

Rudolph F. Crew, Ed.D., Superintendent of Schools

SUBJECT: REQUEST THAT THE SCHOOL BOARD OF MIAMI-DADE COUNTY, FLORIDA RECEIVE THE 2002-2003 AND 2003-2004 PERSONNEL INVESTIGATION REPORT AND AUTHORIZE THE SUPERINTENDENT TO ESTABLISH THE CIVILIAN INVESTIGATIVE UNIT AND DEVELOP A PLAN OF ACTION FOR THE IMPLEMENTATION OF THE DESIGNATED UNIT

COMMITTEE: LEGISLATIVE RELATIONS, PUBLIC RELATIONS AND PERSONNEL SERVICES

At the School Board meeting of August 18, 2004, the School Board directed that a Personnel Investigation Report be prepared for submission at the October 20, 2004 Board meeting. The Board directed that the report contain the number of police investigations processed by the Office of Professional Standards in the past two years categorized by the nature of those cases, the findings and timeliness of the investigations, and the gender and ethnicity of the employees who were the subject of those investigations.

The Board additionally directed that it be provided information regarding the accessibility of receiving the same data for an additional three years. While this information exists, capturing the data requested for those additional years to provide a report would require the manual review of approximately fifteen hundred (1500) personnel files, many of which are voluminous. The added value for extending the scope of the report to include investigative data back to the 1999-2000 fiscal year is marginal, especially in light of the resources which would be expended to retrieve the information and verify the data.

Therefore, as directed, the Office of Professional Standards prepared the Personnel Investigation Report for fiscal year 2002-2003 and 2003-2004, organized by ACCESS Center, work location, or District office. By way of overview for fiscal year 2002-2003, 501 personnel investigations were conducted by Miami-Dade Schools Police (M-DSP) with an average time of 104 days for M-DSP to complete those investigations. For the 2003-2004 fiscal year, there were 435 investigations with an average time of 115 days for M-DSP to complete the investigations. The number of substantiated charges for the two years is 174 and 156, respectively.

Based upon careful review of the data requested by the Board as well as a thorough review of the process of initiating and investigating complaints, the concerns expressed at the Board meeting and the identified areas in need of improvement, I am recommending the establishment of a Civilian Investigative Unit (CIU) to investigate allegations that are not criminal in nature or violative of civil rights. This Unit is the centerpiece of an investigative process, the new aspects of which are designed to address concerns expressed at the August Board meeting, while, at the same time, maintaining the legal integrity of the investigative process.

The recommended CIU will be modeled after the School Board's Civil Rights office, which currently is a part of the Office of Civil Rights and Diversity Compliance (CRDC). The civil rights component of CRDC investigates violations of federal laws utilizing School Board employee/investigators. I am recommending the establishment and classification of investigators to become the Civilian Investigative Unit (CIU) under the authority of the existing office of Civil Rights and Diversity Compliance. A proposed model of the unit which includes an organizational chart and cost analysis is set forth in Attachment A. Professional development and training will be initiated upon Board authorization as part of the Plan of Action for Implementation.

The Investigative Process

All principals and other worksite supervisors will receive training, designed and delivered by the Professional Development department, on the investigative process and the types of allegations to be called in for investigation. Likewise, M-DSP will receive such training to include the requirement that the principal shall be informed immediately of any allegation in his or her school which M-DSP has called in for investigation. A review of one of the concerns raised at the Board meeting revealed that, during the two year period, M-DSP, rather than principals and other site administrators, reported approximately 50% of all allegations. As a direct consequence, a perception was created that M-DSP, rather than the worksite, was initiating complaints against employees.

Pre-Investigation

When a principal or other site administrator calls in an allegation, it will be reviewed by M-DSP to determine whether the allegation constitutes a crime. If it is determined that a crime may have been committed, M-DSP will conduct the investigation, working in conjunction with the State Attorney's Office (SAO) to determine whether the substantiated allegation will be prosecuted by the SAO or exceptionally cleared. If M-DSP determines during the course of the investigation that no crime is involved, then the allegation will be released for alternate administrative investigation and determination by M-DSP. In sum, M-DSP will make the initial determination as to crime – versus – no crime and will release the Lead Sheet, marked for a M-DSP investigation, if so determined, within one workday from receipt of the allegation. If the allegation is not criminal in nature, this will be noted on the Lead Sheet.

