancy in the position of Inspector General, the
158 Board may appoint another qualified employee in the Office of
159 Inspector General as Interim Inspector General, until such time as a
160 successor Inspector General is selected and assumes offices. The Audit
161 Committee may review the qualifications as established in this policy,
162 the job description, and provide its recommendations to the Board
163 regarding the selection of the Inspector General.

164 e. Qualifications. The Inspector General shall meet the qualifications
165 stated in the Board Approved Inspector General Job Description, job

166 code 70405, as amended by the School Board from time to time.

167 f. Evaluation. To ensure accountability for the Inspector General's
168 effectiveness and productivity, the School Board shall annually
169 evaluate the Inspector General's performance in fulfilling the
170 responsibilities outlined in this policy and the Board approved job
171 description, with input from the Audit Committee.

172 **5. Functions, Authority and Powers**

173 The Office of Inspector General is authorized to engage in the following
174 specific functions:

175 a. **Investigative Duties and Responsibilities.** In carrying out
176 investigative duties and responsibilities, the Inspector General shall:

177 i. Initiate, conduct, supervise, and coordinate investigations
178 designed to detect, deter, prevent and eradicate fraud, waste,
179 financial mismanagement, fiscal misconduct, and other abuses
180 or wrongdoings in District government. To avoid duplication of
181 efforts, the Inspector General shall ensure effective coordination
182 and cooperation with, but shall be separate and independent
183 from School Police. Notwithstanding this provision, the
184 Inspector General may refer investigations to School Police or
185 as otherwise provided in this policy.

186 ii. Investigate, inspect, review and monitor the performance of
187 School District officers, employees, functions and programs
188 either in response to complaint or on the Inspector General's
189 own initiative, in order to detect and prevent misconduct,
190 inefficiency and waste within the programs and operations of
191 the District. The Inspector General may also coordinate with the
192 General Counsel to the School Board, Human Resources, and
193 the School Police Chief, if necessary, on special investigations
194 into significant matters.

195 iii. Receive, review and investigate any complaints regarding
196 ~~District-funded projects, programs, contracts or transactions.~~

197 iv. Receive and consider complaints, and conduct, supervise, or
198 coordinate such inquiries, investigations, or reviews as the
199 Inspector General deems appropriate.

200 v. Pursuant to Sec. 112.3187, Fla. Stat., the Inspector General
201 shall be the designee of the District's chief executive officer for
202 purposes of receiving Whistleblower's Act disclosures under Sec.
203 112.3197, Fla. Stat.

204 vi. Receive complaints and coordinate all activities of the District as

205 required by the District's Whistleblower Protection Policy (Policy
206 3.28).

207 vii. Report expeditiously to the appropriate law enforcement
208 agency, whenever there are reasonable grounds to believe there
209 has been a violation of state, federal or local law.

210 viii. Conduct investigations and other inquiries free of actual or
211 perceived impairment to the independence of the Inspector
212 General or the Inspector General's office. This shall include
213 freedom from any interference with investigations and timely
214 access to records, personnel and other sources of information.

215 ix. Refer to the appropriate offices for investigation or other action
216 matters related to collective bargaining agreements; employee
217 performance and misconduct allegations not involving fraud,
218 waste, financial mismanagement, or fiscal misconduct and other
219 abuse; and, equal employment opportunity complaints as
220 provided for in Board Policies 3.05 (Equal Employment
221 Opportunity) and 3.19 (Policy Prohibiting Discrimination and
222 Harassment).

223 x. Timely submit final reports on investigations conducted by the
224 Office of Inspector General to the Audit Committee, School
225 Board and Superintendent. The Inspector General may request
226 workshops with the School Board which will be scheduled in a
227 timely manner.

228 xi. Report complaints to applicable outside agencies as provided
229 within this policy, and aid in those inquiries through in-house
230 access to personnel and documents, unless such complaints
231 relate to the Inspector General or an employee in the Office of
232 Inspector General. This subsection includes the authority to
233 coordinate or request investigations by the Office of Inspector
234 General, Florida Department of Education, into allegations made
235 by any person relating to waste, fraud, or financial
236 mismanagement within the District, pursuant to Fla. Stat.
~~237 §1001.20(4)(e).~~

238 b. **Auditing Duties and Responsibilities.** In carrying out auditing
239 duties and responsibilities, the Inspector General shall:

240 i. Perform audits ~~of and~~ require production of documents from the
241 Superintendent, School Board members, School District
242 employees, departments and vendors/contractors, and public
243 schools, including District charter schools, regarding any matter
244 within in the jurisdiction of the Inspector General.

245 ii. Conduct financial, compliance, performance, management,

- 246 operational, electronic data processing or other audits of all
247 departments, offices, activities; agencies, contracts, grants,
248 procurements (for goods, services, or construction),
249 agreements, and other programs under the operation, control
250 and supervision of the School District; and expenditures
251 incurred by the School District to independently determine
252 whether:
- 253 A. Activities and programs being implemented have been
254 authorized by the appropriate party.
- 255 B. Activities and programs are operated in compliance with
256 applicable laws, policies, regulations and
257 grants/contracts.
- 258 C. Revenues are being properly collected, deposited,
259 recorded, and accounted for.
- 260 D. Resources or assets, including funds, property and
261 personnel, are adequately safeguarded, controlled and
262 used in an effective and efficient manner.
- 263 E. Financial and other reports are being provided that
264 disclose fairly and fully information that as required by
265 law.
- 266 F. There are indicators of financial mismanagement, waste,
267 fraud, abuse or illegal acts.
- 268 G. There are adequate policies, operating and administrative
269 procedures and practices, systems or accounting controls
270 and internal management controls which have been
271 established by management.
- 272 H. There has been adequate fiscal evaluation of all large
273 purchases of real property by the District and sale of
274 District property.
- 275 iii. Conduct all audits in accordance with current Standards for the
276 Professional Practice of Internal Auditing as issued by the
277 Institute of Internal Auditors, Inc., or, where appropriate, in
278 accordance with generally accepted Government Auditing
279 Standards issued by the Comptroller General of the United
280 States.
- 281 iv. Provide reasonable notice to appropriate personnel of an intent
282 to audit in their area, except for audits intended to be
283 unannounced.
- 284 v. Be alert to any indications of fraud, financial mismanagement,

285 waste, abuse, or illegal acts. If the Inspector General detects
286 apparent violations of law or apparent instances of misfeasance,
287 malfeasance, or nonfeasance by an employee or information
288 that dereliction may be reasonably anticipated, the Inspector
289 General shall start an investigation in a time and manner
290 appropriate to the facts and circumstances. If the irregularity
291 may be criminal in nature, the investigation results shall be
292 referred to the School Police Department, in conjunction with
293 the Office of General Counsel, or may also be referred to other
294 law enforcement agencies as applicable.

