

CORRECTIVE ACTION

INTENT & PURPOSE

Employees are expected to comply with workplace policies, procedures and regulations; local, state, and federal laws; and State Board Rules, both in and out of the work place.

The District's corrective action policy is designed to improve and/or change employees' job performance, conduct, and attendance. Supervisors are encouraged to continually provide coaching, counseling, feedback and/or additional support to help ensure each employees' success. It is the intent of the School Board to treat all employees fairly and equitably in the administration of corrective action, while also ensuring employees are held accountable and responsible for the expectations of their position.

This policy applies to all District employees except temporary and substitute employees.

The collective bargaining agreement language will prevail in the event of any conflicting language with this policy.

DEFINITIONS

For purposes of this policy, the terms:

- "Employee" or "school district personnel" includes all regular full-time or regular part-time persons who are employees at the time of the alleged incident or at the time a personnel investigation is commenced. The term "employee" or "school district personnel" does not include substitutes or temporary employees.
- "Just Cause" is defined as a standard of reasonableness used to evaluate whether a preponderance of evidence exists that a person has committed the alleged act or acts, and that the alleged act or acts warrant **corrective action**.
- "Controlled substance" means any substances named or described in Schedule I through V of s. 893.03; laws controlling the manufacture, distribution, preparation, dispensing or administration of such substance are drug abuse laws.
- "Felony" shall mean any criminal offense that is punishable under the laws of this state **or federal law**, or that would be punishable if committed in this state **or under federal law**, by death or imprisonment in a state or **federal penitentiary** for a period exceeding one (1) year.

I. CORRECTIVE ACTION

- (a) In dealing with employee misconduct, corrective action shall be issued except in situations where immediate steps must be taken to ensure student/staff safety and loss prevention .
- (b) The types of corrective action may include, but are not limited to the following employment actions: verbal reprimands, written reprimands, suspension without pay, demotion, or termination of employment. There are other types of actions to encourage and support the improvement of employee performance, conduct or attendance that are not considered disciplinary in nature. These actions may include, but are not limited to: coaching, counseling, meeting summaries, and

additional training.

- (c) There are certain acts of misconduct that are so offensive as to render an employee as no longer employable. The only appropriate corrective measure in these cases (See Section II, Category A) is the termination of the employment relationship with the School Board of Broward County.
- (d) There are other acts of misconduct (See Section II, Category B) considered to be so egregious, problematic or harmful that the employee may be immediately removed from the workplace until such time a workplace investigation is completed. The severity of the misconduct in each case, together with relevant circumstances (III (c)), will determine what step in the range of progressive corrective action is followed. In most cases, the District follows a progressive corrective action process consistent with the “Just Cause” standard designed to give employees the opportunity to correct the undesirable performance, conduct or attendance. A more severe corrective measure will be used when there is evidence that students, employees, or the community we serve was negatively impacted. It is the intent that employees who engage in similar misconduct will be treated as similarly situated employees and compliant with the principle of Just Cause.

II CORRECTIVE ACTION

(CATEGORY A) OFFENSE

OUTCOME

- | | |
|---|-----------|
| a) Inappropriate sexual conduct including, but not limited to, sexual battery, possession or sale of pornography involving minors, sexual relations with a student or the attempt thereof | Dismissal |
| b) Possession, sale or distribution of a controlled substance | Dismissal |
| c) Reckless display, threatening with guns or weapons on School Board property or at School Board events | Dismissal |
| d) Possession of dangerous or unauthorized materials such as explosives or firearms | Dismissal |
| e) Grand theft of School Board property > \$300 | Dismissal |

(CATEGORY B) OFFENSE

OUTCOME

- | | |
|---|----------------------|
| a) Committing a criminal act related to performance of duties or continued fitness for office – felony | Suspension/Dismissal |
| b) Committing a criminal act related to performance of duties or continued fitness for office – misdemeanor | Reprimand/Dismissal |
| c) Unlawful possession, use or being under the influence of a controlled substance | Suspension/Dismissal |
| d) Driving Under the Influence within the scope of employment | Suspension/Dismissal |
| e) Alcohol related offenses | Reprimand/Dismissal |
| f) Driving Under the Influence | Reprimand/Dismissal |
| g) Inappropriate method of discipline | Reprimand/Dismissal |
| h) Falsification or alteration of employment paperwork, SBBC records/documents or student records/documents | Suspension/Dismissal |
| i) Possession of guns or weapons on School Board | Reprimand/Dismissal |