Upon receipt of the Lead Sheet, OPS, in conjunction with Civil Rights and Diversity Compliance (CRDC) will make a joint determination of the proper investigative route for these non-criminal allegations. Generally, allegations of violations of State Board of Education or School Board Rules, not involving civil rights violations, e.g., sexual harassment, race, gender, or other actionable discrimination, will be assigned to the new CIU. Allegations involving violation of civil rights will be assigned to CRDC, and allegations that are purely administrative in nature will be assigned to the worksite administrator. Allegations involving safety i.e., violence against students or employees, or criminal issues may result in the employee being placed on alternative assignment to an alternate work location including the ACCESS Center, or to the employee's residence. OPS, after consulting with the worksite administrator, will make the determination as to the appropriateness of placement. The ultimate determination will be made by OPS.

Investigation

The assigned investigative agency,(i.e. M-DSP), entity, (i.e., CRDC or CIU), or individual, (i.e., the site administrator), shall bear the responsibility for informing the suspect employee of a pending investigation. Prior to reaching a final determination of investigative outcome, the employee will be given the opportunity to respond to the charges. Absent unusual circumstances, the time for investigation and determination of findings by the assigned investigative agency, entity, or individual will be 30 to 45 workdays. Unusual circumstances include investigations conducted in conjunction with outside law enforcement agencies, or lack of timely cooperation by the employee or union representative. Determinations of investigations will remain as: substantiated – the allegation was proven; unsubstantiated – the allegation was neither proven nor disproven; unfounded – the allegation did not occur; or undetermined – the allegation was not capable of proof. OPS will provide a report on open investigations to the Superintendent on a monthly basis. The report will contain the Case (SPAR) Number, worksite, type of employee or individual, i.e. instructional or non-instructional, allegation, and timeliness for each case.

Post-Investigation

If the allegation is unsubstantiated, undetermined, unfounded, or substantiated for a minor offense which would not lead to a recommendation by the Superintendent for School Board disciplinary action (suspension, demotion, dismissal), OPS will send the case to the worksite supervisor for disposition, to include transmittal of the investigative report and the opportunity for the employee to respond verbally or in writing to the case disposition. Substantiated cases will require a conference-for-the-record, directives, and other appropriate administrative action. Cases with other determinations will be disposed of through a meeting with the employee, to include appropriate administrative action. Contractual provisions and due process will be adhered to throughout the process, and disposition documents shall be forwarded by the worksite administrator through the respective administrative line to OPS.

If the allegation is substantiated for a crime or other major offense, OPS will conduct a District-level conference-for-the-record. This is the second opportunity for the employee to respond to the allegations and have those responses, or the responses of the designated representative included in the conference summary. Following the conference, OPS will summarize the conference in writing and provide copies of the summary to all parties. The employee may respond to the written summary in writing. This is the third opportunity for the employee to respond to the allegations.

While many of the OPS processes will remain the same, the marked departure is that OPS, rather than the administrative line, will make the recommendation for disciplinary action. If the recommended discipline requires Board action, i.e., suspension, demotion, dismissal, OPS will send the entire file for legal review by the Board Attorney's Office. Following the legal review, the employee will be notified of the outcome and whether disciplinary action will be recommended by the Superintendent to the Board.

Conclusion

The steps above delineate the investigative process from allegation through case disposition. A flow chart and corresponding narrative of this process are set forth in

Attachment B. The delineated process is responsive to concerns addressed at the August 18, 2004 Board meeting. New features include: (1) timely notification of the employee who is the subject of an allegation; (2) the separation of investigations of crimes only by M-DSP; (3) the establishment of the Civilian Investigative Unit; (4) multiple notifications by report to the Superintendent of all investigations on a monthly basis; (5) the training components for administrators, members of CIU, and M-DSP to include the types of infractions or allegations to be called in for investigation, the components of a crime and Board Rule violations, and how to conduct an investigation; (6) the 30 to 45 workday timeline for completion of investigations, absent unusual circumstances; (7) the added responsibility for the Office of Professional Standards, rather than the administrative line, to make the recommendation for disciplinary action, which is intended to lend uniformity to such recommendations; and (8) a more transparent process for the unions and the suspect employees to understand.

