



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

OFFICE OF THE SUPERINTENDENT

September 6, 2018

TO: The Honorable Catherine Payne
Chairperson, Audit Committee

FROM: Dr. Christina M. Kishimoto 
Superintendent

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

1. RECOMMENDATION

Approval of the Department of Education's Investigation Process Review.

2. RECOMMENDED EFFECTIVE DATE

September 6, 2018.

3. RECOMMENDED COMPLIANCE DATE

Same as effective date.

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 on the same or similar matter: N/A

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

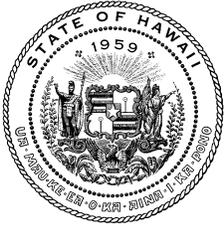
i. Personal implications: N/A

j. Facilities implications: N/A

k. Financial implications: N/A

CMK:md
Attachment

c: Internal Audit Office



Department of Education

Internal Audit

Investigation Process Review

Issue Date: June 2018

Report Number: FY2017-04

Department of Education Investigation Process Review

Executive Summary

AUDIT OF: Investigation Process Review	DATE: Fieldwork performed March 2017 – April 2018	AUDIT RATING: Acceptable [<input type="checkbox"/>] Marginal [<input checked="" type="checkbox"/>] Unacceptable [<input type="checkbox"/>]
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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.¹

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 Investigation Section in the Office of Talent Management (OTM) is responsible for policies, guidance, and training related to employee misconduct investigations. The Investigation 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 Office (CRCO), 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 CRCO.

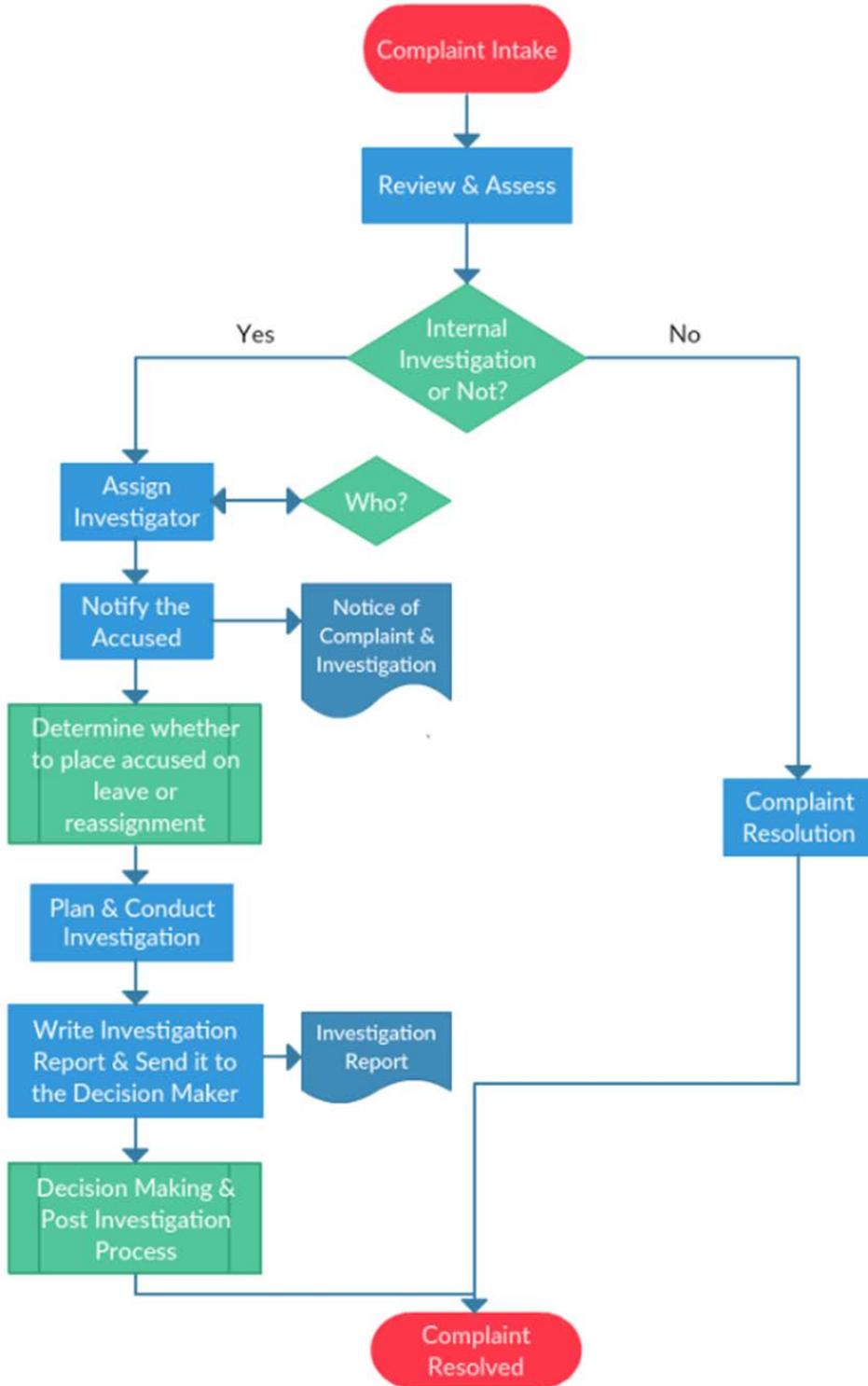
If an investigation is warranted, the respondent is notified and an investigator is assigned to the case. There are school level investigators (Vice Principal or Other), district level investigators (Complex Area Personnel Specialist, District Education Specialist, School Renewal Specialist, or Other), 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.