- property
- j) Lewd & Lascivious behavior Reprimand/Dismissal
 - k) Indecent Exposure Reprimand/Dismissal
 - l) Solicitation of Prostitution Reprimand/Dismissal
 - m) Any violation of The Code of Ethics of the Education Professional in the State of Florida-State Board of Education Administrative Rule Reprimand/Dismissal
 - n) Any violation of Violence in the Workplace Reprimand/Dismissal
 - o) Misappropriation of Funds Suspension/Dismissal
 - p) Insubordination, which is defined as a continuing or intentional failure to obey a direct order, reasonable in nature and given by and with proper authority Reprimand/Dismissal
 - q) Unauthorized use of School Board property Reprimand/Dismissal
 - r) Failure to comply with School Board policy, state law, or appropriate contractual agreements Reprimand/Dismissal

III. OTHER CONSIDERATIONS

- (a) Failure to include a particular act or type of conduct in either category does not preclude the Superintendent or the School Board from addressing an employee for such omitted act or conduct if it otherwise constitutes Just Cause for corrective action.
- (b) The lists in Section II, Category A and B are illustrative and not meant to be exhaustive. The Superintendent and School Board reserve the right to impose corrective measures, up to and including termination of employment, for any offense, act or conduct which constitutes Just Cause for corrective action or which violates any School Board rule, regulation, state or federal law, as well as the Code of Ethics and Principles of Professional Conduct.
- (c) The following circumstances are illustrative and not meant to be exhaustive and may be considered when determining the appropriate penalty within a penalty (II Category B) range:
 1. The severity of the offense
 2. Degree of student involvement
 3. Impact on students, educational process and/or community
 4. The number of repetitions of the offenses and length of time between offenses
 5. The length of time since the misconduct
 6. Employment history
 7. The actual damage, physical or otherwise, caused by the misconduct
 8. The deterrent effect of the discipline imposed
 9. Any effort of rehabilitation by the employee
 10. The actual knowledge of the employee pertaining to the misconduct
 11. Attempts by the employee to correct or stop the misconduct
 12. Related misconduct by the employee in other employment including findings of guilt or innocence, discipline imposed and discipline served

13. Actual negligence of the employee pertaining to any misconduct
14. Pecuniary benefit or self-gain to the employee realized by the misconduct
15. Degree of physical and mental harm to a student, co-worker or member of the public
16. Length of employment
17. Whether the misconduct was motivated by unlawful discrimination
18. Any relevant mitigating or aggravating factors under the circumstance
19. Employee's evaluation
20. Adherence to Self-Reporting Policy

The Penalty Range is established as an administrative guideline for administering appropriate corrective action. The purpose in providing a range of corrective action is to allow for considerations that may include the factors identified in this policy.

IV. PROCEDURAL GUIDELINES FOR WORKPLACE FACT-FINDING INQUIRIES/INVESTIGATIONS

PURPOSE

- 4.1 The purpose of a workplace fact-finding inquiry/investigation is to determine if Just Cause exists relative to an employee's alleged acts of misconduct; and, if so, to make a recommendation to the Superintendent of Schools to determine the appropriate level of corrective action.

All such fact-finding inquiries/investigations will comply with the due process provisions outlined in the collective bargaining agreements and state statutes. Employees not covered under a collective bargaining agreement will be provided notice of such fact-finding inquiry/investigation in similar fashion as provision 5.2 of this policy, afforded an opportunity to representation in accordance with provision 5.7 of the policy, and due process under School Board Policy 4015, or as otherwise provided by law. All such fact-finding inquiries/investigations will be reviewed with the Employee & Labor Relations Department for guidance relative to corrective action.

- 4.2 Through this policy, the School Board and Superintendent direct every employee to cooperate fully with all investigators, and to fully and truthfully answer each of their questions. Failure to do so **may** be deemed gross insubordination, and the employee will be subject to corrective action up to and including termination. The employee will be afforded an opportunity for representation as stated in provision 4.1. Additionally, the employee has the protections afforded by *Garrity*. An employee who knowingly makes material false accusations or false statements about an investigation shall be subject to investigation under this policy and, as determined by the Superintendent, will be subject to corrective action, including termination in addition to any other potential legal ramifications.

