



## Administrative Regulation 9166

# ADMINISTRATIVE INVESTIGATIONS

**Responsible Office:** Office of the General Counsel

### **PURPOSE**

The Superintendent has adopted this administrative regulation to establish the purpose and use of confidential administrative investigations in the Washoe County School District ("District" or "WCSD").

### **DEFINITIONS**

1. The Administrative Investigations Division ("Division") of the Office of the General Counsel ("OGC") provides internal investigative support for District representatives, including the Board of Trustees, the Superintendent of Schools and Administrators of the District.
2. For the purposes of this regulation:
  - a. "Administrator" refers to a District Administrator (at the principal level or above) who is requesting an investigation.
  - b. "AI" refers to the OGC Administrative Investigator or an outside individual or agency hired by the OGC pursuant to Board Policy 9165.
  - c. "Investigation" refers to an administrative investigation conducted by the Division or an outside individual or agency hired by the OGC pursuant to Board Policy 9165.
  - d. "CRIF" refers to the District's Confidential Request for Investigation Form.

### **REGULATION**

1. The District seeks to ensure that investigations into allegations of unsatisfactory conduct are performed thoroughly and impartially by the Division, protecting the interests of the District and upholding the rights and obligations of District personnel.
2. Criteria for administrative investigations:
  - a. The Division conducts investigations into matters with one or more of the following criteria:
    - i. Multiple witnesses;
    - ii. Difficult or complex legal issues;
    - iii. High risk of liability to the District; and/or
    - iv. Any allegation of staff-on-student bullying.

- b. All investigations are in anticipation or prevention of litigation.
  - c. If a matter presents a potential conflict of interest, requires specialized subject knowledge, the Division's workload does not permit a timely investigation, or for any other good and proper reason, the OGC may, pursuant Board Policy 9165, employ an outside individual or agency to conduct the investigation at its direction under the same above criteria.
  - d. All documents and materials used as part of an investigation conducted by the Division and/or an outside individual or agency, and any reports or memoranda generated as a result of the investigation, are attorney-work product and/or attorney-client privileged materials.
    - i. The investigation is conducted at the direction of the legal department in the OGC;
    - ii. An investigation conducted at the direction of the OGC is not completed in the common course of business; and
    - iii. The OGC directs the investigation to provide legal advice and/or support to the Administrator requesting the investigation.
3. Confidential Request for Investigation
- a. To request an investigation, the Administrator must submit a CRIF to the OGC. The CRIF must be filled out in detail, signed and dated by the Administrator. At their election, the Director of the Department of Civil Rights Compliance ("Civil Rights Department") or the Director of the Department of Labor Relations ("Labor Department") may sign the CRIF on behalf of the Administrator.
  - b. The Superintendent has delegated authority to the Civil Rights Department to act as the Administrator for purposes of requesting staff on student bullying investigations.
    - i. The Civil Rights Department will only be responsible for requesting the investigation. All other requirements, including the final decision on the issue of whether bullying occurred under NRS Chapter 388, must be completed by the Administrator or his/her designee or the next highest administrator, as applicable.
  - c. Once the CRIF is completed, signed and dated by the Administrator, the Civil Rights Department, and/or the Labor Department, as applicable, it shall be submitted to the OGC for submission to and review and consideration by the Chief General Counsel ("Chief") and/or the Deputy Chief General Counsel ("Deputy Chief").



- ii. Consider all relevant documents, including written statements and other materials presented by the parties;
  - iii. Interview the parties and other individuals and/or witnesses; and/or
  - iv. Review certain documents or materials in the possession of any party that the AI has deemed relevant. The AI may also review any available District School Police Department investigation reports or the investigation reports of local law enforcement authorities.
- c. When appropriate, the AI shall work in consult with the Administrator and Labor Department to provide notice of an investigatory/due process meeting to the subject.
  - i. The notice shall include:
    - 1. A description of the allegations against the subject;
    - 2. The date, time, and place for the subject to respond to the allegations; and
    - 3. Under certain circumstances, the right of the subject to have a representative present at the meeting.
  - ii. The AI shall conduct the questioning of the subject in consult with the Administrator and Labor Department.
- d. Upon completion of the investigation, the AI shall draft a "Confidential Report" that contains the following information:
  - i. Allegations;
  - ii. Chronology;
  - iii. Investigative Summary;
  - iv. Standard of Proof;
  - v. Analysis;
  - vi. Recommendation;
  - vii. Signature Page; and
  - viii. Evidence.
- e. The AI shall submit the Confidential Report to the Chief and Deputy Chief for approval of the report.