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

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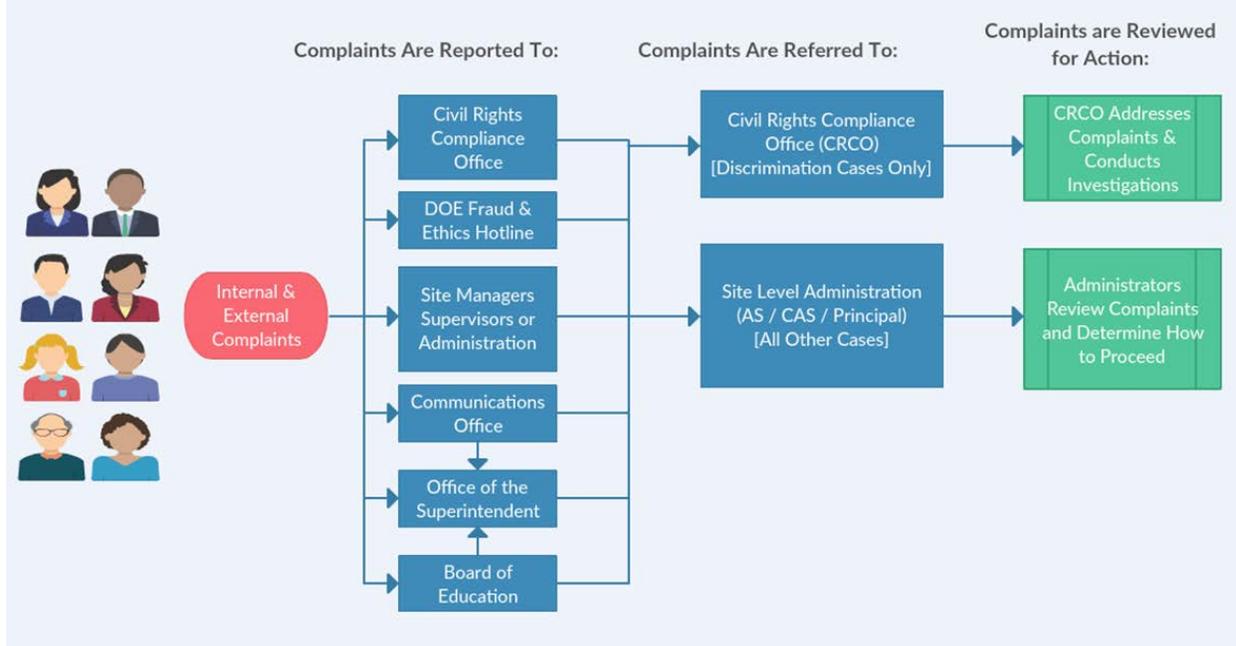
Below is a depiction of the DOE's investigation process:



