



STATE OF HAWAII  
DEPARTMENT OF EDUCATION  
P.O. BOX 2360  
HONOLULU, HAWAII 96804

OFFICE OF THE SUPERINTENDENT

May 2, 2019

TO: The Honorable Catherine Payne  
Chairperson, Audit Committee

FROM: Dr. Christina M. Kishimoto  
Superintendent

A handwritten signature in blue ink, appearing to be "CK", written over the name "Dr. Christina M. Kishimoto".

SUBJECT: **Committee Action on the Department of Education's Investigation  
Process Review - Amended**

1. RECOMMENDATION

Committee Action on the Department of Education's Investigation Process Review - Amended.

2. RECOMMENDATION EFFECTIVE DATE

Upon approval.

3. RECOMMENDED COMPLIANCE DATE

N/A

4. DISCUSSION

a. Conditions leading to the recommendation:

Internal Audit has discussed our findings (observations) and recommendations with Management and they have submitted their management plans for inclusion in the report.

b. Previous action of the Board and Committee on the same or similar matter:

The Investigation Process Review was presented at the September 6, 2018 Audit Committee Meeting. Previous action of the committee was to defer the Department's Investigation Process Review to the Human Resources Committee

for the Human Resources Committee and the Office of Talent Management to conduct further review prior to being returned to the Audit Committee for the Audit Committee to take action.

c. Other policies affected: N/A

d. Arguments in support of the recommendation:

If the review is approved, Internal Audit will follow up with Management on their progress of completion for their action plans, and report accordingly through the audit committee quarterly updates.

e. Arguments against the recommendation: N/A

f. Other agencies or departments of the State of Hawaii involved in the action: N/A

g. Possible reaction of the public, professional organizations, unions, DOE staff and/or others to the recommendations: N/A

h. Educational implication: N/A

i. Personnel implications: N/A

j. Facilities implications: N/A

k. Financial implications: N/A

5. OTHER SUPPLEMENTARY RECOMMENDATIONS

N/A

CMK:dy  
Attachment

c: Internal Audit Office



# **Department of Education**

## **Internal Audit**

### **Investigation Process Review - Amended**

**Issue Date: April 2019**

**Report Number: FY2017-04**

*This audit has been performed in accordance with the International Standards for the Professional Practice of Internal Auditing.*

Department of Education  
Investigation Process Review - Amended

*Executive Summary*

|                                                            |                                                                  |                                                                                                                                                                  |
|------------------------------------------------------------|------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>AUDIT OF:</b><br>Investigation Process Review - Amended | <b>DATE:</b><br>Fieldwork performed<br>March 2017 – January 2019 | <b>AUDIT RATING:</b><br>Acceptable [ <input type="checkbox"/> ]<br>Marginal [ <input checked="" type="checkbox"/> ]<br>Unacceptable [ <input type="checkbox"/> ] |
|------------------------------------------------------------|------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------|

**INTRODUCTION:**

In connection with the Department of Education’s (DOE) Updated Risk Assessment and Internal Audit Plan approved on August 16, 2016, Internal Audit (IA) performed an “*Investigation Process Review.*” The purpose of this project was to review and evaluate the design and operating effectiveness of the DOE’s process for investigating alleged employee misconduct and to provide recommendations for improvement.

**BACKGROUND:**

Investigating and resolving potential workplace misconduct the right way can strengthen and protect a company or agency. A proper investigation will help to:

- Figure out what happened, so that appropriate action can be taken to address the situation.
- Deal with employee problems early, before things get worse.
- Enforce policies, so everyone knows that there are consequences for misconduct.
- Encourage reporting, so that employee issues and concerns are identified as soon as possible.
- Avoid or counter bad publicity, so everyone knows that you care about employees and rules.
- Protect from lawsuits, so that you will not be held liable for wrongdoing or inaction.<sup>1</sup>

Within the DOE, complaint resolution and investigations of employee misconduct are performed by various staff members at the school level, district level, or state office level. The Investigations Section in the Office of Talent Management (OTM) is responsible for policies, guidance, and training related to employee misconduct investigations. The Investigations Section published a *DOE Conducting Internal Investigations Guidance Manual* (2015), and they have a training program for DOE employees who perform investigations. The DOE also has a specialized Civil Rights Compliance Branch (CRCB), which is responsible for addressing and resolving allegations of protected class discrimination.

Currently, there are multiple methods and locations for reporting complaints and allegations of employee misconduct. Most complaints and allegations are forwarded to the related site (school/office), complex area, or DOE state office, where administrators will decide whether or not an investigation is warranted. The administrators will also decide whether or not the accused (respondent) should be placed on leave or reassigned to a different position or location. Allegations of discrimination are referred to and addressed by the CRCB.

If an investigation is warranted, the respondent is notified and an investigator is assigned to the case. There are school level investigators (Vice Principal or Other), district level investigators (Complex Area Personnel Specialist, District Educational Specialist, School Renewal Specialist, or Other), and state office investigators (Personnel Specialist, Executive Assistant, Director, Manager, or Other Supervisor). Investigators are responsible for: planning the investigation, conducting interviews, gathering other evidence, evaluating the evidence, determining whether or not there is sufficient evidence to substantiate the allegations, and writing an investigation report. The final investigation reports are submitted to a designated Decision Maker for review and for disciplinary action, if applicable.

