

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 THE OFFICE OF PROFESSIONAL STANDARDS ANNUAL REPORT OF EMPLOYMENT ACTIONS, COMPARATIVE DATA, 2002 - 2003 AND 2003 - 2004 AND AUTHORIZE THE SUPERINTENDENT TO ESTABLISH THE CIVILIAN INVESTIGATIVE UNIT AND FINALIZE 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 personnel investigations processed by the Office of Professional Standards (OPS) 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. That report was prepared for receipt by the Board for the October 20, 2004 Board meeting as part of Agenda Item A-7 but was postponed for Board action until its November Board meeting.

The Board additionally directed at its August meeting that it be provided information regarding the accessibility of receiving the same data on personnel investigations for an additional three years. As indicated in the October Agenda Item A-7, while this information exists, capturing the data requested for those additional three 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 years is marginal, especially in light of the resources which would be expended to retrieve the information and verify the data. However, at the October Legislative Relations, Public Relations and Personnel Services Committee meeting, the OPS Annual Report of Employment Actions was presented to the Committee and an overview of the Department was discussed. The Annual Report contains a comprehensive compilation of data by function. This document along with the Personnel Investigation Report will be provided to the full Board and the Office of Citizen's Information under separate cover.

As directed, the Office of Professional Standards prepared the Personnel Investigation Report for the past two fiscal years, 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.

At the October 20, 2004 Board meeting, prior to taking action to postpone the agenda item to the November Board meeting, additional concerns were raised by the Board and Union and Association leadership regarding the investigative process. To address those concerns, multiple meetings were held with Union and Association representatives. Those concerns centered around the following issues: (1) timelines of the personnel investigations; (2) quality of the investigations; (3) notification to the employee of a pending investigation; (4) terminology of the investigative determinations, i.e. substantiated, unsubstantiated, unfounded, and undetermined; (5) the employee's right to appeal the recommended determination prior to Board action; (6) the entity that makes the final determination; (7) the role and function of OPS; and (8) timeliness for each aspect of the investigation.

Based upon a careful review of the data requested by the Board at its August meeting, as well as a review of the entire process of initiating and investigating complaints, the concerns expressed at both the August and October Board meetings, the identified areas in need of improvement, and the Union and Associations' concerns and recommendations, I am again recommending the establishment of a Civilian Investigative Unit (CIU) to investigate those 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 all concerns, while, at the same time, maintaining the legal integrity of the investigative process. I am recommending that the Board establish and classify the positions for investigator and supervisor and authorize the Civilian Investigative Unit (CIU). This unit will report to OPS. A proposed model of the investigative process is set forth in Attachment A. Professional development and training will be initiated upon Board authorization as part of the Superintendent's Plan of Action for Implementation.

Professional Development/Training

A comprehensive Professional Development and Training component will be developed in order to ensure that this new investigative model is understood by all stakeholders. All principals and other worksite supervisors will receive training on the investigative process, the types of allegations to be called in for investigation, employee notification of pending investigations, and follow-up actions, if needed, from worksite supervisors. Likewise, Union stewards and Association representatives will be invited to participate in training sessions. Union and Association input has been offered in the creation of the CIU model and will be solicited for the professional development/training agendas. CIU will receive extensive training in investigative techniques and due process rights of employees. OPS will receive training in the new model to address its role and scope of this new model. School Police will receive additional training in conducting investigations and employee due process rights, including 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 (i.e. School Police), rather than principals and other site administrators, reported approximately 50% of all allegations. As a direct consequence, a perception was created that School Police, rather than the worksite, was initiating complaints against employees.

The Investigative Process

Pre-Investigation

Prior to a principal or other site administrator calling in an allegation, the responsible administrator shall make a determination whether the allegation is one that should be handled administratively at the worksite. It will be the responsibility of the worksite administrator to notify the employee that an allegation has been made against the employee. The employee shall be notified unless the allegation is one that is not appropriate for employee notification. If the allegation is such that it needs to be formally investigated, it shall be called into M-DSP. The allegation then will be reviewed by M-DSP to determine whether the allegation constitutes a crime, i.e., an act that violates a state or federal statute, for which the law, upon conviction, provides a penalty.

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 allegation will be prosecuted by the SAO or exceptionally cleared for administrative investigation and handling by the school system. If the SAO does exceptionally clear the case, or, if M-DSP determines during the course of the investigation that no crime is involved, then M-DSP will continue with the investigation to completion as an alternate administrative investigation, if appropriate, of a Board rule or other violation, and the recommended determination will be made by M-DSP. In sum, M-DSP will make the initial determination as to crime - versus - no crime and will release the Lead Sheet to OPS, 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. Moreover, once it is determined that M-DSP will initiate an investigation of an employee, the employee will be notified, as soon as appropriate.

