

FRANCZEKRADELET

ATTORNEYS & COUNSELORS

Defensible Decisions

Best Practices for Preventing Litigation & Defending Claims

Independent Schools Association of the Central States

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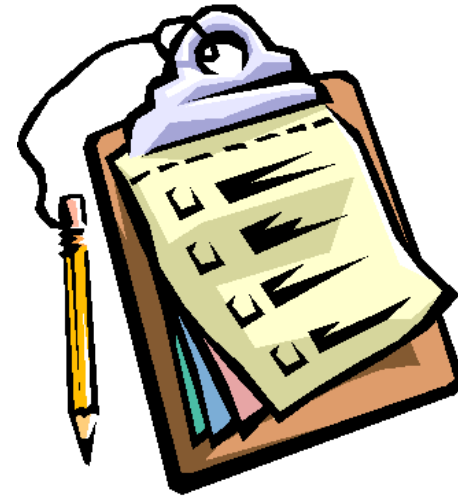
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Topics for Today

- ✓ Student Discipline
- ✓ Employee Discipline
- ✓ Bullying
- ✓ Employee Discrimination and Harassment
- ✓ Reporting Abuse and Neglect





STUDENT DISCIPLINE

Student Discipline

- Contractual Relationship
 - Governed by School Policy
 - Student Handbooks, codes,
 - mission and promotional docs
- Due Process
 - Rules must be clear
 - Process cannot be arbitrary or capricious



Fair treatment = met a professional standard of care. This is determined by whether school has clear policy and standards and followed it.

Discipline Policy

- Clear set of disciplinary policies that set forth what offenses could lead to discipline and what discipline may be imposed.
- Clear set of processes used – who decides? is there an appeal?
- Ensure that these disciplinary guidelines comport with school mission and the rest of the student handbook.

- Investigation Triggers
 - Observation, Complaints, Rumors, Anonymous Tips
- Initial Steps
 - Gather preliminary information
 - Define Scope
 - Review school policies and legal framework
- Interview
- DOCUMENT, DOCUMENT, DOCUMENT

Resolution

- Once investigation is complete, review information and use school documents as guidelines
- Act within the confines of the documents.
- Liability risk comes if the school breached its own standard, ignored its own policy, or acted outside the contract it had with students and parents, and if it can be argued that this breach caused the student harm.



BULLYING

Bullying

- No federal law specifically prohibits bullying
 - A number of federal laws protect rights that may be impacted by bullying policies
- State law – may apply to private schools.
- School policies



Duty of Care

- Similar to school discipline matter – what are the standards and is the school responding in line with policies.

Responding to Bullying

- Investigate
 - Prompt, thorough, and impartial
 - Interview victim, parents, and teachers
- Implement Appropriate Intervention
 - Prompt and effective steps reasonable calculated to end the harassment, eliminate any hostile environment and its effects, and prevent the harassment from recurring

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Mandated Reporting

- What is a Mandated Reporter?
 - Illinois Abused and Neglected Child Reporting Act (“ANCRA”), 325 ILCS 5/1
- Who is a Mandated Reporter?
 - Individuals who work with children
 - As school personnel, you are mandated reporters
- What must a Mandated Reporter do?
 - Sign a form indicating they understand their responsibilities to report
 - Immediately report to child protective services where there is reasonable cause to believe a child may be an abused or neglected child
 - WHEN IN DOUBT, REPORT!!!

Immunity and Liability

- Any person who acts in good faith by making a report is immune from civil and criminal liability
- False reports: knowingly transmits false report - Class A misdemeanor/Class 3 felony for subsequent violation
- Failure to report: knowing and willful failure -- Class A misdemeanor -- Class 3 felony for subsequent violation
- May also be subject to license suspension or revocation of teaching certificate