<sup>1</sup>Guerin, Lisa. *The Essential Guide to Workplace Investigations, 4<sup>th</sup> Edition*. Berkley: Nolo, 2016. Print

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If the decision is to initiate an investigation, the *Conducting Internal Investigations Guidance Manual* (2015) addresses who should conduct the investigation.

|                       |                                                                                                                                                                                                                                     |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
|-----------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>School Level</b>   | Vice Principal                                                                                                                                                                                                                      | In general, it often works best to conduct school-based investigations since investigations can be done more efficiently and the on-site school administrators have more knowledge of the school, students, and community.<br><br>Principal assigns investigation to vice principal.                                                                                                                                                                                               |
| <b>District Level</b> | Complex Area Personnel Specialist (CAPS)<br>Program and Personnel Analyst (PAPA)<br><br>Complex Area Superintendent (CAS)/ Assistant Superintendent (AS) may assign other district/state office staff to conduct the investigation. | The decision maker may decide that the investigation should be referred to the district level investigator due to various reasons, including but not limited to the complexity of the investigation, limited resources, involvement of school administrators (as parties to the complaint or witnesses in the investigation).<br><br>Principal/Administrator consults with CAS/AS and requests that CAPS or PAPA (or other district/state office staff) conduct the investigation. |
| <b>State Level</b>    | Office of Human Resources (OHR) <sup>1</sup> Investigations Section                                                                                                                                                                 | The decision maker may request that the OHR Investigations Section investigates due to the complexity or difficult nature of the allegations.<br><br>CAS or AS consults with OHR AS and requests that the OHR Investigations Section conduct investigation.                                                                                                                                                                                                                        |
|                       | Internal Audit Office                                                                                                                                                                                                               | If the allegations involve fiscal improprieties, fraud, embezzlement, inappropriate use of school funds or facilities, the CAS/AS may request the IA Office to perform a fiscal review.<br><br>CAS/AS will follow IA protocol to request such a review. IA may also provide assistance/support during an investigation involving these types of allegations.                                                                                                                       |
|                       | Civil Rights Compliance Office (CRCO) <sup>1</sup>                                                                                                                                                                                  | If the allegations involve allegations of discrimination or discriminatory harassment (i.e. on the basis on one’s sex, race, religion, disability, etc.).<br><br>Principal, CAS, or AS consults with CRCO to determine whether case should be referred to CRCO for investigation.                                                                                                                                                                                                  |

<sup>1</sup> The Office of Human Resources is currently known as the Office of Talent Management. The Civil Rights Compliance Office is currently known as the Civil Rights Compliance Branch

# Department of Education Investigation Process Review - Amended

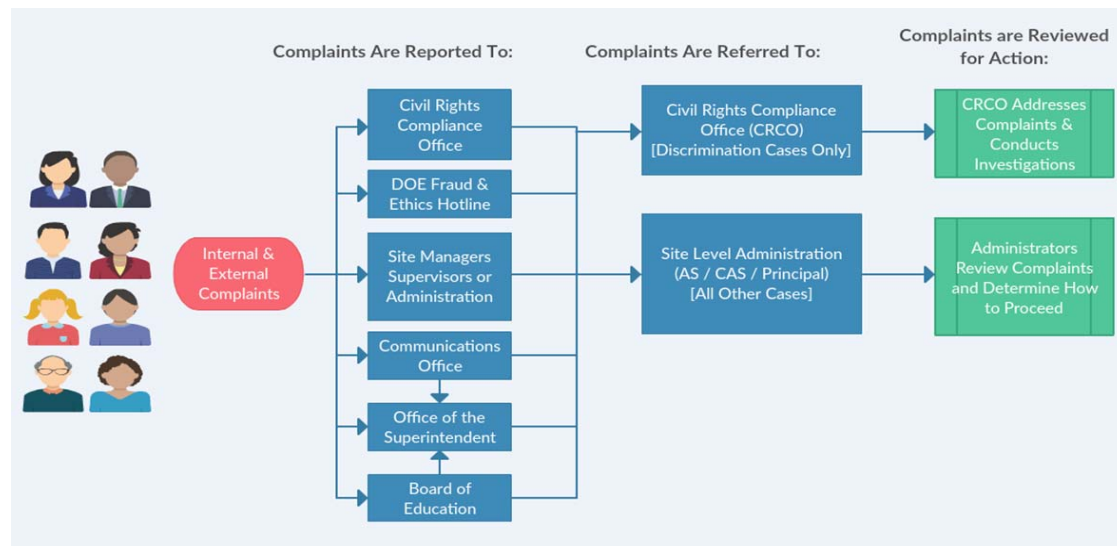
## Executive Summary

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|------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>External Investigator</b> | <p>There may be times when the decision maker decides that it would be prudent to have an external investigator conduct the investigation (e.g. high level manager is accused of wrongdoing, special expertise is required, complex/difficult issues are involved).</p> <p>CAS or AS contacts OHR AS or OHR Investigations Section to coordinate contracting of an external investigator.</p> |
|------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

Internal Audit interviewed several Principals and we noted that in general, when complaints come in, Principals will consult with their Vice Principal(s) and/or district personnel including Personnel Regional Officers, Complex Area Personnel Specialists, District Educational Specialists, and Complex Area Superintendents to determine how the complaint should be handled and who should conduct the investigation if the complaint is deemed to require an investigation. Interviewed Principals stated that depending on the situation, investigations may be conducted internally or escalated to the District Office if they feel that the respective school’s administration may involve a conflict.

Although, there is no written process, a complainant can bring an issue to a higher level in the DOE if the complainant feels that their complaint was mishandled. IA has seen complaints taken in through the DOE Fraud and Ethics Hotline in situations where complainants were not satisfied with how their complaints were handled. In addition, there are other available mechanisms in the DOE to report their complaints such as the Civil Rights Compliance Branch, Communications Office, Office of the Superintendent, and the Board of Education. See below for a depiction of the DOE’s complaint intake structure.