Upon receipt of the Lead Sheet, OPS will be responsible for maintaining an accurate database of all investigations. OPS also will be responsible for making a joint determination of the proper investigative route for these non-criminal allegations in conjunction with Civil Rights and Diversity Compliance (CRDC). 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 which should not be formally investigated will be returned to the worksite administrator for investigation or handling. 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 Region, or to the employee's residence. OPS will make the determination as to the appropriateness of alternate placement pending the formal investigation.

Investigation

Allegations assigned for investigation will take one of four investigative tracks: (1) worksite administrative action for minor incidents purely administrative in nature; (2) M-DSP for criminal allegations; (3) CRDC Investigations for allegations involving violation of Federal Laws covering harassment and/or discrimination; or (4) CIU Investigations for non-criminal allegations. 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 employee of a pending

investigation except when notice is not appropriate. Additionally, prior to a recommended determination of an investigative outcome being reached, the employee will be given the opportunity to respond to the charges or allegations. Absent unusual circumstances, the time for investigation and recommended 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, delays or requests for extensions by the employee, Union or Association representation, or other good cause.

Recommended determinations of investigations will change from those currently existing designations, i.e., substantiated, unsubstantiated, unfounded, or undetermined to track Florida law with designations of Probable Cause or No Probable Cause. Probable Cause is defined as follows: "Based upon an evaluation of the evidence, it is more likely than not that the alleged act occurred." No Probable Cause is defined as "the absence of Probable Cause." Rather than having the investigator issue a final determination of Probable Cause or No Probable Cause, the investigator will complete the investigative report with a recommended determination. The completed investigation will be forwarded to OPS.

OPS will provide a report on open investigations to the Superintendent on a monthly basis. The report minimally will contain the Case (SPAR) Number, worksite, type of employee, (i.e. instructional or non-instructional), allegation, and timeliness for each case.

Post-Investigation

For cases that may give rise to a recommendation by the Superintendent for School Board disciplinary action, OPS shall provide the investigative report to the employee upon OPS receipt. With the employee's permission, the employee's Union or Association representative shall also receive a copy of the report, at least five work days prior to a conference-for-the-record. This will allow the employee the opportunity to file written exceptions to the investigative report if, in his or her opinion, the investigative report has reached an inaccurate conclusion. The employee will have five work days to submit the exceptions in writing, and to state with particularity, the reasons for the exceptions, to include additional witnesses, evidence or information to be sought that, if obtained, would likely change the outcome of the investigation.

If No Probable Cause is found, OPS will send the case to the worksite supervisor for administrative disposition (i.e. meeting with employee) and the case is closed. If Probable Cause is found for a minor offense which would not lead to a recommendation by the Superintendent for Board action (i.e. suspension, demotion, dismissal), OPS will send the case to the worksite supervisor for administrative disposition (i.e. conference-for-the-record), to include transmittal of the investigative report and the opportunity for the employee to respond verbally or in writing to the recommended determination.

A finding of Probable Cause for serious offenses which may lead to a recommendation by the Superintendent for Board action (i.e. suspension, demotion, dismissal), will require a conference-for-the-record (CFR) in OPS, and other appropriate administrative action. The CFR provides another 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. Contractual provisions and due process will be adhered to throughout the process,

and, in the case of dispositions at the employee's worksite, disposition documents shall be forwarded by the worksite administrator through the respective administrative line to OPS.

Following a CFR in the Office of Professional Standards, OPS will render the final determination of Probable Cause or No Probable Cause within two work days following the CFR. OPS then will summarize the conference in writing and provide copies of the summary to all parties. The employee has the right to respond to the written conference summary in writing. This is still another opportunity for the employee to respond to the allegations.

OPS, rather than the worksite which is the current practice, will recommend 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. The employee shall receive written notice of the recommended disciplinary action. 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. If disciplinary action is to be recommended, the employee prior to Board action will be entitled to request a final review of the recommended discipline by the Superintendent's designee even if the employee did not file exceptions to the investigation. The employee will be notified that an agenda item is scheduled to be presented to the Board and the employee will have five work days to request in writing this final review. The failure to file written exceptions to the investigation or to request a review by the Superintendent's designee shall not preclude an employee from requesting an administrative hearing on the Board action nor shall it preclude the raising of any defenses not previously raised.

Timeline for Investigations

The anticipated timeline for each stage of the investigation is as follows: (1) one work day for School Police to determine if a criminal investigation is required; (2) three work days for OPS and CRDC to determine the type of non-criminal investigation; (3) thirty to forty five work days to complete the investigation; (4) twenty work days to schedule and conduct the CFR; (5) ten work days to complete the legal review; and (6) five work days to conduct a review by the Superintendent's designee, if requested.

Timeline for Implementation of Model

The recommended restructuring of the investigative process requires aspects of collective bargaining and requisite Memoranda of Understanding to reflect the negotiations of this proposed investigative model for personnel investigations. Additionally, it will require in-depth professional development and training to include training of all worksite administrators, CIU investigators, M-DSP investigators, and Union stewards. 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 winter 2005. The various stages of the implementation of this Plan of Action will be reported to the Board, as required. After commencing the new model, a review and evaluation of the process for reaching its intended goals will be assessed at the conclusion of three months, and then again six months later.