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



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 CRCO 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 (DDL or 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

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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.

SCOPE and OBJECTIVES:

The scope of our review focused on evaluating the design, implementation and effectiveness 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, & Reporting)

This review did not include the DOE Civil Rights Compliance Office, 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 2015-2016 fiscal year and the 2016-2017 fiscal year.

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 and operating effectiveness 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 6) 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 4th 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

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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.
- 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 are not always free, both in fact and appearance, from potential impairments to independence.
2. Information is not 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

OVERALL RATING SCALE	
<i>Acceptable</i>	No significant deficiencies exist and improvement continues to be appropriate; controls are considered adequate and findings are not significant to the overall unit/department.
<i>Marginal</i>	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.
<i>Unacceptable</i>	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.

OBSERVATION RATING SCALE	
<i>High (1)</i>	<p>1 - The impact of the finding is <i>material</i>¹ and the likelihood of loss is probable in one of the following ways:</p> <ul style="list-style-type: none"> • A material misstatement of the DOE’s financial statements could occur; • The DOE’s business objectives, processes, financial results or image could be materially impaired; • 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. <p><i>Immediate action is recommended to mitigate the DOE’s exposure</i></p>
<i>Moderate (2)</i>	<p>2 - The impact of the finding is <i>significant</i>¹ and the likelihood of loss is possible in one of the following ways:</p> <ul style="list-style-type: none"> ➤ A significant misstatement of the DOE’s financial statements could occur; ➤ The DOE’s business objectives, processes, financial performance or image could be notably impaired; ➤ 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. <p><i>Corrective action by Management should be prioritized and completed in a timely manner to mitigate any risk exposure.</i></p>
<i>Low (3)</i>	<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>

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

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Observations

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.

Obs. No.	Description	Page #
1	Investigations are not always free, both in fact and appearance, from potential impairments to independence.	8
2	Information is not maintained for analysis and reporting.	11

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Observations

Observation Number: 1	
Observation: Investigations are not always free, both in fact and appearance, from potential impairments to independence.	Rating: Moderate
<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. Furthermore, a fair, objective, and thorough investigation 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 Office of Talent Management (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">1. Complaint review and assessment process is not always independent. Site level administrators review complaints or allegations for their own area and decide whether or not an investigation is needed (Principals at the school level, Complex Area Superintendents at the district level, and Superintendents, Directors or Supervisors at the state office level). This practice is not organizationally independent, and there may be perceptions of bias, because there are supervisor/subordinate relationships between the reviewer, the accused employee, and the complaining employee. In addition, site level administrators are more likely to have a professional or personal interest in the outcome of investigations within their own area than someone positioned outside the management chain. If employees or others are not comfortable reporting complaints and allegations directly to management/administration, then they report to the DOE Fraud & Ethics Hotline, the Communications Office, the Office of the Superintendent, or the Board of Education Office. However, the general practice for all of these locations is to forward the complaint back down the management chain for site level administrators to address. Therefore, there is no method of reporting which guarantees an independent review.2. Investigators are not always independent in fact and appearance. Site level administrators conduct internal investigations for employees within their own area at both the school level and state office level (Vice Principals at the school level, and Directors or Supervisors at the state office level). This practice is not organizationally independent, and there may be perceptions of bias, because there is a supervisor/subordinate relationship between the investigator and the accused employee. In addition, site level administrators are more likely to have a professional or personal interest in in the outcome of investigations within their own area than someone positioned outside the management chain. District level investigators (Complex Area Personnel Specialist, District Education 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.	