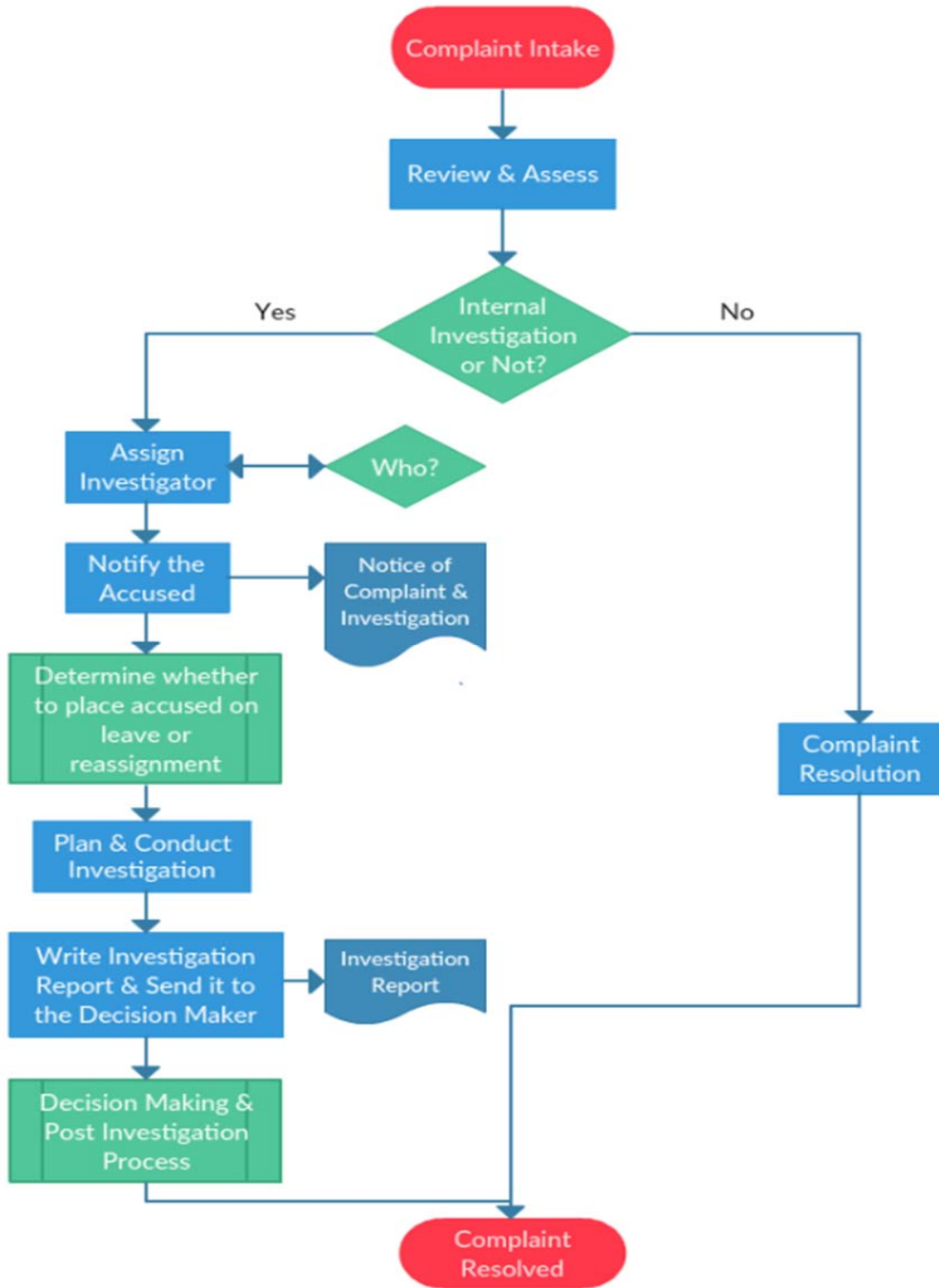
Below is a depiction of the DOE’s complaint intake structure:



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Below is a depiction of the DOE's investigation process:



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## *Executive Summary*

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DOE has revised the process to allow for an independent review of complaints received through the DOE Fraud and Ethics Hotline. OTM, along with the Hotline Intake Team (HIT), revised the process for review and assessment of complaints received through the DOE Fraud and Ethics Hotline. The HIT will now review complaints involving allegations of serious or egregious misconduct to determine whether an investigation is warranted and will make a recommendation to the appropriate CAS or AS that an investigation be initiated, if deemed necessary. In addition, if a situation was elevated to the DOE Fraud and Ethics Hotline because the complainant was not satisfied with how their complaint was handled, the HIT will review to determine if further action may be necessary. The process revision was made for DOE Fraud and Ethics Hotline complaint intakes to mitigate any risks that complaints in the field could be mishandled.

In December 2014, the Board of Education Human Resources Committee (HRC) raised concerns about the timeliness of investigations for employees who were placed on leave. The HRC requested follow-up and periodic updates for future committee meetings. In subsequent meetings, the HRC noted additional concerns, such as: employee notification requirements, potential bias, employees' willingness to report, and data collection for prevention.

In December 2015, the Board of Education requested that the Hawaii Department of the Attorney General (AG) perform an audit of the "Department of Education's Department Directed Leave and Leave Pending Investigation Process and Procedures." The AG's Office issued an audit report in April 2016, which included the following results and recommendations:

- DOE investigations are not centralized with the vast majority of the investigations occurring at the school level. Therefore, it is essential that the individuals conducting the investigations are properly trained in conducting investigations.
- For more serious investigations and civil rights investigations, it is apparent that the OTM and CRCB are seriously understaffed. There needs to be an increase in staffing to reduce the backlog of the more serious and higher financial exposure cases.
- The DOE investigation and decision making manuals are fine. However, the overuse of templates may result in lack of critical thinking.
- The DOE should continue to emphasize the expeditious processing of investigations.
- The DOE should more closely monitor when employees are placed on leave Department Directed Leave (DDL) or Leave Pending Investigation (LPI) in order to make sure that this only occurs when there are legitimate concerns as to the safety of students and/or staff.

In response to the HRC and the AG's audit, OTM has made efforts to implement process improvements via guidance and training. On August 30, 2016, OTM posted the "Procedures for Department Directed Leave and Leave Pending Investigation" Standard Practice, which provides the criteria, procedures, and timelines for placing employees on leave. On September 8, 2016, the DOE issued a "Code of Conduct," which established employee standards of conduct, notified employees of the potential consequences, and advised where to report potential violations. OTM also continues to monitor the cases in which employees have been placed on leave pending investigation and to provide updates to the HRC.