295 c. **Contract Review Duties and Responsibilities.** The Inspector
296 General may review all School Board contracts as they pertain to Board
297 funded projects, programs, contracts and transactions. This includes
298 charter school applications and contracts with the School Board and
299 any third party contracts allowed by the charter agreements. All
300 prospective bidders and proposers, and vendors and contractors doing
301 business with the School Board, shall be informed of the authority of
302 the Inspector General to conduct such contract reviews.

303 For every School Board bid, proposal, contract or purchase, the School
304 District shall inform bidder, proposer or vendor/contractor, or
305 subcontractor of the Inspector General's accessibility to records and
306 data related to such District's contracts and the requirement for the
307 bidder's, proposer's, vendor's or contractor's cooperation with the
308 Inspector General as provided for in subparagraph (e) herein
309 (*Accessibility to and Cooperation with the Inspector General and Staff*)
310 and paragraph 8(b)(iii).

311 d. **Miscellaneous Duties.** In carrying out Miscellaneous Duties, the
312 Inspector General:

313 i. May review the actions taken by District offices to improve
314 program performance and meet program standards and make
315 recommendations for improvement, if necessary.

316 ii. May provide direction for, supervise, and coordinate
317 management reviews relating to the programs and operations
318 of the District.

319 iii. Shall monitor implementation of recommendations made by the
320 office and other audit, investigative and law enforcement
321 agencies.

322 iv. May request periodic status reports from audited or investigated
323 departments, offices, divisions regarding corrective actions
324 taken to address reported findings, deficiencies and/or audit
325 recommendations.

- 326 v. Shall, upon discovering credible information of corruption,
327 fraud, waste, abuse or illegal acts in carrying out duties and
328 responsibilities of the office, the Inspector General report such
329 information to School Police, the State Attorney, the United
330 States Attorney, or other appropriate law enforcement agency.

- 331 vi. Will guard against using abuse of authority, as provided in the
332 definition of "Abuse" as defined in paragraph 2 herein, as the
333 basis for an allegation if another standard more accurately
334 characterizes the alleged inappropriate conduct or failure to act.

- 335 e. **Accessibility to and Cooperation with Inspector General and**
336 **Staff.**

- 337 i. The Office of Inspector General shall have immediate, complete
338 and unrestricted access to all papers, books, records,
339 documents, information, personnel, processes (including
340 meetings), data, computer hard drives, emails, instant
341 messages, facilities or other assets owned, borrowed, or used
342 by the District, which includes information regarding District
343 vendors or any other partnership, corporation or organization
344 that may be involved with the District, as deemed necessary in
345 performing investigative and/or audit activities and other
346 requested information, including automated or electronic data,
347 pertaining to the business of the School Board and District within
348 their custody.

- 349 ii. The Office of Inspector General shall have access to all District
350 employees, including unrestricted interview (written and oral)
351 privileges. The Inspector General shall have direct and prompt
352 access to the head of any District department, division or school
353 when necessary for any purpose pertaining to the performance
354 of his/her duties and responsibilities.

- 355 iii. At all times the Office of Inspector General shall have access to
356 any building or facility that is owned, operated or leased by the
357 School Board.

- 358 iv. All District employees or vendors shall furnish the Inspector
359 General with requested information and records within their
360 custody for the purposes of conducting an investigation, review
361 or audit, as well as provide reasonable assistance to the
362 Inspector General in locating assets and obtaining records and
363 documents as needed for an investigation or audit.

- 364 v. The Inspector General may also obtain information from District
365 vendors when such information is needed while conducting an
366 audit, review or investigation. Furthermore, every Board
367 contract and every bid, proposal, and solicitation for contracts

368 with outside contractors and subcontractors, and every
369 application for certification of eligibility for a School Board
370 contract or program, shall contain a statement that the
371 Inspector General's access to all financial and performance-
372 related records, services, property and equipment purchased in
373 whole or in part with School Board funds, and that the individual,
374 corporation, partnership or organization understands and will
375 abide by this policy.

376 vi. The Office of Inspector General shall have the authority to
377 monitor implementation of recommendations made and
378 corrective actions taken by the School District relative to
379 external and internal audits, in accordance with Policy 2.62
380 (Audit Recommendations and Follow-Up).

381 vii. In the case of a refusal to cooperate with a request by the
382 Inspector General for documents or for an interview, the
383 Inspector General may seek the assistance of the Office of the
384 State Attorney or other appropriate law enforcement agency in
385 obtaining a subpoena for such document or testimony.

386 f. **Due Process.** The Office of Inspector General shall respect employees'
387 and contractors' due process rights as prescribed by State law, Board
388 rules, and/or applicable collective bargaining agreements.

389 i. When audits, reviews or investigations conducted or coordinated
390 by the Inspector General disclose apparent criminal violations or
391 violations that could result in employee discipline or termination
392 of a vendor's contract, the Inspector General shall provide
393 relevant factual information to the appropriate District
394 department or relevant agency for possible further review or
395 investigation and provision of due process.

396 ii. The Inspector General shall strive to protect employees from
397 false complaints. If the Inspector General determines that an
398 individual has filed a false report or complaint, such report or
399 complaint and any findings of the Inspector General shall be
400 referred to the appropriate law enforcement agency for
401 investigation and possible prosecution in accordance with law.
402 Additionally, the Inspector General shall refer such matter to the
403 Office of Professional Standards.

404 iii. Any employee who knowingly files a false report with the
405 Inspector General will be subject to disciplinary action.