OVERVIEW

- 4.3 The following defines the scope for workplace fact-finding inquiries/investigations:

- a) **Special Investigative Unit (SIU):**
The Special Investigative Unit (SIU) will conduct workplace investigations, as outlined in Section II, regarding allegations that have the potential to be criminal in nature, or of such a serious offense that the SIU deems it warranted. Should the SIU find that Just Cause exists, then their findings are presented to the Professional Standards Committee (PSC) for review and recommendation.
- b) **Employee and Labor Relations:**
All other workplace fact-finding inquiries/investigations that are not handled by the SIU are conducted by the Supervisor under the guidance of the Employee and Labor Relations Department. The results of the fact-finding inquiry/investigation will be reviewed with the Employee and Labor Relations Department for guidance relative to the appropriate level of corrective action. Should the recommended action be a suspension, demotion or termination, then the action must be presented to the Superintendent of Schools for approval by the School Board.
- c) **Other policies concerning employee conduct:**
 - 1. Matters involving reasonable suspicion drug/alcohol testing which are governed by Policies, such as 2400;
 - 2. Matters involving arrests and/or criminal histories, which are governed by Policies such as 2405 and 4002; and
 - 3. Matters involving substitute and/or temporary employees which are governed by policies such as 4100 and 4101.

V. GUIDELINES FOR SIU INVESTIGATIONS

Workplace fact-finding inquiries/investigations as outlined in Section IV (b & c) are excluded from the remaining provisions of this policy.

- 5.1 Investigations of allegations under this Section V must be authorized by the Chief of Special Investigative Unit (SIU) or designee (SIU Major) and will be conducted by SIU, who may secure the assistance of the administration or outside agencies when appropriate.
- 5.2 Upon authorization of an investigation by the SIU Chief or designee (SIU Major), the employee shall be provided a statement of the factual allegations under investigation (date, time, and place, as available) and a copy of Board Policy 4.9, Section V. In no event shall such notice be delayed for a period of more than six (6) calendar days. If additional allegations are subsequently raised or uncovered as part of the investigation, notice of the additional allegations shall be given to the employee with the same specificity as the original notice. Notice of additional allegations, if any, will be provided to the employee no less than three (3) calendar days prior to the scheduled employee's interview by SIU.
- 5.3 If, at any point prior to completing and delivering the investigations report to the employee, the investigator determines that no allegations of misconduct can be substantiated, the investigator, with the approval of the SIU Chief, may close the SIU investigation into the specific allegations which are subject to the investigations. In such instances, the employee will be provided written notice of such closure.
- 5.4 The investigator shall complete his/her investigation activities; finalize the investigation report; and deliver, or cause to be delivered, a copy of said report and associated evidence to the employee who is the subject of the investigation, within eighty-four (84) calendar days from the date the employee receives the written notification of the initiation of the investigation, excluding only

those days between the last day of attendance for a school year and the first day of student attendance for the following school year, unless an extension is granted by the Superintendent or designee (Chief of Staff or Chief Human Resources & Equity Officer). The Superintendent must be advised of the reasons if an investigation may go beyond the eighty-four (84) calendar days. The Superintendent may approve such additional time as is reasonably necessary to conduct a full, fair and complete investigation. The employee shall be notified of the extension and the new anticipated date of completion.