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**SCOPE and OBJECTIVES:**

The scope of our review focused on evaluating the design and implementation of the Department’s process for investigating alleged employee misconduct. The scope of our review specifically focused on an overall assessment of the following subcategories that IA deemed as high risk in our project-level risk assessment:

- Complaint Intake and Resolution
- Investigation (Planning, Conducting, and Reporting)

This review did not include the CRCB, a specialized office responsible for addressing protected class discrimination, which is regulated by State and Federal non-discrimination laws. We also did not review the Department’s “decision making” process for disciplinary action, which is guided by the OTM Labor Relations Section. This activity will be addressed in a separate Decision Making Process Review.

The scope of any detailed testing covered the 2015-2017 fiscal years and current fiscal year 2019 (July 1, 2018 up to January 2019).

The objectives of our review included the following:

1. To obtain an understanding of the DOE’s process for complaint resolution and investigating alleged employee misconduct.
2. To evaluate the design of the DOE’s process for complaint resolution and investigating alleged employee misconduct.
3. To provide recommendations for improvement to enhance effectiveness and efficiency.

**OBSERVATIONS:**

Based upon our review, we found the DOE’s controls related to investigation processes are functioning at a “marginal” level. A marginal rating indicates that there may be a potential for loss to the auditable area and ultimately to the DOE. Some improvements are necessary to bring the area to an acceptable status, but if weaknesses continue without attention, it could lead to further deterioration of the rating to an unacceptable status. Please refer to the Risk Ratings section of this report (page 8) for a complete definition of the ratings used by IA and the Observations and Recommendations section for a detailed description of our findings.

We have presented the observations of this review based on leading practices for conducting workplace investigations. We identified key process elements and common characteristics for effective and efficient investigations through research of generally accepted principles, standards, and guidance, including: Protiviti’s “Six Elements of Infrastructure,” the Council of the Inspectors General’s “Quality Standards for Investigations,” *The Essential Guide to Workplace Investigations 4<sup>th</sup> Ed.* by Lisa Guerin J.D, and the Association of Workplace Investigators’ “Guiding Principles.” Leading practices suggest that an effective and efficient investigation process includes the following characteristics:

- Investigations must be free, both in fact and appearance, from impairments to independence.
- Investigators should have professional proficiency and also time for the tasks required. The right investigator is trained, skilled, experienced, and impartial.
- The investigation process should include the following tasks: plan the investigation, conduct interviews, gather documents and other evidence, evaluate the evidence, and document the investigation.
- Investigation tasks must be conducted in a timely, efficient, thorough, and objective manner.

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- Investigative data should be stored in a manner that allows retrieval, reference, and analysis. This will allow the organization to identify and address recurring or systematic workplace problems.

We discussed our preliminary findings and recommendations with Management and they were receptive to our findings and agreed to consider our recommendations for implementation.

Each observation presented in this report is followed by specific recommendations that will help to ensure that process weaknesses are addressed and, if implemented and monitored, will mitigate related risks. In summary, our observations are as follows:

1. Investigations at the school level are time consuming and may be perceived to be subjective.
2. Information is not centrally maintained for analysis and reporting.

**PLANNED FOLLOW UP BY MANAGEMENT AND INTERNAL AUDIT:**

IA will follow up with Management on their progress of completion for their action plans and report accordingly through the audit committee quarterly updates.

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*Rating Scale Definitions*

| <b>OVERALL RATING SCALE</b> |                                                                                                                                                                                                                                                                                                                                                                                   |
|-----------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b><i>Acceptable</i></b>    | No significant deficiencies exist and improvement continues to be appropriate; controls are considered adequate and findings are not significant to the overall unit/department.                                                                                                                                                                                                  |
| <b><i>Marginal</i></b>      | Potential for loss to the auditable unit/department and ultimately to the DOE. Indicates a number of observations, more serious in nature related to the control environment. Some improvement is needed to bring the unit to an acceptable status, but if weaknesses continue without attention, it could lead to further deterioration of the rating to an unacceptable status. |
| <b><i>Unacceptable</i></b>  | Significant deficiencies exist which could lead to material financial loss to the auditable unit/department and potentially to the DOE. Corrective action should be a high priority of Management and may require significant amounts of time and resources to implement.                                                                                                         |

| <b>OBSERVATION RATING SCALE</b> |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |
|---------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b><i>High (1)</i></b>          | <p>1 - The impact of the finding is <i>material</i><sup>1</sup> and the likelihood of loss is probable in one of the following ways:</p> <ul style="list-style-type: none"> <li>• A material misstatement of the DOE’s financial statements could occur;</li> <li>• The DOE’s business objectives, processes, financial results or image could be materially impaired;</li> <li>• The DOE may fail to comply with applicable laws, regulations or contractual agreements, which could result in fines, sanctions and/or liabilities that are material to the DOE’s financial performance, operations or image.</li> </ul> <p><i>Immediate action is recommended to mitigate the DOE’s exposure</i></p>                                                                  |
| <b><i>Moderate (2)</i></b>      | <p>2 - The impact of the finding is <i>significant</i><sup>1</sup> and the likelihood of loss is possible in one of the following ways:</p> <ul style="list-style-type: none"> <li>➤ A significant misstatement of the DOE’s financial statements could occur;</li> <li>➤ The DOE’s business objectives, processes, financial performance or image could be notably impaired;</li> <li>➤ The DOE may fail to comply with applicable laws, regulations or contractual agreements, which could result in fines, sanctions and/or liabilities that are significant to the DOE’s financial performance, operations or image.</li> </ul> <p><i>Corrective action by Management should be prioritized and completed in a timely manner to mitigate any risk exposure.</i></p> |
| <b><i>Low (3)</i></b>           | <p>3 – The impact of the finding is moderate and the probability of an event resulting in loss is possible.</p> <p><i>Action is recommended to limit further deterioration of controls.</i></p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |