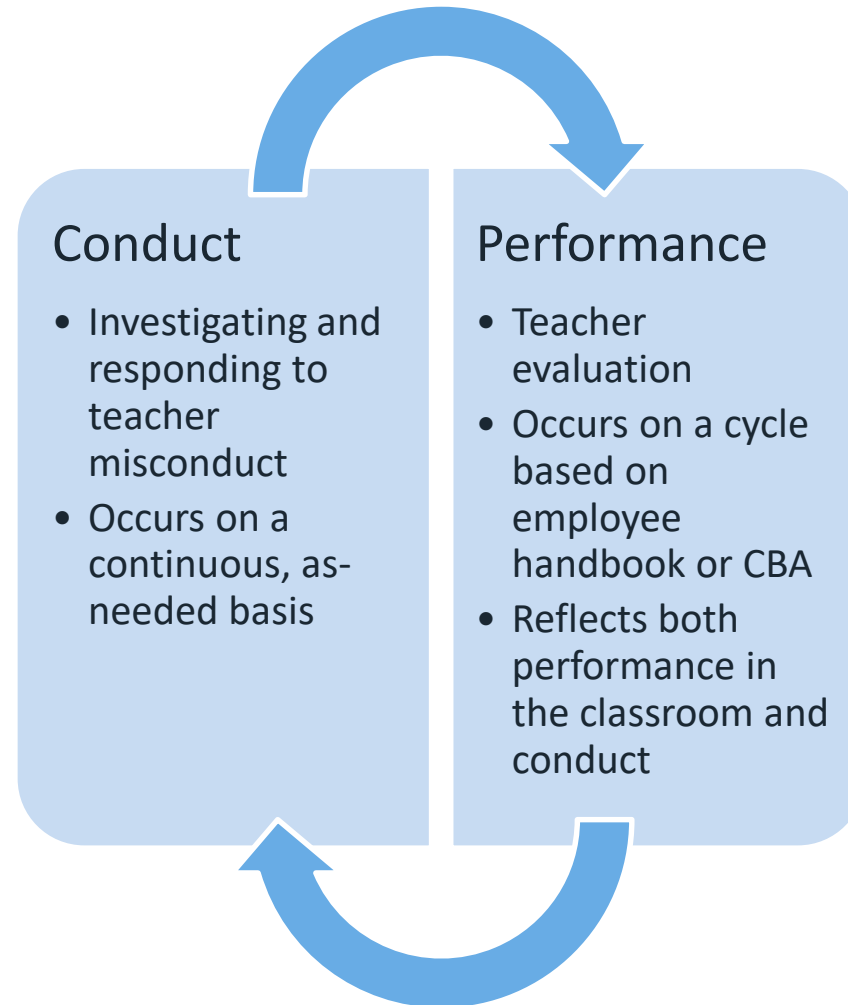


EMPLOYEE DISCIPLINE

- Governed by:
 - School Policy/Employee Handbook or CBA
 - State and Federal Employment Laws



Conduct vs. Performance



Investigating Employee Misconduct

- Initial Steps:
 - Define Nature and Scope
 - Gather Background Information
- Interview teacher and witnesses
- DOCUMENT, DOCUMENT, DOCUMENT





EMPLOYEE DISCRIMINATION

Discrimination

- Discrimination is:
 - making an employment decision based on a prohibited category or characteristic
 - Failing to reasonably accommodate an employee or applicant, disability or religious belief
 - Creating a hostile work environment based on a protected categories or characteristics (i.e., harassment)
 - *Quid Pro Quo* sexual harassment
 - Retaliation

Discrimination

- The following types of discrimination are prohibited under federal law:
 - Age
 - Disability
 - Equal Pay/Compensation
 - Genetic Information
 - National Origin
 - Pregnancy
 - Race/Color
 - Religion
 - Sex
- State laws offer additional protections

Americans With Disabilities Act (ADA)

- Applicable to non-religious private schools
- Under Title III of the ADA, private schools are required to provide auxiliary aids and services to ensure that students with disabilities are not excluded, denied services, segregated or treated differently than other students. These accommodations are required only so long as they would not change the fundamental nature of the program or result in significant difficulty or expense.

Federally Funded Programs

- Title IV of the Civil Rights Act of 1964
 - prohibits discrimination on the basis of **race, color, sex, religion or national origin** by public elementary and secondary schools and public institutions of higher learning
- Section 504 of the Rehabilitation Act
- Title IX of the Education Amendments of 1972
 - Prohibits discrimination on the basis of **sex** in any education program or activity operated by a recipient of federal financial assistance

Section 1981

- Prohibits racial discrimination when making or enforcing contracts
- Prevents private schools from denying enrollment based on race.
- Private schools cannot qualify as tax-exempt organizations if discriminate based on race in admissions.
- Applies even if school does not receive federal funds.

Religion and Discrimination

- Prohibition on race discrimination does not apply to sectarian schools that exclude students of certain races based on religious grounds.
- Title IX makes an exception for any school controlled by a religious organization if the law's prohibition on sex discrimination would violate the organization's "religious tenets."
- Title VI doesn't include religious discrimination. Private schools—including church schools—can restrict enrollment or charge higher fees based on the students' religion, even if the school receives federal funds.
 - the law still protects students who are being harassed because they come from a place where a particular religion is dominant (such as a Muslim-majority nation or region).

Harassment

- Harassment is “unwelcome conduct based on race, color, religion, sex (including pregnancy), national origin, age (40 or older), disability or genetic information.”



- Harassment is unlawful where:
 - it becomes a condition of continued employment;
or
 - creates a hostile, intimidating, or abusive work environment

FMLA

- Applicable to private schools
 - Must notify employees of their rights
 - Respond to requests from employees
- Must have 50 or more employees to have eligible employees.

Other Questions?