Timeline

The recommended restructuring of the investigative process requires some aspects of collective bargaining and will require in-depth professional development and training. Additionally, the CIU positions must be established and classified by the Board, advertised, selected, and trained. In order to accomplish these aspects in a comprehensive and expeditious fashion, it is anticipated that the current process will remain in place until mid to late Fall, with all required actions being brought to the Board for approval

RECOMMENDED: That The School Board of Miami-Dade County, Florida:

1. Receive the 2002-2003, 2003-2004 Personnel Investigation Report;
2. Establish and classify the position of Assistant Superintendent, Civil Rights and Diversity Compliance, MEP pay grade 25;
3. Appoint Ms. Susan P. Rothstein, Administrative Director Civil Rights and Diversity Compliance, MEP pay grade 24, to Assistant Superintendent, Civil Rights and Diversity Compliance, MEP pay grade 25, effective October 21, 2004;
4. Establish and classify the position of Executive Director, Civilian Investigative Unit, MEP pay grade 22;
5. Establish and classify the position of Investigator, CIU, DCSAA pay grade 42; and
6. Authorize the Superintendent to Develop a Plan of Action to Implement the Civilian Investigative Unit.

RFC:vab

Attachment A1

Proposed Establishment of the Civilian Investigative Unit (CIU) Civil Rights and Diversity Compliance

The Civil Rights and Diversity Compliance (CRDC) office currently has two units within the Department: Civil Rights Compliance, and Diversity Compliance. The Civil Rights Compliance Unit investigates complaints of harassment/discrimination that are in violation of Federal and State law or School Board Rule. Staff in the Civil Rights Compliance Unit currently consists of six Investigators and one administrative supervisor. In School Year 2003-2004, the six Civil Rights Investigators investigated 141 complaints of harassment/discrimination.

The procedures for investigating a civil rights complaint are as follows: When the Civil Rights Compliance Unit receives a completed and signed Complaint Form, a notification memorandum is sent to the accused employee and to the site supervisor of the employee. The case is assigned to an Investigator who conducts the investigation. Upon completion, the Investigator writes an Investigative Summary and makes a determination whether it is substantiated or unsubstantiated. If the complaint is substantiated, a copy of the Investigative Summary is transmitted to The Office of Professional Standards (OPS) for review and appropriate personnel action.

Civilian Investigative Unit (CIU)

The proposed unit will conduct Personnel Investigations resulting from incidents entered into the School Police Automated Reporting (SPAR) system that are not criminal in nature. For example, the unit would investigate allegations that are potential violations of State Board of Education or School Board Rules. Currently these investigations are conducted by the Miami-Dade Schools Police (MDSP) utilizing approximately 26 investigators.

It is recommended that CIU consist of eight Investigators and one administrative supervisor and that this configuration be piloted for a three month time period, after which staffing needs will be analyzed and changes made, if appropriate.