<sup>1</sup> The application of these terms are consistent with the guidelines provided by the Institute of Internal Auditors

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*Observations*

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The detailed observations noted herein were based on work performed by IA through the last date of fieldwork and are generally focused on internal controls and enhancing the effectiveness of processes for future organizational benefit.

| <b>Obs. No.</b> | <b>Description</b>                                                                           | <b>Page #</b> |
|-----------------|----------------------------------------------------------------------------------------------|---------------|
| 1               | Investigations at the school level are time consuming and may be perceived to be subjective. | 10            |
| 2               | Information is not centrally maintained for analysis and reporting.                          | 16            |

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*Observations*

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| <b>Observation Number: 1</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |                         |
| <b>Observation: Investigations at the school level are time consuming and may be perceived to be subjective.</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    | <b>Rating: Moderate</b> |
| <p>According to leading practices, investigations must be free, both in fact and appearance, from impairments to independence, such as: bias, conflicts of interest, interference, or constraints. Maintaining independence throughout the investigation process shows that an organization is making good faith efforts to get to the truth. In addition, investigation tasks must be conducted in a timely, efficient, thorough, and objective manner that allows an organization to make fair and reasonable decisions to resolve workplace issues.</p> <p>IA reviewed the DOE’s policies, procedures, and guidance for internal investigations and met with the OTM Investigations Section to gain an understanding of the investigation process (as noted in the background section above). In addition, IA sent out surveys to 256 schools to verify practices at the school level. One hundred forty two (142) surveys were returned completed. Please refer to the appendix for the school Investigation Process survey. IA also selected and interviewed 11 surveyed Principals to gain a better understanding of how the investigation process is followed at their respective schools. The survey/interview results indicated the following issues:</p> <p><b><u>Time-Consuming</u></b> – IA noted that 86 out of 142 Principals responded that complaints and investigations are time consuming. The following is a summary of the comments received:</p> <ul style="list-style-type: none"><li>➤ Takes up too much time, very time consuming.</li><li>➤ Anonymous complaints are the most time consuming.</li><li>➤ Takes a lot of time to make sure you do all the steps properly.</li><li>➤ Investigations take too much time - DOE is limited by union rules and appeals.</li><li>➤ Timeliness is difficult for administrators who are not well acquainted with the process.</li><li>➤ Investigations take a long time and it is not the role of an administrator to do investigations when they should concentrate on education.</li><li>➤ Keeps administrators away from their daily duties.</li><li>➤ Need to find substitute or TA which results in loss of service to students.</li><li>➤ Disrupts school focus and brings negative energy.</li><li>➤ Takes a lot of time from being an educator, takes away administrator’s time from students/staff.</li><li>➤ Vice Principal's time is taken by investigations. The school essentially losses a Vice Principal during the whole time of the investigation.</li><li>➤ Had to cancel professional development for teachers because union representatives were only available on that day.</li><li>➤ When investigations take a long time, it impacts services and moral.</li></ul> <p>Surveyed results indicated that during fiscal year 2017, majority of the schools had 0-3 investigations. There were seven (7) schools that had more than three (3) investigations during fiscal year 2017.</p> <p><b><u>Subjectivity</u></b> – IA noted that 32 out of 142 Principals responded about the subjectivity of investigations performed at the school. The following is a summary of the comments received:</p> <ul style="list-style-type: none"><li>➤ A neutral party would minimize bias.</li><li>➤ School personnel could be too close to the situation.</li><li>➤ Less objectivity when investigations are done at the school.</li><li>➤ Investigations may harm relationships at the school.</li></ul> |                         |

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### Observations

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- Conflict when the administrator who does the investigation also has to do the evaluation on the same employee.
- Feelings and relations get in the way especially for alleged suspect.
- Hard to be objective in an investigation when you work so close to the people.
- Subjectivity from school to school is a hindrance.
- What determines a “full investigation” is a point of concern as it can be executed in a very subjective manner.
- It is completely subjective when investigations are done at schools. Administrators still have to work with the employee afterwards even if everything was done properly and with respect. Relationships are hurt no matter the outcome.
- Formal investigations put administrators in a hard situation when part of their role is to support teachers. Administrators have to work with the employee afterwards. Naturally, there is a sense of hard feelings while trying to stay neutral.
- There is a perception of bias to some.
- When you know someone for a long time, there has to be objectivity but it may be subjective because of past history.
- School belongs to a very small, tight knit community. There is a fear of retaliation if you submit a complaint against another employee.

#### **School Level versus District/State Level**

District level investigators (Complex Area Personnel Specialist, District Educational Specialist, School Renewal Specialist, or Other) also conduct school level investigations, and they are considered to be more independent for that situation. However, the use of district level investigators varies across the state. Some are used full time for investigative duties and some are not. IA noted that Vice Principals were used as investigators in every complex area, even with the presence of district level investigators.

Sometimes, the OTM Investigations Section is utilized for school level investigations, district level investigations, or state office level investigations. The Investigations Section does provide independent investigators; however, their involvement is limited due to staff size and workload.

Based on the survey responses; when asked if schools would prefer that complaints/allegations of employee misconduct be handled at the school level by School Administration, or prefer that complaints/allegations of employee misconduct be handled at the district/state level by Complex Area or State Office Personnel, 77 out of 142 Principals responded that complaints/allegations of employee misconduct be handled at the district/state level. IA asked the Principals to elaborate on the response and the following is a summary of the comments received:

- Trained and experienced investigators would be best.
- A neutral party would minimize bias.
- Doesn't harm relationships at the school. Administrators will be able to maintain relationships with staff.
- Takes up too much time and keeps Administrators away from their duties.
- Lack of school staff.
- Some schools don't have Vice Principals.
- It would be easier for the school.
- Should have investigation experts identify patterns and proactively address common themes to minimize future incidents and problems.
- Would eliminate fear of retaliation - won't impact working relationship.