- i. The Chief and Deputy Chief act as a check and balance on the AI to ensure that the evidence based on the totality of the circumstances could substantiate the recommendation.
    - ii. The Chief and/or Deputy Chief may:
      1. Send the Confidential Report back to the AI for further investigation;
      2. Refer the Confidential Report back to the AI to modify the recommendation based on the evidence presented in the Confidential Report; or
      3. Forward the Confidential Report to the Administrator for the Administrator's decision.
  - f. Upon completion and approval of the Confidential Report, the Paralegal shall email the Confidential Report to the Administrator, the Civil Rights Department and/or the Labor Department, as applicable.
    - i. If the complaint alleges staff on student bullying, the completed Confidential Report shall be distributed to the Administrator, the Civil Rights Department **and** the Labor Department.
5. Recommendation
- a. The Confidential Report shall include a recommendation whether the evidence provided is substantial evidence to meet the standard of proof.
    - i. "Substantial evidence" means "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." Richard v. Perales, 402 U.S. 389, 401 (1971).
    - ii. "Standard of proof" means a reasonable person must find that based on the evidence and totality of the circumstances it is more likely than not the offense or violation occurred.
  - b. The recommendation shall be based on the totality of the circumstances to include:
    - i. The quality of physical evidence;
    - ii. The testimony of witnesses;
    - iii. The credibility of witnesses; and
    - iv. Circumstantial evidence.
  - c. The AI's recommendation is not a final determination on the evidence and whether the evidence provided is substantial evidence. The

recommendation is advisory on behalf of the OGC to the Administrator for the Administrator's consideration in making a final decision.

6. Final decision and discipline
  - a. The final decision on whether substantial evidence exists to substantiate the allegation(s) rests with the Administrator.
  - b. The final decision on discipline, if any, rests with the Administrator.
  - c. The final decision on the issue of whether bullying occurred under NRS Chapter 388, rests with the Administrator or his/her designee, or the next highest administrator, as applicable.
  - d. If the Administrator disagrees with the recommendation of the AI, the Administrator should discuss the disagreement with the OGC. The Administrator and OGC should work together to attempt to reconcile the difference of opinions.
  - e. The Administrator shall create a memorandum explaining the reason for the decision and the actions taken.

#### **LEGAL REQUIREMENTS & ASSOCIATED DOCUMENTS**

1. This regulation reflects the goals of the District's Strategic Plan and aligns/complies with the governing documents of the District, to include:
  - a. Board Policy 9065, Legal Counsel
  - b. Board Policy 1600, Public Complaint and Resolution Procedure, and any associated documents
  - c. Board Policy 4400, Equal Opportunity in Employment, and any associated documents
  - d. Board Policy 5700, Safe and Respectful Learning Environment, and any associated documents
  - e. Board Policy 9200 Harassment and Discrimination Prohibited, and any associated documents
2. This regulation complies with Nevada Revised Statutes (NRS) and Nevada Administrative Code (NAC), to include:
  - a. Chapter 284, State Personnel, and specifically: i. NAC 284.702 – 284.734, Personnel records
  - b. Chapter 288, Relations Between Governments and Public Employees
  - c. Chapter 391, Personnel

3. This regulation complies with applicable federal laws and regulations.
  - a. Title VII of the Civil Rights Act
  - b. Fair Labor Standards Act
  - c. National Labor Relations Act

**REVISION HISTORY**

Date	Revision	Modification
1/26/2020	v1	Adopted