406 iv. Any vendor or contractor who knowingly files a false report with
407 the Inspector General may be subject to debarment or
408 suspension as provided in Board Policy 6.14.

409 g. **Establishment of Hotline.** To facilitate the receipt of information
410 from citizens and employees associated with allegations of corruption,
411 fraud, waste, mismanagement, etc., the Inspector General shall
412 maintain a system of hotline and shall circulate and communicate to
413 the various departments, divisions and schools the existence of the
414 toll-free number and its purposes.

415 **6. Employee Responsibilities**

416 a. All employees of the District shall be responsible for reporting to the
417 Office of Inspector General an observed, known, or suspected fraud,
418 waste, abuse or wrongdoing to include ethical misconduct. No officer
419 or employee of the Board or District shall threaten, discipline or
420 retaliate against an employee; or intimidate or coerce an employee
421 because the employee has acted in good faith, in accordance with the
422 requirements of this policy. Employees should exemplify honesty and
423 integrity in the performance of their official duties for the School
424 District. Unethical conduct includes but is not limited to:

425 i. Falsifying or misrepresenting professional qualifications, criminal
426 history, college or staff development credit and/or degrees,
427 academic award, and employment history when applying for
428 employment and/or certification or when recommending an
429 individual for employment, promotion or certification;

430 ii. Falsifying or misrepresenting information submitted on behalf of
431 the School District to federal, state and other governmental
432 agencies;

433 iii. Falsifying or misrepresenting information reported regarding the
434 evaluation of students and/or District personnel;

435 iv. Failing to report all actual or suspected cases of child abuse,
436 abandonment or neglect as required by Section 1006.061, Florida
437 Statutes, as now or hereafter amended;

438 v. Failing to report suspected or actual misconduct of employees that
439 affects the health, welfare or safety of a student;

440 vi. Falsifying or misrepresenting reported reasons for absences or
441 leaves;

442 vii. Falsifying, misrepresenting, or omitting information submitted in
443 the course of an official inquiry/investigation;

444 viii. Knowingly reporting alleged misconduct of a District
445 employee which affects the health, safety or welfare of a student
446 which the reporting party knows to be false or incorrect; and

447 ix. Knowingly taking responsibility and credit for work performed or
448 produced by others; or failing to acknowledge the work and
449 contributions made by others, including any acts of plagiarism.

450 b. District employees shall promptly cooperate fully with Office of Inspector
451 General staff by providing complete, truthful and accurate
452 information/testimony in matters being reviewed.

453 c. **Employee Education**- Employees are responsible for reviewing this policy
454 on an annual basis. This policy will be reviewed with all new employees at
455 the required new employment orientation session.

456 6.7. **Allegations Regarding Board Members, Superintendent,**
457 **Inspector General or General Counsel**

458 A complaint(s) alleging waste, fraud, abuse, financial mismanagement, fiscal
459 misconduct and/or other abuses or wrongdoings as described below against
460 a Board member, the Superintendent, the Inspector General, or the General
461 Counsel shall be managed as follows:

462 a. *Ethical Misconduct.* The Inspector General shall immediately refer
463 complaints alleging a violation of the Florida Code of Ethics, Part III,
464 Chapter 112, F.S., as amended, to the Florida Commission on Ethics.

465 i. Any allegations to be filed with the Florida Commission on Ethics
466 regarding a Board member, General Counsel, or Superintendent
467 shall be filed and signed by the Inspector General.

468 ii. Any allegations to be filed with the Florida Commission on Ethics
469 regarding the Inspector General shall be filed and signed by the
470 Board Chair.

471 If a complaint alleges ethical misconduct as provided for in Board Policy
472 3.02, the Inspector General shall immediately forward such allegations
473 to an external agency the Board has entered into an agreement with,
474 if any, for the purposes of investigating such allegations.

475 b. *Criminal Misconduct.* The Inspector General shall immediately refer
476 complaints alleging a violation of criminal law(s) to the appropriate
477 local, state or federal law enforcement agency.

478 c. *Elections.* The Inspector General shall refer complaints alleging a
479 violation of The Florida Election Code, Chapters 97 through 106, Florida
480 Statutes, to the Florida Elections Commission (except as to alleged
481 violations that may be criminal in nature, which shall be referred to
482 the Office of State Attorney).

483 d. *Other Complaints of Wrongdoing.* The Inspector General shall
484 immediately refer complaints alleging wrongdoings within the

485 jurisdiction of the Inspector General, other than ethical, elections or
486 criminal misconduct as provided herein, to the appropriate external
487 administrative or civil agency, or an agency the Board has entered into
488 an agreement for the purposes of investigating such allegations.

489 **7.8. Referrals to Internal Units and Outside Agencies - Efficiency**
490 **and Coordination**

491 a. The Inspector General shall refer matters to the appropriate District
492 office or outside agencies, as provided for in this policy, ~~but and~~ shall
493 keep a record of such referral. Upon receipt of a referral, the District
494 office receiving the referral shall execute an acknowledgement of
495 receipt and agree to provide periodic, self-directed, and timely status
496 reports to the Inspector General. Status reports from the District
497 offices shall include pertinent actions taken by the District office,
498 including, but not limited to, the substance and nature of investigations
499 conducted, summaries of interviews taken, statement of policies and
500 procedures reviewed, and a summary report of current findings and
501 any corrective measures taken in response to the Inspector General's
502 referral. The District office or receiving unit shall submit a periodic
503 status report to the Inspector General.

504 b. If an outside agency to which the Inspector General refers a complaint
505 later determines that the Inspector General is in a better position to,
506 or has more appropriate jurisdiction to, investigate the matter, the
507 Inspector General may accept the return referral and proceed with the
508 inquiry/investigation, unless such complaint relates to the Inspector
509 General or an employee of the Inspector General. Upon such
510 determination by an outside agency, the Inspector General shall
511 present a copy of return referral to the Board Chair prior to
512 commencing an inquiry/investigation.