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### Observations

- Lack of administration staff - investigations can be completed faster - no bias.
- Some schools are small - also it is more objective.
- Would like larger, more severe investigations to take place at district/state level.
- Awkward for school/district level when claims are found baseless.
- Unfounded, unsubstantiated allegations still creates uncomfortableness on both sides.
- When investigations are done at the school, there is an indirect impact to teaching and learning.
- Hate to do it wrong and it leads to more questions and investigation.
- Get away from any perception of bias if it's done outside of the school.
- Perception of integrity: Even families feel that school is protecting themselves when a complaint is found to be unsubstantiated. Tarnishes reputation.
- Unintended ramifications for unsubstantiated cases.
- Feelings and relations get in the way especially for alleged suspect.
- The school is too close to the problem.
- Lack consistencies and fidelity. Schools need to show parents/employees protocol and consistency. Currently, there is no protocol, no consistency.
- Outside person investigating can just concentrate on the facts excluding relationship/work history with the employee being investigated.
- Educators are not investigators. It is not part of an educator's job to do investigations.
- Having it at the district level may be the most efficient if there's an experienced team that only does investigations.
- Witnesses don't like to testify to someone they know. The reality is people do talk about the investigation, even when they're told not to. A third party person would be more neutral and take out the compassion aspect.
- Best person to do the investigation is an outsider with open eyes coming in. Will get a better investigation because employees feel at ease talking to someone not in the school.

Although, there were a lot of comments against schools conducting investigations, IA also noted that there were several comments regarding the timeliness of investigations performed at the district/state level. The following is a summary of the comments received:

- State level takes too long to resolve issues.
- Want investigations done sooner.
- Timeliness makes a difference.
- Timeframe of the investigation: Employee under investigation had paid leave for over one (1) year because the District Office was backlogged. Investigations shouldn't take this long.
- Not happy that employee on investigation received paid leave for six (6) months.
- On-going investigations may be forgotten about when it takes long and administrators who know about the case either leaves the department/area or they just forget about the case.

#### **Leading Practices and School Suggestions:**

During IA's interviews we noted the following suggestions/comments from various Principals:

- Schools within the Campbell-Kapolei complex gave up funds to pay for a personnel specialist to assist and perform investigations in their complex. The Campbell-Kapolei Principal felt that schools are greatly supported by the additional personnel specialist.
- One Principal suggested creating an independent process for complaint intake, review, and assessment:
  - Centralize the complaint intake functions at the District/State office level.

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*Observations*

- Have schools/offices do the fact finding on the complaints and submit report to the District/State office level personnel.
- District/State office level personnel would then determine whether an investigation is warranted and make a recommendation to the appropriate CAS/AS that an investigation be initiated.
- District/State office should also determine who should conduct the investigation based on the information gathered and provide guidance on next steps and policy violations (if any).

IA also contacted several different school districts to obtain information on who performs the investigations and the school administration’s role at these locations. IA sent out 20 surveys and eight (8) surveys were completed. The following are the responses received:

| <b>District / Location</b>                               | <b>Schools</b> | <b>Students</b> | <b>Who Performs Formal Investigations</b>                                                                                                                        | <b>Does School Admin Investigate Major Case</b> | <b>School Admin Role</b>                            |
|----------------------------------------------------------|----------------|-----------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------|-----------------------------------------------------|
| Los Angeles Unified School District<br>(Los Angeles, CA) | 1,021          | 646,683         | Designated Offices<br>(Office of Inspector General, Human Resources, Equal Opportunity Section, Office of Educational Equity, Student Safety Investigation Team) | NO                                              | Preliminary Inquiry and Employee Assignment         |
| Miami Dade County Public Schools<br>(Miami, FL)          | 555            | 356,964         | Designated Offices<br>(Civilian Investigative Unit, General Investigative Unit)                                                                                  | NO                                              | Investigate Minor Cases as an Administrative Review |
| Houston Independent School District<br>(Houston, TX)     | 288            | 215,225         | Employee Relations, Internal Audit, Area Administrator                                                                                                           | YES                                             | Investigate Minor and Major Cases                   |
| Hillsborough County Public Schools<br>(Tampa, FL)        | 329            | 207,469         | Office of Professional Standards                                                                                                                                 | NO                                              | Investigate Minor Cases                             |
| Fairfax County Public Schools<br>(Falls Church, VA)      | 222            | 185,541         | Internal Investigations, Equity and Employee Relations                                                                                                           | NO                                              | Investigate Minor Cases                             |
| Gwinnett County Public Schools<br>(Lawrenceville, GA)    | 133            | 173,246         | Human Resources, Internal Audit, Area Administrator                                                                                                              | YES                                             | Joint Investigation with HR for Major Cases         |



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| District / Location                               | Schools | Students | Who Performs Formal Investigations                      | Does School Admin Investigate Major Case | School Admin Role       |
|---------------------------------------------------|---------|----------|---------------------------------------------------------|------------------------------------------|-------------------------|
| Wake County Schools<br>(Cary, NC)                 | 174     | 155,820  | Employee Relations                                      | NO                                       | Investigate Minor Cases |
| Duval County Public Schools<br>(Jacksonville, FL) | 214     | 128,685  | Office of Equity and Inclusion / Professional Standards | NO                                       | Investigate Minor Cases |

**Impact**

Time consuming and subjectivity impairments with the investigation process may possibly lead to:

- Disruption in education and school's focus.
- Perception of bias.
- Potential impairments to independence and objectivity.
- Incomplete investigations.
- Improper determinations and conclusions.
- Non-compliance with DOE policies and procedures.
- Litigation and financial loss for the DOE.
- Loss of employee trust or confidence.
- Unresolved workplace issues.
- Reputational exposure for the DOE.

**Recommendation and Management Plan**

Recommendations to address time consuming and subjectivity impairments to the investigation process include:

- **Recommendation:** Management should continue to provide training to the field. Training should be offered continuously to different groups such as investigators and decision makers.