- 5.5 All personnel (instructional and non-instructional) investigations shall remain confidential until the investigation is completed. An investigation is deemed completed upon being closed by SIU, a finding of no Just Cause for suspension, demotion or termination by the Superintendent to the School Board.
- 5.6 The investigator will make a reasonable and good faith effort to contact the parent, as defined in § 1000.21(5), Fla. Stat., to notify the parent prior to interviewing a minor as part of a personnel investigation. If extraordinary circumstances arise, the parent shall receive an explanation of such circumstances.
- 5.7 No presumption shall be made as to the validity of the allegations until the process has been completed. An employee shall have the right of representation during the investigation. When this right is exercised, the employee must notify SIU in writing of such representation. Once written notification is received, all future notices will be provided to the employee and his/her representative. A request for an extension of time by the employee or his or her representative for any event related to the investigation may be grounds for an extension of the investigation period set forth in provision 5.4.
- 5.8 Until the employee receives a copy of the Investigative Report, the employee who is the subject of an investigation is prohibited from contacting the complainant or any witness in any manner, directly or indirectly, regarding the allegations or any issues related thereto, except and to the extent provided in provision 5.10. Doing so will be deemed an interference with or/and an obstruction to the investigation, including, but not limited to, tainting the testimony of the witness. This prohibition includes all communications whether by telephone, written or verbal, mail or electronic, social media or communications through third parties. A violation of this prohibition may be grounds for separate corrective action, including termination of employment.
- 5.9 Once the Investigative Report becomes available, the employee and his/her designated representative shall be provided a copy by personal delivery or via U.S. Mail (and electronic delivery if the employee cannot be located), with a copy of all materials relating to the investigation redacted as required by law, including witness statements. The identity of the complainant and witnesses shall be released to the employee except when such information is confidential or protected under federal or state laws and/or School Board Policy. Student identifiable information shall not be released except in compliance with the Family Educational Rights and Privacy Act (FERPA), applicable state statutes, and School Board Policies.
- 5.10 The employee shall be permitted thirty (30) calendar days after receipt of the Investigation Report, unless an extension is granted in writing by the SIU Chief or designee (SIU Major), to submit to the SIU Chief or designee (SIU Major) a written response to the allegations and to the Investigative Report, if the employee so chooses, including additional information and documentation. During this thirty (30) day period, the employee may invite the complainant and/or witnesses, whose names were provided in compliance with state and federal laws, to contact him/her and/or his

representative on a voluntary basis so that he or she may prepare said response. All interviews must be conducted in a professional manner. If an employee is going to invite a K-12 student victim or witness to provide a statement, the employee shall only contact a parent or guardian to make this request. If the parent or guardian refuses this request it will be considered final and no further attempts will be made. The employee will not make direct contact with a K-12 student. Any violation of this provision may be deemed an interference with or/and an obstruction to the investigation, including, but not limited to, tainting the testimony of the witness and may subject the employee to further corrective action.

- 5.11 The SIU Chief may determine that further investigation must be completed prior to the Professional Standards Committee (PSC) meeting. If further investigation is conducted, the employee shall be provided with a copy of the supplemental investigation report and materials no later than seven (7) calendar days prior to the scheduled PSC meeting.
- 5.12 Reassignment to an alternate location may occur, if appropriate under the particular circumstances of the case, at the discretion of the Superintendent or designee (Chief of Staff or Chief Human Resources & Equity Officer). The alternate assignment shall not exceed six (6) calendar months, excluding only those days between the last day of attendance for a school year and the first day of student attendance for the following school year, unless the Superintendent approves an extension. If an extension is granted, the employee shall be notified of the reason(s) for the extension. When the provisions of §1012.796(5) are applicable, said provisions shall govern.
- 5.13 Subject matter experts, regardless of whether they are direct district employees or independent consultants, may be consulted and utilized by the SIU to more efficiently and effectively conduct information collection, analysis, and interviews to complete comprehensive investigations in a timely fashion. Any pertinent information/documents utilized by SIU will be included in the investigative report to the employee as noted in subsection 5.8. **The employee may consult and utilize independent consultants at the employee's expense.**

GUIDELINES FOR THE PROFESSIONAL STANDARDS COMMITTEE

- 5.14 It is the Superintendent of School's statutory duty to investigate and to submit a recommendation to the School Board, as may be appropriate (§§ 1001.51(7) and (12), 1012.27, 1012.796(1)(d) and (5), Fla. Stat.). The Superintendent may appoint and convene a Professional Standards Committee (PSC) to perform managerial functions on behalf of the Superintendent, as well as to make recommendations to the Superintendent as to Just Cause on certain employee corrective action matters. The Superintendent retains full statutory authority to review the investigatory materials and make his or her own determination as to whether Just Cause exists, regardless of the Committee's recommendation. In the event the Superintendent or designee (Chief of Staff or Chief Human Resources & Equity Officer) modifies the recommendation(s), such information will be included within the written notice of the outcome of the PSC's recommendation (See 5.20). When the Superintendent makes a recommendation to the School Board on employee corrective action matters, The School Board may adopt or reject the Superintendent's recommendation. The School Board's decision regarding corrective action is subject to the employee's right to contest the charges through a due process hearing as provided by law or other procedures provided by collective bargaining agreement. **When the grievance procedure is applicable, grievances may be filed directly with the Employee and Labor Relations Department.** If an employee does not contest the charges, the School Board's decision is final.
- 5.15 The PSC shall be appointed by the Superintendent and shall submit its recommendations solely to