513 **8.9. Reporting of Work Activities**

514 a. The Office of Inspector General will conduct its affairs in accordance
515 with this Policy; the Audit Committee charter as set forth in School
516 Board Policy 1.091; the Government Auditing Standards issued by the
517 Comptroller General of the United States; Standards for the
518 Professional Practice of Internal Auditing issued by the Institute of
519 Internal Auditors; Principles and Standards for Offices of Inspector
520 General as published by the Association of Inspectors General; and the
521 internal operating procedures of the Office of Inspector General
522 (internal operating procedures), provided that nothing in the internal
523 operating procedures shall be interpreted as contrary to state or
524 federal law. If any part of the internal operating procedures may be
525 deemed in conflict with this body of the Policy, the provisions within
526 this body Policy shall control.

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- b. Each investigation, audit, inspection, or review will result in a written report. Such reports shall be objective, clear, concise, constructive, and timely and shall contain the professional conclusions of the Inspector General regarding the activities.
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- i. Before issuing a final written report, the Inspector General will communicate with and schedule a meeting to review the preliminary report and response with, the respective investigated, audited or reviewed department, office, division, or person. However, the Inspector General shall not provide any preliminary reports to the Superintendent, School Board or individual Board members until the final draft of the report is distributed (absent a Board vote requesting receipt of a preliminary/draft report before the final draft of the report).
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- ii. In response to a request of the Inspector General for information or documentation, the entity that is the subject of the investigation, audit, inspection or review shall provide the requested information or documentation to the Inspector General within ten (10) working days.
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- iii. When investigating, reviewing or auditing a vendor, and/or in the event information and response is needed from a vendor, this step may include meeting with the vendor when the investigation or audit is near completion, and the vendor or affected person must agree to maintain the confidentiality of preliminary/draft report and the information contained therein pursuant to Fla. Stat. § 119.0713(2) and shall enter into a written confidentiality agreement for the period until the investigation, review or audit is completed. A vendor's failure to enter such written confidentiality agreement shall be deemed to constitute that vendor's waiver of the opportunity to respond to the investigation, review or audit preliminary report, and the investigation, review or audit shall be completed without the vendor's response.
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- iv. The department, office, division, or person shall have twenty ~~(20) working days to submit a written corrective action plan, explanation or rebuttal to any audit, review, or investigative findings before the report or recommendation is finalized, and such timely submitted written corrective action plan, explanation or rebuttal shall be attached to the final report or recommendation. The Inspector General shall submit and present the audit, review or investigative reports to the Audit Committee for the next available Audit Committee meeting.~~
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- v. This section shall not apply when the Investigative, audit or review reports are referred to a law enforcement agency, State

570 Attorney, Attorney General or United States Attorney, and it is
571 determined that supplying the affected person or entity with
572 such report will jeopardize a pending criminal investigation.

573 c. Whistleblower investigations conducted as provided herein and by
574 state law are not subject to this policy and shall be reported consistent
575 with state law. Additionally, matters referred by the Inspector General
576 to other District Investigative offices, Florida Department of Education,
577 or a law enforcement agency shall not be reported in personally-
578 identifiable form if a preliminary report could harm the integrity of the
579 pending investigation.

580 d. To enhance the independence, objectivity, and effectiveness of the
581 investigative, review and auditing processes, a final report shall be
582 submitted at the same time to all members of the School Board, the
583 Superintendent and the affected department heads, members of the
584 press and upon request, the general public. Final Audit reports and
585 investigative reports that are deemed substantiated or
586 unsubstantiated, in whole or in part, will shall be posted on the
587 Inspector General's website upon completion of all required
588 investigations. Unfounded reports will not be posted on the Inspector
589 General's website.

590 e. The Inspector General shall prepare an annual report summarizing the
591 activities of the office during the immediately preceding fiscal year.
592 The annual report shall be furnished to the School Board, the Audit
593 Committee, the Superintendent, and published on the Inspector
594 General's website.

595 **9-10. Quality Review**

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597 The work activities of the Office of Inspector General shall be subject to
598 periodic quality assurance or peer review by a group of its peers, utilizing
599 guidelines endorsed by the United States Government Accountability Office.
600 When completed by the peer review group, the group shall submit its
601 recommendations and findings of such review to the Board, Audit Committee
602 and the Inspector General. ~~The Audit Committee shall provide a report to the~~
603 Board of the recommendations and findings which the committee accepts and
604 recommends for implementation by the Inspector General.

605 **10-11. Annual Work Plan**

606 a. For each fiscal year, the Inspector General shall develop, for approval
607 by the Board, a proposed work plan after consultation with the Board
608 and Audit Committee at a joint meeting, and with input from the
609 Superintendent and other high-level administrators. The annual work
610 plan shall be consistent with applicable standards, including the
611 Government Auditing Standards, standards issued by the Institute of

612 Internal Auditors and standards issued by the Association of Inspectors
613 General.

614 b. Before presenting the proposed work plan for approval by the Board,
615 the Inspector General shall first submit the proposed plan (reflecting
616 budget, staffing, scheduled audits, and other projects) for review and
617 discussion by the Audit Committee, whose advice on the proposed plan
618 will be reported to the School Board before a vote by the Board. The
619 annual work plan may be amended by the Board, as deemed
620 necessary.

621 ~~11.12.~~ **Confidential Information**

622 a. The Inspector General will properly protect confidential information in
623 accordance with law. Specifically,

624 i. Pursuant to § 119.0713(2), Fla. Stat., work papers, notes, and
625 preliminary or draft audit reports shall be held confidential and
626 exempt from public-records disclosure until the audit is
627 completed by submission of the final draft of the report to the
628 Audit Committee and the School Board.

629 ii. Pursuant to § 112.3188, Fla. Stat., whistle-blower information
630 is confidential and exempt "if the information is being received
631 or derived from allegations as set forth in § 112.3187, Fla. Stat.
632 and the investigation is active", and such information can be
633 disclosed only as allowed by § 112.3188, Fla. Stat.

634 iii. Under § 1012.31(3)(a), Fla. Stat, "[a] complaint and any
635 material relating to the investigation of a complaint against an
636 employee shall be confidential and exempt from the provisions
637 of the Public Records Law, § 119.07(1), Fla. Stat., until the
638 conclusion of the preliminary investigation or until such time as
639 the preliminary investigation ceases to be active".