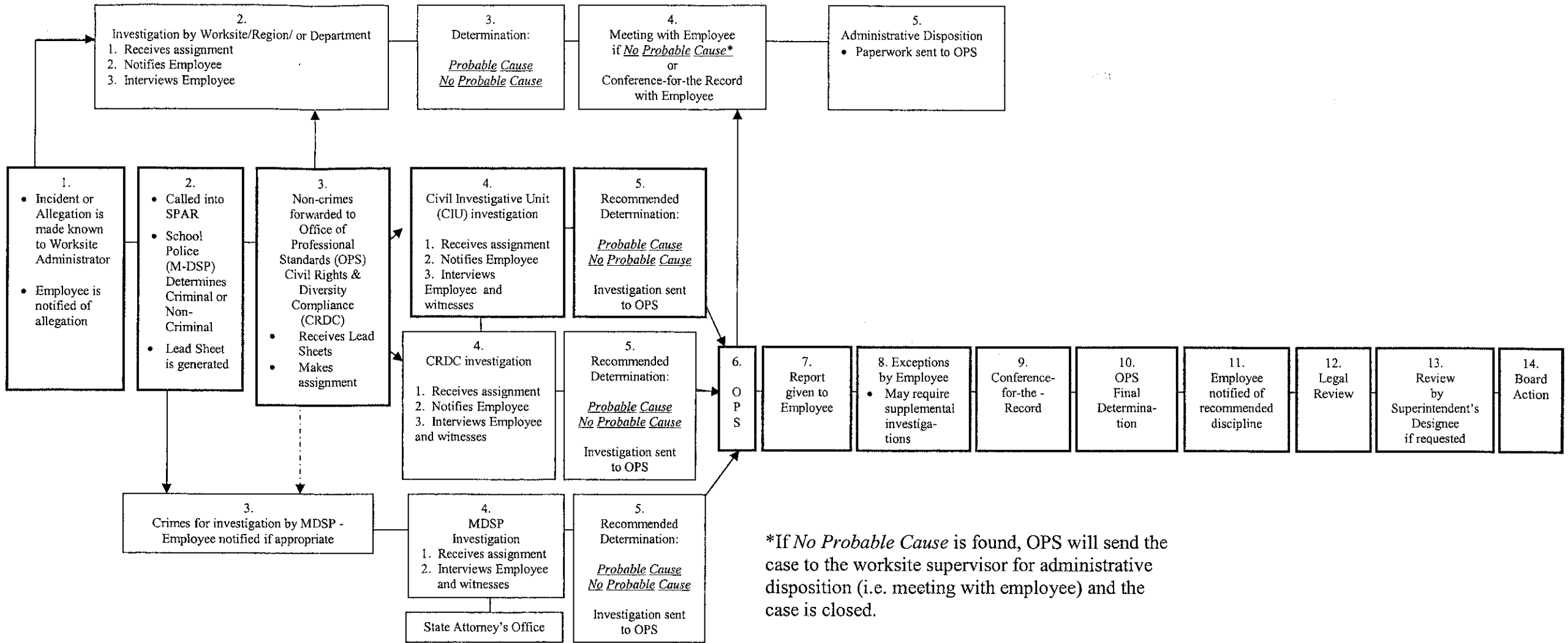
Conclusion

The steps above delineate the investigative process from allegation through case disposition. The delineated process is responsive to concerns addressed at both the August 18, 2004 and the October 20, 2004 Board meetings, as well as concerns later expressed by Union and Association representatives. New features now 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, M-DSP, Union stewards and Association representatives 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) OPS, rather than the investigator of making the final investigative determination of Probable or No Probable Cause; (8) OPS, rather than the administrative line, making the recommendation for disciplinary action, which is intended to lend uniformity to such recommendations; (9) enhanced due process for employees to include a final review by a designee of the Superintendent prior to Board action, if requested; and (10) a more transparent process of conducting investigations.

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

1. Receive the 2002-2003, 2003-2004 Personnel Investigation Report;
2. Receive the Office of Professional Standards Annual Report of Employment Actions, Comparative Data, 2002 - 2003 and 2003 - 2004;
3. Authorize and approve the Civilian Investigative Unit;
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 Finalize a Plan of Action and to implement the Civilian Investigative Unit, including entering into Memoranda of Understanding with applicable Unions.

PROPOSED INVESTIGATIVE MODEL



Anticipated Timeline: 75 work days (absent unusual circumstances)	1 work day Criminal Identification	3 work days Non-Criminal Assignment	Investigations to be completed 30-45 work days	(5 work days for employee to file written exceptions)	20 work days Conference-for-the Record	10 work days Legal Review	(5 work days for employee to request a Review by Superintendent's Designee)
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