**Management Plan:** OTM will continue to provide investigation training to Vice Principals and other Educational Officers who conduct investigations on a regular basis as requested by the CAS.

**Anticipated Completion Date:** On-going

- **Recommendation:** Management should ensure that internal investigations are assigned to investigators who are independent in fact and appearance. Management should:
  - Increase staff at the district level and state office level to conduct investigations.
  - Transfer investigation duties to other employees.
  - Outsource for investigations.
  - Update policies, procedures, and guidelines for the assignment of investigators.

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**Management Plan:** OTM will (continue to) request for three (3) permanent investigator (personnel specialists) positions in the biennium and supplement budget requests until the positions can be obtained.

**Anticipated Completion Date:** Continuous until positions are obtained and filled

OTM will also initiate discussions with the Complex Area Superintendents and recommend that a permanent Complex Area Personnel Specialist (investigator) be hired in each complex area.

Until such time that personnel resources at the state and district levels can be ramped up, for lower level allegations of misconduct, OTM proposes that Vice Principals who have been trained to do investigations, are impartial, and can do an objective and fair investigation should continue to be assigned to conduct those types of investigations.

**Anticipated Completion Date:** September 30, 2019

Contact Person: Cynthia Covell, Assistant Superintendent  
Office of Talent Management

**Responsible Office**

OTM

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| <b>Observation Number: 2</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |                    |
| <b>Observation: Information is not centrally maintained for analysis and reporting.</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     | <b>Rating: Low</b> |
| <p>According to leading practices, investigative data should be stored in a manner that allows retrieval, reference, and analysis so that an organization can identify and address recurring or systematic workplace problems. Conducting pattern and trend analysis can assist with detection and prevention of employee misconduct. Investigative information can also help an organization make informed judgements for resource allocation, training needs, investigative program development, and implementation of the investigative process. Information that may be considered for tracking and analysis includes, but is not limited to, the following:</p> <ul style="list-style-type: none"><li>• Number of complaints handled</li><li>• Source of information</li><li>• Appropriate dates</li><li>• Reason to investigate or not</li><li>• Case status</li><li>• Type of action taken</li><li>• Location for complaint</li><li>• Type of allegation</li><li>• Referral information</li><li>• Financial loss or impact</li><li>• Findings and conclusions</li><li>• Amount of labor hours expended</li></ul> <p>IA reviewed the DOE’s policies, procedures, and guidance for internal investigations and met with the OTM Investigations Section to gain an understanding of the investigation process. IA also conducted a department-wide survey to verify practices at the school level, district level, and state office level. IA noted the following weaknesses:</p> <ol style="list-style-type: none"><li><b>1. There is no consistent practice or system for managing investigative information.</b> Different locations use different methods to document complaints, complaint resolution, investigations, and investigation results. Depending on location, investigative information could be recorded in notes, emails, forms, reports, a custom database, or a listing. Relevant information is not always readily available, and some information may not be recorded at all. As a result, the retrieval and analysis of investigative information is significantly limited.</li><li><b>2. A lack of policies and procedures for managing investigative information.</b> There are no requirements or guidelines for recording and maintaining investigative information for the purpose of retrieval and analysis. There are policies and procedures which include the documentation of some types of investigative information (i.e. notifying employees, corresponding with employees, preparing investigation reports, and documenting disciplinary action), but they do not address the preparation and maintenance of information that may be considered for tracking and analysis.</li><li><b>3. The only investigations tracked for review and analysis are the ones in which employees are placed on leave.</b> The OTM Investigations Section monitors employees placed on leave during investigation (either “Department Directed Leave” or “Leave Pending Investigation”), and they provide periodic updates to the Board of Education HRC. This activity focuses on process improvements to ensure that investigations (where employees are placed on leave) are conducted in a timely manner. However, this is the only type of analysis conducted statewide for internal investigations.</li></ol> |                    |

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| <b>Impact</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
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| <p>Weaknesses in the management of investigative information may possibly lead to:</p> <ul style="list-style-type: none"> <li>➤ The inability to identify recurring or systematic workplace problems and issues.</li> <li>➤ Continued non-compliance with DOE policies and procedures.</li> <li>➤ Unresolved workplace issues.</li> <li>➤ Reputational exposure for the DOE.</li> </ul>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |
| <b>Recommendation and Management Plan</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |
| <p>Recommendations to address the weakness in the management of investigative information include:</p> <ul style="list-style-type: none"> <li>➤ <b>Recommendation:</b> Management should consider creating and implementing a process for recording and maintaining investigative information. Information should be stored in a manner that allows effective retrieval, reference, and analysis, while ensuring the protection of sensitive data. Management should: <ul style="list-style-type: none"> <li>○ Determine what information should be tracked and analyzed.</li> <li>○ Have schools/offices document complaint intake and complaint resolution.</li> <li>○ Standardize forms and templates.</li> <li>○ Consider using computer applications.</li> <li>○ Create requirements and guidelines for managing investigative information so that employees know what information should be documented and how.</li> <li>○ Update policies and procedures to provide clarity and guidance to the field.</li> </ul> </li> </ul> <p><b>Management Plan:</b> OTM will research case management software, including the cost and pros and cons of software products. If a viable option is found, OTM will follow up with the necessary tasks to procure the case management software.</p> <p><b>Anticipated Completion Date:</b> September 30, 2019</p> <ul style="list-style-type: none"> <li>➤ <b>Recommendation:</b> Management should consider conducting analysis of investigative information to identify recurring or systematic workplace issues and to assist with determinations for resource allocation, training needs, program development, and process improvements.</li> </ul> <p><b>Management Plan:</b> As an interim measure, or temporary means of collecting information related to investigations, OTM will be develop a spreadsheet for the schools, district offices, and state offices to complete and return to OTM to consolidate on a semi-annual basis.</p> <p><b>Anticipated Completion Date:</b> September 30, 2019</p> <p><u>Contact Person:</u> Cynthia Covell, Assistant Superintendent<br/>Office of Talent Management</p> |
| <b>Responsible Office</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |
| OTM                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |

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*Acknowledgements*

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We also wish to express our appreciation for the cooperation and assistance afforded to the review team by Management and staff during the course of this review.