640 iv. Under § 1002.22 Fla. Stat., student records are confidential and
641 may be disclosed only as allowed by §§ 1002.22 (3)(d), and
642 ~~1002.221, Fla. Stat.; State Board of Education Rule 6A-1.0955,~~
643 ~~F.A.C., and Board Policy 5.50.~~

644 v. Under §119.071(2)(c)1, Fla. Stat., "[a]ctive criminal intelligence
645 information and active criminal investigative information [as
646 defined in 119.001(3)(a),(b)F.S] are exempt." Under
647 119.011(4)(c), Fla. Stat., the Office of Inspector General would
648 be deemed a "criminal justice agency" for purposes of records
649 exemptions if it has "custody of criminal intelligence
650 information."

RULEMAKING AUTHORITY: Fla. Stat. §§ 1001.32(2); 1001.41 (1) & (2); 1001.42 (28); 120.81 (1) a.

LAWS IMPLEMENTED: Fla. Stat. §§ 119.0713(2); 1001.32 (2); 1001.41; 1001.42 (12),(13), & (15); 1001.43 (2), (6), & (10); 286.011

OTHER REQUIREMENTS: Government Auditing Standards, Government Accountability Office, U.S. Comptroller of the Treasury; General Principles and Standards for Offices of Inspector General as published by the Association of Inspectors General; International Standards for the Professional Practice of Internal Auditing as published by the Institute of Internal Auditors, Inc.

HISTORY: 1/13/2003; 12/14/2011; 6/7/2017; 06/03/2020.

Cross References:

Policy 1.009 - Audit Committee

Policy 2.61 Fraud

Policy 2.62 - Audit Recommendations and Follow-up

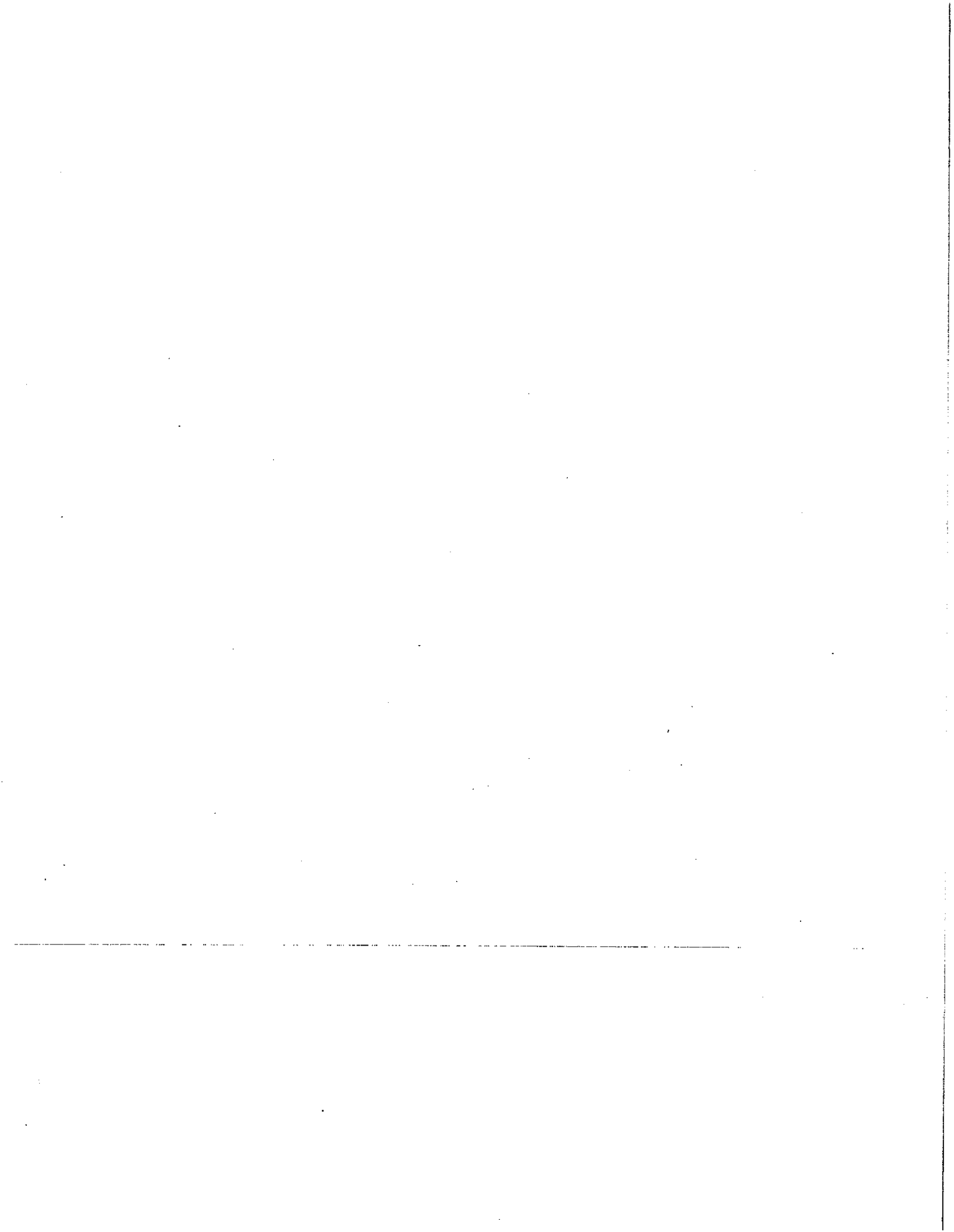
Policy 3.28 - Whistleblower Protection Policy

Policy 3.02 - Code of Ethics

Policy 3.05 - Equal Employment Opportunity

Policy 3.19 - Policy Prohibiting Discrimination and Harassment

Policy 3.31 - Grievances





Fwd: Discussion Item and Information Request

3 messages

Mike Burke <mike.burke@palmbeachschools.org>
To: Gonzalo La Cava <gonzalo.lacava@palmbeachschools.org>, Vicki Evans-Pare <vicki.evans-pare@palmbeachschools.org>

Wed, Nov 17, 2021 at 3:20 PM

fyi

----- Forwarded message -----

From: **Teresa Michael** <teresa.michael@palmbeachschools.org>
Date: Wed, Nov 17, 2021 at 12:20 PM
Subject: Re: Discussion Item and Information Request
To: ToniLynn Bilotta <tonilynn.bilotta@palmbeachschools.org>
Cc: Board Questions <board.questions@palmbeachschools.org>

Please see the attached requested information.