the Superintendent or his designee (The Chief of Staff or The Chief of Human Resources & Equity Officer). The individuals appointed shall be employees of the School Board. The PSC shall be composed of seven (7) members and for each committee member an alternate member. Four members shall be appointed in even years and three members shall be appointed in odd years and any member may be removed at any time at the sole discretion of the Superintendent. In appointing PSC members and alternate members, the Superintendent, should consider the ethnic and professional diversity of its membership in addition to the candidate's qualifications to perform the functions of the PSC. The PSC's powers are limited to performing a managerial function under the direct supervision of the Office of the Superintendent of Schools. The PSC has no subpoena powers and no powers to take sworn testimony or other evidence under the Florida Rules of Evidence, but may accept and consider relevant information, evidence and/or notarized affidavits.

- 5.16 Upon being appointed, PSC members and alternate members, and any other employees regularly attending PSC meeting, must sign an acknowledgement that the information they receive while performing PSC functions is confidential and shall not be disclosed outside the PSC meetings. All PSC members and alternate members are required to attend an orientation session concerning their roles and duties as PSC members, the requirements of confidentiality, and the need to protect the integrity of the process and the reputation of all involved in the process.
- 5.17 The PSC meeting shall take place within twenty (20) calendar days after completion of the procedures set forth in paragraphs 5.10 and 5.11 above. The employee shall be notified of the date, time, and location of the PSC meeting, and the employee may request a continuance, for good cause shown, no later than forty-eight (48) hours prior to the scheduled meeting, except where such notice is precluded by an emergency.
- 5.18 At the PSC meeting, the employee, with or without representation, shall be allowed an opportunity, up to twenty (20) minutes, unless additional time has been granted by the SIU Chief or designee (SIU Major) prior to the meeting, to present his/her response to the allegations. Additional time granted by the SIU Chief may not exceed fifteen (15) minutes. The PSC meetings shall not be recorded.
- 5.19 All individuals, except the PSC membership, the Chief and/or his designee (SIU Major), a representative from the Employee Relations, and the Superintendent's legal representative, shall be excluded from the meeting so that the PSC may deliberate in private. The PSC deliberations shall not be recorded. The SIU Chief will prepare a summary of the PSC recommendations as to whether the employee committed the act(s) in question as well as appropriate level of corrective action, if Just Cause is found, and will share with the Superintendent or designee (Chief of Staff or Chief Human Resources & Equity Officer) the discussion at the PSC, including significant divergent views. The PSC may defer making a recommendation of any matter to a date certain pending receipt of additional information or documentation.
- 5.20 The SIU Chief or designee (SIU Major) shall provide written notice to the employee of the PSC's recommendation, including the recommendation on each allegation and the corresponding corrective action, within ten (10) calendar days of the date the PSC meeting was held, as well as provide the employee, as permitted by law, a true and complete copy of any materials relating to the investigation which were not previously provided.
- 5.21 If the recommendation is for Just Cause, a pre-disciplinary conference shall be noticed to be held within thirty (30) calendar days from the date of the PSC meeting. Said conference shall be

recorded and a transcript will be available to the employee at his or her expense. The employee and/or his representative has an opportunity to present reasons and submit additional information and documentation to the SIU **Chief or designee (SIU Personnel Administrator)**, either in person or in writing, as to why the proposed recommended corrective action should not be imposed.

5.22 The Superintendent shall have authority, at his/her discretion, to complete and/or bring to closure and final disposition any pending personnel investigation.

5.23 The procedural guidelines set forth in this policy shall not confer any additional substantive rights on any employee. All subsequent proceedings are *de novo* proceedings based on the personnel action taken by the School Board.

Authority: 1001.41, Fla. Stat.

Laws Implemented: 1001.51(7) & (12)(b), 1012.27(5), 1012.31, 1012.33, 1012.796(1)(d) & (5), Fla. Stat.

Adopted: 5/1/01

Amended: 9/8/10

Amended: 4-19-18