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**School-Level Investigation Process Survey Questions**

**Location**

Please provide the following information.

Please provide the name of your Complex Area. We will use this information to report results by Area and District.

Please provide the name of your School. We will only use this information if we need to request and gather documents.

**Complaints/Allegations of Employee Misconduct**

Please provide information for your school practices.

1. Who receives and addresses complaints or allegations of employee misconduct? (Please provide all applicable titles/positions)
2. Are complaints documented anywhere for record keeping purposes or for processing/follow up? If so, how (e.g. hardcopy form and file, database, spreadsheet, other)? (Please include all methods of documentation)
3. Who determines whether the complaint should be handled as an investigation or as a management issue? (Please provide all applicable titles/positions)
4. How do they determine whether or not an investigation should be performed? What criteria do they use to make this determination?
5. Who addresses the management issues, or the complaints that do not become an investigation? (Please provide all applicable titles/positions)
6. Are management issues documented and/or tracked anywhere for record keeping purposes or to document resolution? If so, how (e.g. hardcopy and file, database, spreadsheet, other)? (Please include all methods of documentation)

**Investigations of Employee Misconduct**

Please provide information for your school practices.

7. Are employees ever investigated without being issued a *Notice of Complaint and Investigation*? If so, under what circumstances?

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8. Who prepares and issues each *Notice of Complaint and Investigation*?
9. Who performs investigations for allegations against school staff? (Please provide the title/position of all applicable investigators)
10. Who performs investigations for allegations against school administrators? (Please provide the title/position of all applicable investigators)
11. Are investigations ever outsourced? If so, under what circumstances, and to whom?
12. Has each investigator received the DOE training for investigations? If not, who has not? (Please provide names and titles)
13. What standards or guidelines do investigators follow to perform investigations? Are there policies, rules, guidelines, or best practices that they use? (Please provide all applicable sources)
14. Who determines whether or not the respondent is put on leave, DDL or LPI? (Please provide all applicable titles/positions)
15. How do they determine whether or not to put the respondent on leave? What criteria do they use to make this determination?
16. Is an investigation report prepared for every investigation? If not, please describe when reports are prepared and when reports are not prepared.
17. Are investigations of employee misconduct documented and/or tracked anywhere for record keeping purposes or to document resolution? If so, how (e.g. hardcopy and file, database, spreadsheet, other)? (Please include all methods of documentation)

**Decision Making for Employee Misconduct**

Please provide information for your school practices.

18. It is our understanding that the Principal is the “Decision Maker” for investigations of employee misconduct at the school level. Is this correct? If not, who acts as the Decision Maker for your location? (Please provide all applicable titles/positions)
19. Has each Decision Maker received DOE training for investigative decision making? If not, who has not? (Please provide names and titles)
20. When allegations of employee misconduct are substantiated, how does the Decision Maker determine what the disciplinary action should be? What criteria do they use to make this determination? What information is considered during the process? (Please elaborate)

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21. Is disciplinary action documented and/or tracked for record keeping purposes or to document resolution? If so, how (e.g. hardcopy and file, database, spreadsheet, other)? (Please include all methods of documentation)

**Feedback and Opinion**

Please answer as best as you can. We will not include your name or location in any shared review documents.

22. Approximately, how much time do you (and your administrators) spend addressing complaints and management issues each month? Is it a significant amount of time?

23. Approximately, how much time do you (and your administrators) spend on investigations of employee misconduct each month? Is it a significant amount of time?

24. Does the time spent on complaint resolution and investigations have an impact on other necessary or critical functions for your school? If so, is it significant? (Please elaborate)

25. Would you prefer that complaints/allegations of employee misconduct be handled at the school level by school administration, or would you prefer that complaints/allegations of employee misconduct be handled at the district/state level by complex area or state office personnel? Why? (Please elaborate)

26. Has your (and your administrators) involvement in addressing complaints and performing investigations had any negative effects at the school (on environment, on relationships, on performance, on other)? (Please elaborate)

27. Has your (and your administrators) involvement in addressing complaints and performing investigations had any positive effects at the school (on environment, on relationships, on performance, on other)? (Please elaborate)

28. Do you feel that the current process for complaint resolution and investigations is effective and efficient? Why or why not? (Please elaborate)

29. Is there anything you would change about the current process for complaint resolution and investigations of employee misconduct? Any suggestions for improvement? (Please elaborate)

30. Is there anything else you would like to share for this review? (Please elaborate)



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**Information Request**

Please submit the following information to Internal Audit by Friday, July 21, 2017.

- Please provide us with a list of complaints made regarding employee misconduct for the last two school years (2015-2016 and 2016-2017). Please include all relevant complaints reported for your school (i.e. both management issues and investigations). We are looking for the number of complaints reported as well as the following information: date of complaint, description of allegation, and how they were resolved. If there is no reportable data or if the information cannot be easily organized prior to the deadline, do you know approximately how many reported complaints there were for each year or for each month?
- Please provide us with a list of administrative investigations performed for your school during the last two school years (2015-2016 and 2016-2017). We are looking for the number of investigations handled as well as the following information: start/end dates, job title of respondent, description of allegation, name of investigator, the results or determinations, and any action taken (disciplinary, corrective, or other). Here is an example:

| Case | Start Date | End Date | Respondent (Title) | Allegation | Investigator (Name & Title) | Determination (Results) | Action Taken |
|------|------------|----------|--------------------|------------|-----------------------------|-------------------------|--------------|
| 1    |            |          |                    |            |                             |                         |              |
| 2    |            |          |                    |            |                             |                         |              |
| 3    |            |          |                    |            |                             |                         |              |

If there is no reportable data or if the information cannot be easily organized prior to the deadline, please let us know where investigation reports are maintained and who we can contact if we need to request any documentation.