On Wed, Nov 17, 2021 at 11:50 AM ToniLynn Bilotta <tonilynn.bilotta@palmbeachschools.org> wrote:

On Tue, Nov 16, 2021 at 9:35 PM Karen Brill <karen.brill@palmbeachschools.org> wrote:



Requesting the IG share with the Board the Miami-Dade PIN (Personnel Investigation Model). This may be helpful in guiding future discussions.

Thank you!

Karen Brill
School Board Vice Chairwoman
School Board Member, District 3
The School Board of Palm Beach County
3340 Forest Hill Boulevard, C-316
West Palm Beach, FL 33406
Cell: 561-222-1048

Executive Administrative Assistant: **Tiffany Ritzel**
Tel. 561-434-8038


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Hotline: 561-361-1010 or submit online pad.etsdofcalabscato.com

ALWAYS BE CONFIDENTIAL. SECURE






Teresa A. Michael, Ed.S. L.E.F.E.
Inspector General
Office of Inspector General
3318 Forest Hill Blvd, Suite C-308
West Palm Beach, FL 33406

Phone: (561) 434-7335
E-mail: Teresa.Michael@palmbeachschools.org

Michael J. Burke
Superintendent
School District of Palm Beach County
(561) 649-6833

3 attachments

-  Miami PIM.pdf 5488K
-  OPS Complete Manual 2020-2021 Procedures Manual.pdf 3198K
-  Miami Dade School CIU (1).pdf



Vicki Evans-Pare <vicki.evans-pare@palmbeachschools.org>
 To: Mike Burke <mike.burke@palmbeachschools.org>
 Cc: Gonzalo La Cava <gonzalo.lacava@palmbeachschools.org>

Wed, Nov 17, 2021 at 5:44 PM

As an update – We have all the documents from Miami-Dade Public Schools as well as those from Osceola County School Board. I have personally had long conversations with both the Chief of HR and the Director of Professional Standards in MDPS. Both Miami Dade and Osceola have graciously agreed to allow us to use much of their language in our document. We have used their manuals to assist in drafting our Standard Operating Procedures Manual. The District had one from 30 years ago that is being revised and updated. We have completed the rough draft that will clear our staff this week. Once all the questions/concerns have been addressed, we will be sending the manual to the OGC and the OIG for comment. I have also revised policy 3.25 (School Board Personnel Investigations and Probable Cause Determinations) and received tentative approval from the OGC. I am also working on 3.27 (Suspension and Dismissal of Employees). I would like to have both policies presented to the Board in January or February, upon your approval. By that time, we hope to have the SOP completed and approved by all stakeholders.

Please let me know if you have any questions.

 3.25

Vicki Evans-Paré, Esq.
 Director of Professional Standards
 vicki.evans-pare@palmbeachschools.org
 (561) 434-8873

Around here, however, we don't look back for very long. We keep moving forward, opening new doors, and doing new things, because we're curious and curiosity keeps leading us down new paths. -- Walt Disney



[Quoted text hidden]

Gonzalo La Cava <gonzalo.lacava@palmbeachschools.org>
 To: Vicki Evans-Pare <vicki.evans-pare@palmbeachschools.org>

Thu, Nov 18, 2021 at 10:20 AM

Let's discuss this during our next 1:1 meeting and get prepared. You may want to reach out to Karen Brill and try to get some intel on what she is looking for and what she means. Thanks

Gonzalo S. La Cava, Ed.D.
 Chief of Human Resources
 3300 Forest Hill Blvd, Suite A-128
 West Palm Beach, FL 33406-5870



Press Release

----- Forwarded message -----
 From: Mike Burke <mike.burke@palmbeachschools.org>
 Date: Thu, Nov 18, 2021 at 9:50 AM
 Subject: Fwd: Discussion Item and Information Request
 To: Gonzalo La Cava <gonzalo.lacava@palmbeachschools.org>

fyi

----- Forwarded message -----
 From: Karen Brill <karen.brill@palmbeachschools.org>
 Date: Tue, Nov 16, 2021 at 9:35 PM
 Subject: Discussion Item and Information Request
 To: Carol Bass <carol.bass@palmbeachschools.org>
 Cc: Mike Burke <mike.burke@palmbeachschools.org>

Carol, please add a discussion item for us at the next available opportunity: I would like to discuss our HR policies vis-a-vis our IG policies.

Additionally, please ask the IG to share with the Board the Miami-Dade PIN (Personnel Investigation Model). This may be helpful in guiding our future discussion.

Thank you!

--
Karen Brill
School Board Vice Chairwoman
School Board Member, District 3
The School Board of Palm Beach County
3340 Forest Hill Boulevard, C-316
West Palm Beach, FL 33406
Cell: 561-222-1848

Executive Administrative Assistant: Tiffany Ritzel
Tel. 561-434-0038

Florida law, e-mail addresses are public records. If you do not want your e-mail address released in response to a public records request, do not send electronic mail to this entity. Instead, contact this office by phone or in writing.

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Ch. 3. Personnel
Title School Board Personnel Investigations and Probable Cause
Determinations
Code 3.25
Status Active
Adopted June 16, 1982
Last Revised December 11, 1985
Prior Revised Dates New: 6/16/82 ; Revised: 12/11/85