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Observations

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.

Impact

Impairments to independence throughout the investigation process may possibly lead to:

- Unfair investigations.
- Improper determinations and conclusions.
- Continued 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 impairments to independence include:

- **Recommendation:** Create and implement an independent process for complaint intake, review, and assessment. Please note that this should be an alternative reporting method and not a replacement for the current practice of reporting to immediate supervisors and administration. An independent reporting option will address this weakness. Management should consider:
 - Creating guidelines for the use of an independent reporting method so that employees know when and how they should use this option.
 - Determining who can and who should review and assess the complaints submitted through the independent reporting option.
 - Consolidating or centralizing complaint intake functions at the state office level.
 - Updating policies and procedures to provide clarity and guidance to the field.

Management Plan: Regarding independent review, the Office of Talent Management (OTM) will work with the Hotline Intake Team (HIT) to revise the process for review and assessment of complaints received through the DOE Fraud and Ethics Hotline. The HIT Team will review complaints involving allegations of serious or egregious misconduct, to determine whether an investigation is warranted and make a recommendation to the appropriate CAS or AS that an investigation be initiated, if deemed necessary.

Anticipated Completion Date: December 31, 2018

- **Recommendation:** Ensure that internal investigations are assigned to investigators who are independent in fact and appearance. Management should consider:
 - Increasing staff at the district level and state office level to conduct investigations.
 - Transferring investigation duties to other employees.
 - Outsourcing for investigations.
 - Updating policies, procedures, and guidelines for the assignment of investigators.

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

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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: June 30, 2019

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

Responsible Office

OTM

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Observations

Observation Number: 2	
Observation: Information is not maintained for analysis and reporting.	Rating: Low
<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">• Number of complaints handled• Source of information• Appropriate dates• Reason to investigate or not• Case Status• Type of action taken• Location for complaint• Type of allegation• Referral information• Financial loss or impact• Findings and conclusions• Amount of labor hours expended <p>IA reviewed the DOE’s policies, procedures, and guidance for internal investigations and met with the Office of Talent Management (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">1. There is no consistent practice or system for managing investigative information. 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.2. A lack of policies and procedures for managing investigative information. 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.3. The only investigations tracked for review and analysis are the ones in which employees are placed on leave. 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 Human Resources Committee. 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.	

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Impact
<p>Weaknesses in the management of investigative information may possibly lead to:</p> <ul style="list-style-type: none">➤ The inability to identify recurring or systematic workplace problems and issues.➤ Continued non-compliance with DOE policies and procedures.➤ Unresolved workplace issues.➤ Reputational exposure for the DOE.
Recommendation and Management Plan
<p>Recommendations to address the weakness in the management of investigative information include:</p> <ul style="list-style-type: none">➤ Recommendation: Create and implement 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 consider:<ul style="list-style-type: none">○ Determining what information should be tracked and analyzed.○ Documenting complaint intake and complaint resolution.○ Standardized forms and templates.○ Computer applications.○ Creating requirements and guidelines for managing investigative information so that employees know what information should be documented and how.○ Updating policies and procedures to provide clarity and guidance to the field. <p>Management Plan: 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>Anticipated Completion Date: February 28, 2019</p> <ul style="list-style-type: none">➤ Recommendation: 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. <p>Management Plan: As an interim measure or temporary means of collecting information related to investigations OTM will 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>Anticipated Completion Date: February 28, 2019</p> <p><u>Contact Person:</u> Cynthia Covell, Assistant Superintendent Office of Talent Management</p>
Responsible Office
OTM

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Acknowledgements

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.