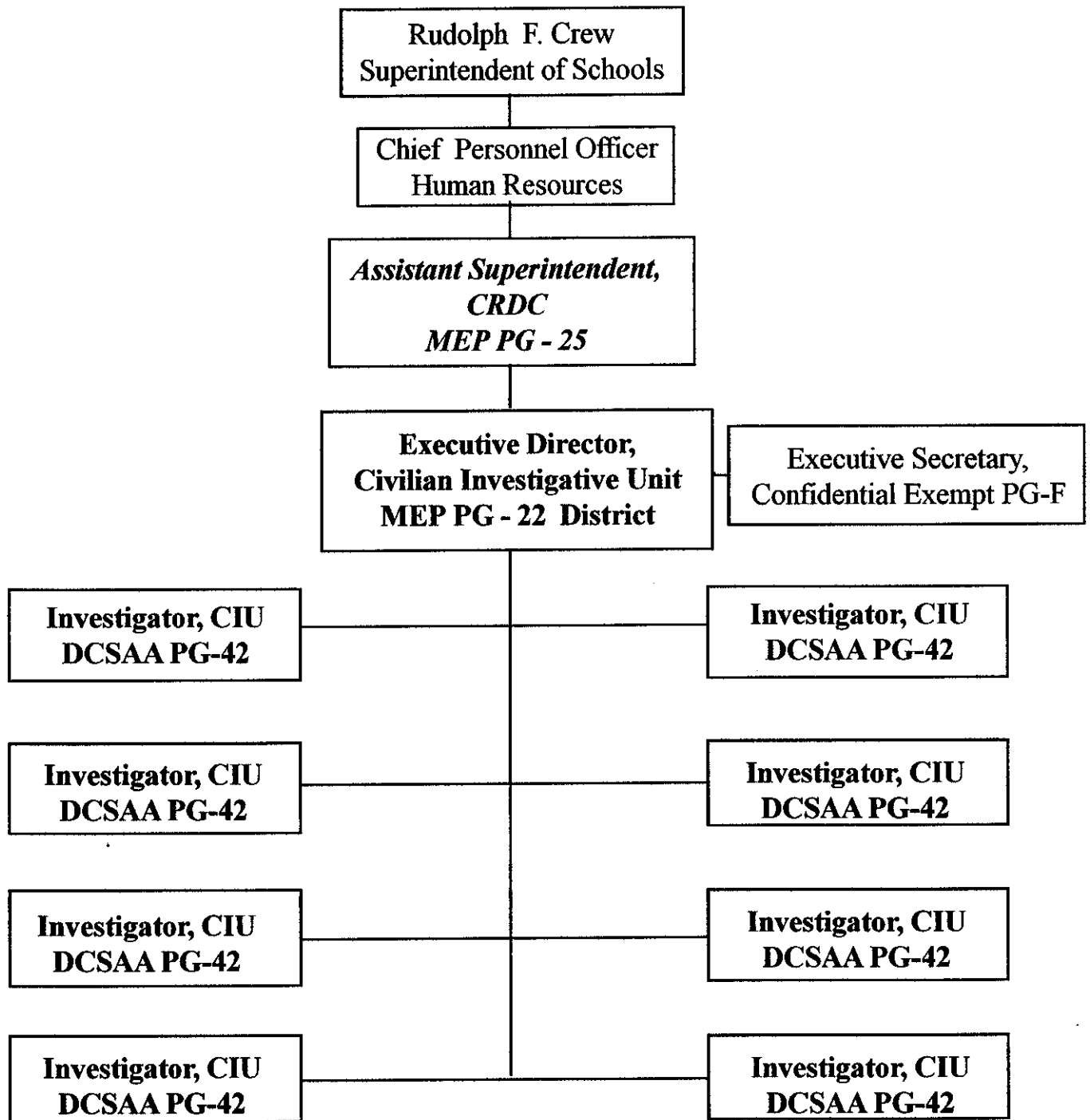
Estimated Cost of Establishing the Civilian Investigative Unit (CIU)

The total estimated cost for establishing the CIU is approximately \$200,000, as follows: The funding for the eight Investigator positions will come from a transfer of money that currently funds eight PACS in the Miami-Dade Schools Police. The establishment of the Executive Director, CIU, MEP Pay Grade 22, to supervise the CIU Investigators and the Unit will be approximately \$75,000. Both the Director, Diversity Compliance, and the Director, Civil Rights Compliance, will be reclassified to Executive Directors, each MEP Pay Grade 22, for a total cost of approximately \$9,000.

One Administrative Director of CRDC would be promoted to Assistant Superintendent, MEP Pay Grade 25, and the corresponding Administrative Aide would be promoted to Administrative Secretary II, Confidential Exempt, Pay Grade H for a total cost of approximately \$11,700. These costs would be contained in the estimate of \$ 200,000.