1. The School Board strives to ensure that personnel investigations are impartial, objective and timely; and that employees have the opportunity to receive, review, and respond to conclusions reached through the personnel investigative process.
2. The Superintendent may authorize and conduct personnel investigations as may be necessary. Any complaint and any material relating to a personnel investigation shall be confidential until the conclusion of the investigation or until such time as the investigation ceases to be active. The Superintendent shall determine if there is probable cause to proceed further and recommend that disciplinary action be taken, based upon the findings of the investigation.
3. An investigation or determination of probable cause is a nonadversary function to discover or procure evidence as part of the fact finding functions of the School Board and Superintendent. The Superintendent need not have an administrative complaint pending to conduct a personnel investigation or make such determination that probable cause exists sufficient to recommend suspension or termination to the School Board.
4. In conducting personnel investigations, the District shall follow all Collective Bargaining Agreement provisions related to Progressive Discipline.
5. Disciplinary action may not be taken against an employee except for just cause, and this must be substantiated by sufficient evidence, which supports the recommended disciplinary action.
6. All disciplinary action shall be governed by applicable statutes, administrative regulations and School Board Policy.
7. Employees shall be provided with a written notice of wrongdoing, setting forth the specific charges against that employee prior to taking any disciplinary action.
8. An employee against whom disciplinary action is to be taken shall have the right to review and respond to any and all of the information relied upon to support any potential disciplinary action prior to taking such action. To this end, the employee shall be afforded a reasonable amount of time to prepare and present responses concerning the allegation(s) and the appropriateness of any potential disciplinary action. This amount of time is to be mutually agreed upon by the Parties.
9. When warranted by just cause, progressive discipline shall be administered as follows:
 - a. Verbal Reprimand with a Written Notation - Such written notation shall not be used to the further detriment of the employee after twelve (12) months of the action/inaction of the employee which led to the notation. The document, however, may constitute evidence that the employee was given prior notice of the unacceptable behavior.
 - b. Written Reprimand - A written reprimand may be issued to an employee when appropriate in keeping with provisions of this Section. Such written reprimand shall be dated and signed by the giver and the receiver of the reprimand.

- c. Suspension Without Pay - A suspension without pay may be issued to an employee when appropriate, including just cause and applicable laws. The length of the suspension also shall be determined by just cause. The notice and specifics of the suspension without pay shall be placed in writing, dated and signed by the giver and the receiver of the suspension. The specific days of suspension will be clearly set forth in the written suspension notice.
 - d. Dismissal - An employee may be dismissed (employment contract terminated) when appropriate in keeping with just cause and applicable laws.
10. Exception to Progressive Discipline may be made in cases which clearly constitute a real and immediate danger to the District, a District employee, and/or a child/children or the actions/inactions of the employee clearly constitute flagrant or purposeful violations of reasonable school rules and regulations.

Authority:	120.53, 1001.44(1-3), 1012.23 FS
Implemented:	1012.22 FS
History:	New: 6/16/82 ; Revised: 12/11/85, ___/___/22



Vicki Evans-Pare <vicki.evans-pare@palmbeachschools.org>

Admin. Closure Letter

6 messages

Susan Slanina <susan.slanina@palmbeachschools.org>
To: Keith Oswald <keith.oswald@palmbeachschools.org>
Cc: Arthur Schofield <aschofield@flalabor.com>, Mike Burke <mike.burke@palmbeachschools.org>, Vicki Evans-Pare <vicki.evans-pare@palmbeachschools.org>

Fri, Nov 19, 2021 at 8:17 AM

Mr. Oswald,

Please find attached the Administrative Closure Letter for Office of Professional Standards case #21/22-016 (OIG Case#21-0009-1).

Susan Slanina, BSHR
Executive Administrative Assistant to:
Vicki Evans-Pare
Director of Professional Standards
561-434-8873- phone
561-434-8278 - fax
susan.slanina@palmbeachschools.org

SDPBCLeanSixSigma.org



Oswald, Keith - Administrative Closure Letter.pdf
294K

Keith Oswald <keith.oswald@palmbeachschools.org>
To: Susan Slanina <susan.slanina@palmbeachschools.org>
Cc: Arthur Schofield <aschofield@flalabor.com>, Mike Burke <mike.burke@palmbeachschools.org>, Vicki Evans-Pare <vicki.evans-pare@palmbeachschools.org>

Fri, Nov 19, 2021 at 12:39 PM

Thank you all so much.

Keith Oswald
Chief of Equity and Wellness
School District of Palm Beach County
Phone: 561-434-8822
Fax: 561-434-8837 PX: 46837
keith.oswald@palmbeachschools.org



[Quoted text hidden]

Ike Burke <mike.burke@palmbeachschools.org>
To: Gonzalo La Cava <gonzalo.lacava@palmbeachschools.org>
Cc: Vicki Evans-Pare <vicki.evans-pare@palmbeachschools.org>

Fri, Nov 19, 2021 at 5:04 PM

Dr. LaCava,
Same question, shouldn't I have been consulted before this letter was issued? What is our process?
Please advise.

[Quoted text hidden]

Michael J. Burke
Superintendent
School District of Palm Beach County
(561) 649-8833

Gonzalo La Cava <gonzalo.lacava@palmbeachschools.org>
To: Vicki Evans-Pare <vicki.evans-pare@palmbeachschools.org>

Fri, Nov 19, 2021 at 7:27 PM

FYI

[Quoted text hidden]

Gonzalo S. La Cava, Ed.D. Chief of Human Resources 3300 Forest Hill Blvd, Suite A-128 West Palm Beach, FL 33406-5870 fax (561) 434-8093

Vicki Evans-Pare <vicki.evans-pare@palmbeachschools.org>
To: Mike Burke <mike.burke@palmbeachschools.org>
Cc: Gonzalo La Cava <gonzalo.lacava@palmbeachschools.org>

Mon, Nov 22, 2021 at 3:49 PM

Mr. Burke,

Below is a timeline of our discussions so we are all starting in the same place. We met with you at least three times on these cases.

October 1, 2021 — Dr. LaCava and I met with you to discuss the investigation and our parameters. We discussed the fact that the OIG's investigation with regard to Mr. Oswald was not legally sufficient and we were required to investigate the issue further. We also indicated that at that time, it was likely that the allegations regarding Mr. Oswald would not be substantiated.

October 8, 2021 - Dr. LaCava, Kevin Butanowicz, the team from the OIG, and I met with you again to discuss the status of the cases. We provided everyone with a draft of the reports for Mr. Oswald, Mr. Schwartzburger and Ms. Peterson. At that time, the determination related to Mr. Oswald was most likely unsubstantiated based on the investigation we were completing. We were completing the reports for the latter two employees. We discussed the differences in focus and standards between the two departments. We also discussed holding the OIG release of their report until such time as the three OPS cases were closed. We also discussed the fact that the OIG continues investigations if employees retire, resign or are otherwise terminated. At that time, OPS did not follow that practice. I mentioned that I was gathering information from other Districts and was reevaluating our practice. You asked if the fact that the case against Mr. Oswald was unsubstantiated prohibited you from addressing the concerns you had related to the entire incident. We told you that as his supervisor you could certainly provide him with conference notes or directives as to how you would like issues handled in the future.

