

POLICY 3.31

4-E I recommend the Board adopt the proposed revisions to Policy 3.31, entitled "Grievance Procedure for Employees."

[Contact: Dr. Bernard Shulman, 434-8500]

Adoption

- The Board requested at the Sept. 9th meeting that the Policy be amended to require a written document for any complaints or grievances. Appropriate amendments are included herein.
- The DOE's Educational Equity Monitoring Work Plan requested that this Policy allow 60 days for initial reporting of alleged discrimination or harassment, reflecting the recent recommendations of the federal Office for Civil Rights.
- The new Section (4) is based on the employee-related portions of Policies 5.001 and 5.81 and provides a procedure tailored to resolving discrimination and harassment complaints, including the requested 60-day limit.
- Retaliation is prohibited at line 347.
- Based on the Board's recent discussion about procedures for investigation of its direct reports (the Superintendent, the Chief Counsel, and the District Auditor), Section (7) has been expanded to cover grievances by or about such direct reports or the employees they supervise. Paragraph (7)(c) is based on discussions with school board attorneys in three other large districts.

CONSENT ITEM

PROPOSED REVISIONS TO POLICY 3.31**GRIEVANCE PROCEDURE FOR EMPLOYEES**

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1. A. DEFINITIONS Purpose.-- The purpose of this procedure is to secure, at the lowest administrative level, equitable solutions to claim(s) arising from a violation, misapplication, or misinterpretation of School Board Policies or Administrative Directives, which may include harassment prohibited by Policies 3.05 and 3.19, and to establish an orderly succession of procedures wherein these solutions may be pursued.

2. B. PURPOSED Definitions.-- As used herein, the following terms have these meanings:

~~The purpose of this procedure is to secure, at the lowest administrative level, equitable solutions to claim(s) arising from a violation, misapplication, or misinterpretation of School Board Policies and Administrative Directives and to guarantee an orderly succession of procedures wherein these solutions may be pursued.~~

a. A "grievance" is a written complaint which alleges a violation, misinterpretation, or misapplication of School Board Policy or Administrative Directives, including discrimination or harassment prohibited by Policies 3.05 and 3.19.

b. The term "employee" includes every employee, instructional or non-instructional, of the School Board of Palm Beach County.

c. The terms "grievant" and "complainant" refer to an employee (including an applicant as defined in Section (2)(e)) who alleges in writing that he/she has been subjected to discrimination or harassment as prohibited by Policies 3.05 and 3.19.

d. "Accused/employee" refers to an employee who is alleged to have subjected another employee to discrimination or harassment as prohibited by Policies 3.05 and 3.19.

e. The term "applicant," as used herein, means any person applying for employment with the District, as well as a current District employee who

30 applies for another instructional or non-instructional position within the District.

31 f. ~~The term "days" in this procedure shall mean work days.~~

32 g. The term "supervisor" means the Pprincipal, Ddirector, Aarea Executive
33 Director superintendent, Assistant Superintendent, Deputy Superintendent,
34 Superintendent of Schools or other Ddepartment Aadministrator who has the
35 direct responsibility of supervising or managing the aggrieved employee and
36 who has the authority to take action necessary to resolve the grievance. For
37 purposes of this Policy, this term may also include a consultant retained by the
38 Board to provide interim management assistance.

39 h. The term "superior" as used herein refers to the supervisor of the aggrieved
40 employee's immediate supervisor.

41 i. A "chief officer" is the Chief Academic Officer or the Chief Operating Officer.

42 j. The term "days" in this Policy shall mean work days unless calendar days are
43 specified.

44 3. G. Procedure for Grievances (*Other than Alleged Harassment or*
45 Discrimination).-- The following grievance procedure applies when the grievance
46 is based on an allegation *other than* discrimination or harassment under Policies
47 3.05 and 3.19. (If the grievance is based on allegations of discrimination or
48 harassment as prohibited by Policies 3.05 and 3.19, the procedures of Section (4)
49 shall apply, instead.)

50 a. Level One: Informal Conference

51 Within ten (10) work days after the employee first knows or reasonably should
52 have known, of the grievable incident, the employee shall initially discuss the
53 matter with the immediate supervisor with the objective of informally resolving
54 the matter. The supervisor shall summarize the conversation in writing, and
55 that writing must be signed by the employee making the informal complaint.