Attachment A2

**Proposed Organizational Chart for Civilian Investigative Unit
Civil Rights and Diversity Compliance**

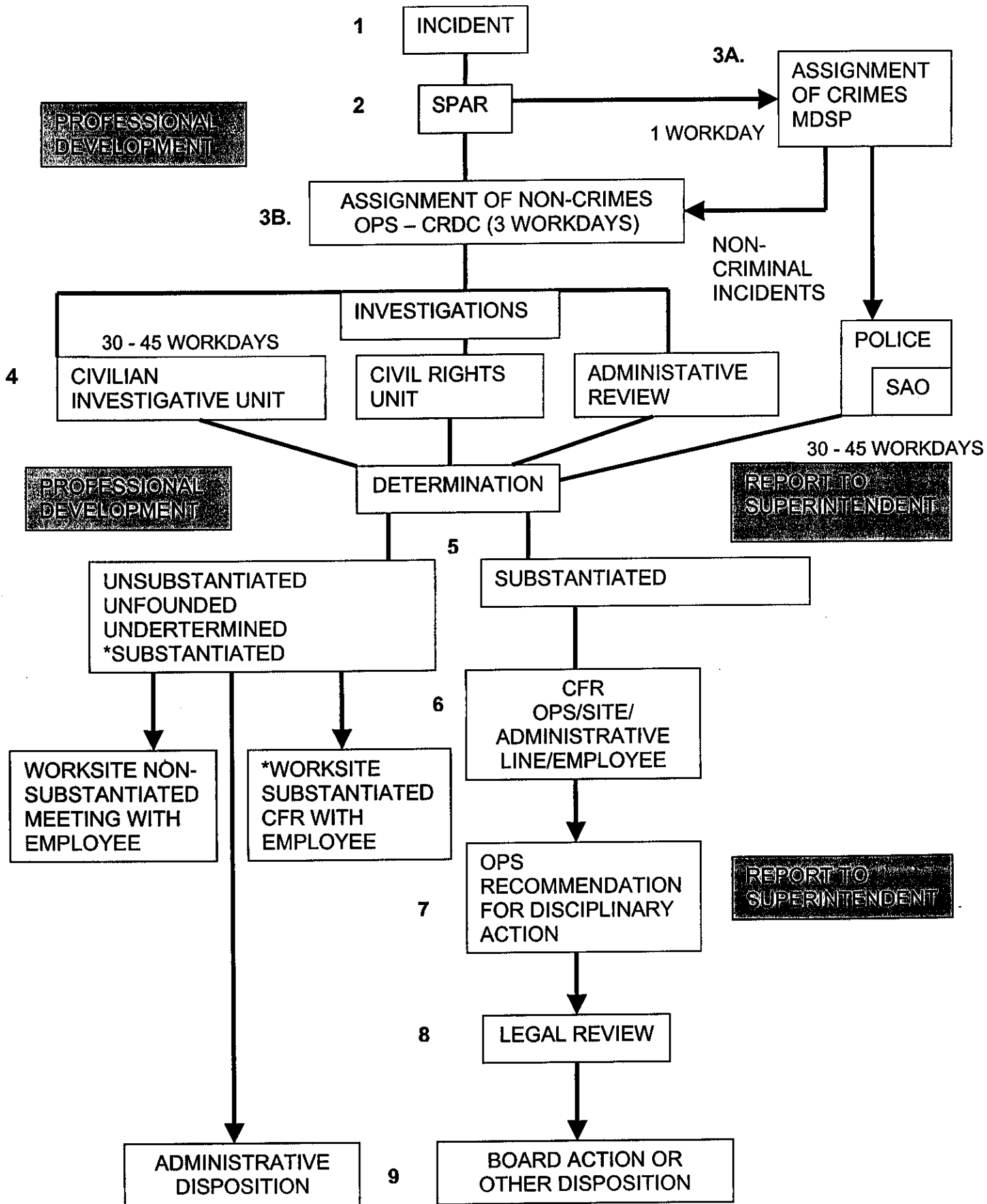


Bold = New Position

Italic = Promotion

Normal = Reclassification

OPS PROPOSED INVESTIGATIVE MODEL



PROPOSED INVESTIGATIVE DESIGN

Chart	Comments
1. Incident	An incident occurs that is a potential violation of State or Federal law, State Board of Education Rule, and/or School Board Rule.
2. SPAR	The School Police Automated Reporting (SPAR) system is activated through a call by a site administrator, School Police Patrol Officer, a non-District law enforcement agency, or other named individual, which results in a SPAR Lead Sheet being generated by Miami-Dade Schools Police (M-DSP).
3A. Assignment of Potential Crimes and Transmittal of SPAR Lead Sheets.	M-DSP makes an initial determination whether the incident constitutes a potential crime to be investigated by M-DSP in which case the SPAR Lead Sheet will be transmitted to OPS already assigned by M-DSP as a School Police Personnel Investigation. M-DSP will investigate all allegations of crimes to include allegations of felonies or misdemeanors as defined by law. If the incident does not constitute a potential crime, the SPAR Lead Sheet will be noted as such by M-DSP and transmitted by M-DSP to OPS for assignment.
3B. Assignment of Non-Criminal Incidents	<p>A representative from the Office of Professional Standards (OPS), and Civil Rights and Diversity Compliance (CRDC) meet to assign the Lead Sheet to one of three investigative sources: the Civilian Investigative Unit (CIU), the Civil Rights Unit (CRU), or the Site Administrator.</p> <ul style="list-style-type: none"> • CIU will investigate non-criminal allegations of violations of State Board of Education and School Board Rules and School Board Procedures including but not limited to: <ul style="list-style-type: none"> • SBER 6B-1.001- Code of Ethics • SBER 6B-1.006 - Principles of Professional Conduct • School Board Rules: <ul style="list-style-type: none"> • 4 - 1.08 Violence in the Workplace (non-criminal) • 4-1.09 Employee-Student Relationships (non-criminal) • 4A -1.21 Responsibilities and Duties • 5D -1.07 Corporal Punishment Prohibited (non-criminal) • 6A - 1.112 Acceptable Use Policy • CRU will investigate allegations of violation of Federal Law to include Harassment/Discrimination based upon: <ul style="list-style-type: none"> • Race • Color • Religion • Age • Disability • Pregnancy • Marital Status • Linguistic Preference • Sexual Orientation • Ethnic or National Origin • Social and Family Background • Political Beliefs • Gender • Sexual Harassment • Retaliation • and other such violations of Federal law. • The Site Administrators will investigate allegations that are purely administrative in nature, for example: <ul style="list-style-type: none"> • Poor performance or nonperformance of job duties • Attendance issues • Simple acts of insubordination • M-DSP will investigate allegations of crimes to include allegations of: <ul style="list-style-type: none"> • Felonies and misdemeanors as defined by State law.