November 4, 2021 - Dr. LaCava, Kevin, Jean Middleton, Danielle Williams, and I met with you again. At that point, the investigation into Mr. Oswald had been completed and unsubstantiated since October 13th. We provided you with the report at the meeting. Ms. Middleton and Ms. Williams explained how the OIG's investigation was not legally sufficient to support a challenge to a disciplinary action. We further talked about ways to avoid the "reinvestigation" issue in the future (i.e. the OIG would send the cases to the OGC for a review for legal sufficiency prior to submitting them to OPS for discipline). You were informed that the EIC was meeting on Schwartzburger and Peterson on November 12th. As Mr. Oswald's case was unsubstantiated it was not sent to EIC. You voiced concern that the two lower level employees would be the ones to face consequences for the situation. I indicated at that time that I didn't anticipate that either one would face serious discipline based on the facts and circumstances. Based on experience with the EIC, it was believed that Mr. Schwartzburger might face some type of reprimand and Ms. Peterson would most likely receive a memo -- or at most a verbal reprimand. We would leave the decision, however, to the EIC. You asked that we not release the letter administratively closing Mr. Oswald's case until such time as we closed the other two. We agreed to do so, even though we had not held unsubstantiated reports in the past.

November 12, 2021 - The EIC met. As neither Schwartzburger nor Peterson was recommended for serious discipline and the EIC recommendations were in line with prior case, we normally would not have brought the cases to the Superintendent's attention. However, given our prior meetings and the media interest in these cases, I sent you an email detailing the outcome. I indicated that we would be moving forward on closing out all three cases starting on Monday, November 15th. After the cases were closed at OPS, we would be forwarding all three investigations to the OIG and FLDOE-PPS. As I know you are very busy, the email indicated that a lack of response would be treated as an approval to move forward. This was also in keeping with what we discussed over the past few months.

If you were caught off guard by the case closures, I do apologize. With these cases, we briefed you at every step of the process. It is important to note that we do not normally bring non-disciplinary documents, minor disciplinary cases and administrative closures to the Superintendent's level. Given our discussions and research on other Districts, we are changing the practice relative to employees who leave the District while under investigation. The HR managers were informed in late October that as of November 1st, we will be closing investigations even after the subject leaves the employ of the District -- to the extent possible. We will also not reinvestigate any OIG cases so long as they are cleared for legal sufficiency by the OGC. We will need to discuss with the OIG how to handle those cases where there is disagreement between their office and the attorneys.

While we have changed a few of our practices as a result of these cases, we could not do so in the middle of the investigations. To have made changes midstream or to fail to follow our practices due to external pressures would have been inappropriate, unethical and not legally sufficient. To assist in understanding the practices we do have, here is the link to that draft version of the OPS manual that was shared on Friday with the OGC and the OIG. Should you have any questions or concerns as to our practices, please let me know.

I hope this clarifies the issues. Have a restful Thanksgiving.

Vicki Evans-Pare
[Quoted text hidden]

Mike Burke <mike.burke@palmbeachschools.org>
To: Vicki Evans-Pare <vicki.evans-pare@palmbeachschools.org>
Cc: Gonzalo La Cava <gonzalo.lacava@palmbeachschools.org>

Fri, Nov 26, 2021 at 1:47 PM

Ms. Evans-Pare and Dr. LaCava,
I do not dispute the timeline, but I did expect a final conversation along with the opportunity to weigh in on discipline stemming from these investigations. You indicated to me earlier the EIC recommendation was subject to my approval. The statement below is not an acceptable business practice:

As I know you are very busy, the email indicated that a lack of response would be treated as an approval to move forward. "

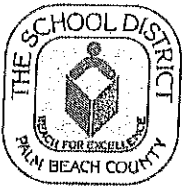
I am very busy, but I cannot have staff assuming they have my approval with no actual response. There are also district communication considerations that stem from your department's actions, as well as implications for the Office of Inspector General with the posting of their investigation.

I meet with Dr. LaCava weekly and answer my phone and text messages promptly. Please be sure to obtain my expressed approval in the future.

Thank you,

Mike

[Quoted text hidden]



THE SCHOOL DISTRICT OF
PALM BEACH COUNTY, FL

VICKI EVANS-PARÉ, ESQ.
DIRECTOR

GONZALO S. LA CAVA, Ed.D.
CHIEF OF HUMAN RESOURCES

OFFICE OF PROFESSIONAL STANDARDS
3300 FOREST HILL BOULEVARD, A-106
WEST PALM BEACH, FL 33406-5870

PHONE: 561-434-8873 / FAX: 561-434-8178

November 19, 2021

Sent via email and regular mail

Keith Oswald
1753 NW 36th Court
Oakland Park, FL 33309

*Re: Professional Standards Case#21/22-016 (OIG Case#21-0009-J)
Administrative Closure*

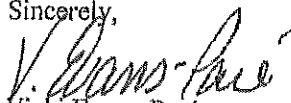
Dear Mr. Oswald:

Please be advised that an administrative investigation was concluded by the Office of Professional Standards. The facts surrounding allegation(s) against you have been reviewed. Based upon this review the current allegation(s) are *Unsubstantiated*. Therefore, the case is considered administratively closed.

Pursuant to Section 1012.31, Florida Statutes, when an investigation is concluded, all materials related to the investigation shall be treated as a public record. Ten days following delivery of this letter or (15) days after the date of this letter, the information contained in the report mentioned above will become public record, subject to disclosure upon request, minus any allowable exemptions. You have the right to inspect this public record and to submit any written rebuttal information for enclosure at any time after the receipt of this notice.

Should you have any questions, please contact the Office of Professional Standards. Thank you for your cooperation in this matter.

Sincerely,


Vicki Evans-Paré
Director

C: Michael J. Burke, Superintendent
Arthur T. Schofield, Esq.