ATTACHMENT B2

Chart	Comments
4. Investigation	<p>An investigation is conducted by the assigned agency, i.e. M-DSP, or entity, i.e. CIU or CRU, or individual, i.e., the site administrator.</p> <ul style="list-style-type: none"> • It is the responsibility of the assigned investigative agency, entity, or individual to notify the alleged suspect of the investigation within contractual and legal timelines. • Interviews will be conducted with the alleged suspect, victim, and witness(es).
Investigative Report to Superintendent	<p>The report is organized by ACCESS Center (or Administrative Area for non-school work locations) and work location. It includes, at a minimum, the SPAR Number, Allegation, and Timelines.</p>
5 A. Determination: Unfounded, Unsubstantiated or Undetermined	<p>If the investigative report is returned to OPS with a determination that the allegation has been unfounded, unsubstantiated or undetermined, OPS sends the report to the respective worksite with directions for disposition with the employee, following which the worksite returns required disposition documents to OPS for case closure.</p>
5 B. Determination: Substantiated	<p>If the investigative report is returned to OPS with a determination that the allegation has been substantiated, then one of the following will occur depending upon the seriousness of the substantiated allegation and the totality of the employee's disciplinary file.</p> <ul style="list-style-type: none"> • OPS sends the report to the respective worksite with directions for disposition with the employee, following which the worksite returns the required disposition documents to OPS for case closure - or - • OPS conducts a conference for the record.
6. OPS CFR	<p>OPS holds a conference-for-the-record with the employee, site and line administrator, and union or other representative. This is the second opportunity for the employee to respond to substantiated allegations. Additionally, the employee has the right to pen a written response, provide it to OPS, and have it appended to the record, thus affording a third opportunity for the employee to respond to the allegations.</p>
7. Recommendation	<p>OPS recommends disciplinary action, if appropriate.</p>
Disposition Report to Superintendent	<p>The report is organized by ACCESS Center, or Administrative Area for non-school work locations, and by work location. It includes, at a minimum, the SPAR Number, Allegation, and Timelines, and shall include the <u>OPS recommendation for disciplinary action</u>. Recommendations for dismissal shall be approved by the Superintendent.</p>
8. Legal Review	<p>The file is reviewed by the School Board Attorney's Office for legal sufficiency of the recommendation.</p>
9. Board Action or other Disposition	<p>The Superintendent recommends disciplinary action to the School Board for action or administrative disposition ensues.</p>

PROFESSIONAL DEVELOPMENT COMPONENTS

<p>Professional Development for:</p> <ul style="list-style-type: none"> • School Site Administrators, • ACCESS Center Administrators • District Administrators 	<p>Professional development on incidents appropriate for investigation is conducted by Professional Development staff which then becomes available for consultation in the event a site administrator needs to seek direction as to whether an Incident should be called in to SPAR.</p> <p>This serves two functions: 1) to train worksite administrators, ACCESS Center and District administrators as to what incidents must be called in for appropriate investigation; and 2) to train OPS and CRDC on the appropriate venue for investigation, i.e., CIU, CRU, or Administrative Review.</p>
Training for Members of CIU	<p>CIU employees receive training in investigative and reporting requirements and techniques.</p>