56 A. ~~For an allegation of discrimination by one's supervisor, an employee~~
57 ~~may refer a complaint to the District's Equal Employment Opportunity~~
58 ~~(EEO) office in the Division of Personnel Services.~~

59 b. Level Two: Filing a Written Grievance

- 60 i. Within ten (10) work days after the informal conference described in Level
61 One, if no satisfactory disposition is made, the employee may file a
62 written grievance with the supervisor. The written grievance shall set
63 forth specifically the event(s) upon which the grievance is based, citing
64 the Policy and/or Directive alleged to be violated, the date the alleged
65 infraction took place, and grounds upon which the grievance is made.
66 The employee must sign and date the grievance.
- 67 ii. Within ten (10) work days after receiving the written grievance, the
68 supervisor shall schedule another meeting with the employee. Within ten
69 (10) work days of the second meeting, and after investigating the
70 allegations, the supervisor shall issue a written decision to the employee.
- 71 c. Level Three: Review by the Supervisor's Superior or Chief Officer
- 72 i. Within ten (10) work days after the supervisor's decision, if the employee
73 is not satisfied with the supervisor's decision or if no decision has been
74 made issued, the employee may forward the written grievance and the
75 supervisor's decision to the supervisor's superior or to the applicable chief
76 officer ~~Department of Employee relations~~. The written grievance shall set
77 forth the event(s) upon which the grievance is based. If the grievance is
78 not forwarded to the superior or chief officer within the designated time,
79 the grievance is considered withdrawn from the grievance process and
80 shall be so noted in the grievance file.
- 81 ii. Within ten (10) work days after receiving the grievance, the superior or
82 chief officer ~~Department of Employee relations~~ will schedule a meeting
83 with the employee. Within ten (10) work days of ~~the said~~ that meeting,
84 meeting, and after further investigating the allegations as appropriate, the
85 superior or chief officer ~~Department of Employee Relations~~ shall issue a
86 written decision to the employee. A copy shall be provided to the
87 supervisor.
- 88 d. Level Four: Appeal to the Superintendent
- 89 i. Within ten (10) work days after the superior or chief officer ~~Department of~~
90 ~~Employee~~ issues it's a written decision, if the employee is not satisfied
91 with the decision ~~(or if no decision is~~ has been issued within ten (10) work
92 days of the meeting), the employee may appeal the decision, in writing, to
93 the Superintendent, ~~, or to the decision of the Department of Employee~~

- 94 Relations. ~~If the grievant does not pursue the grievance past Level~~
 95 ~~three, the grievant is encouraged to forward written correspondence to~~
 96 ~~the Department of Employee Relations indicating that he/she is~~
 97 ~~withdrawing the grievance from the grievance process. If the grievance is~~
 98 ~~not forwarded to the Superintendent within the designated time, the~~
 99 ~~grievance is considered withdrawn from the grievance process and shall~~
 100 ~~be so noted in the grievance file.~~
- 101 ii. The Superintendent/ ~~or~~ designee, shall appoint a n ad hoc Grievance
 102 Rreview Ccommittee. The chair of the committee will be the highest-
 103 ranking District official on the committee. The committee will consist of
- 104 A. one (1) member from District management, selected by the
 105 Superintendent;
- 106 B. one (1) member selected by the grievant; and
- 107 C. ~~the a~~ third member selected by agreement of the first two (2)
 108 members. If the third member is not selected by the other committee
 109 members within seven (7) calendar days, the
 110 Superintendent/~~designee~~, shall appoint a third member to serve on
 111 the committee.
- 112 iii. ~~The highest ranking official in the District among the three (3) committee~~
 113 ~~members shall be the Ccommittee Cchairperson. In an effort to resolve~~
 114 ~~the grievance. Within ten (10) work days after the Ccommittee is~~
 115 ~~designated, the Ccommittee shall meet with the grievant and the~~
 116 ~~supervisor or superior of the person alleged to have violated,~~
 117 ~~misinterpreted, or misapplied a Policy or Directive, in an effort to resolve~~
 118 ~~the grievance. Other persons may be presented as witnesses at the~~
 119 ~~meeting by either the grievant or the supervisor/superior. The committee~~
 120 ~~shall issue a written decision recommendation within ~~five (5)~~ ten (10) work~~
 121 ~~days after the meeting, determining whether any violation has occurred,~~
 122 ~~and if so, an appropriate remedy. A copy of the decision~~
 123 ~~recommendation shall be provided to the grievant, supervisor or superior,~~
 124 ~~the Director of Employee Labor Relations, and the Superintendent.~~
- 125 iv. ~~The decision of the Committee shall be final and binding. The~~
 126 ~~recommendation of the committee shall be forwarded to the~~
 127 ~~Superintendent for review. The Superintendent/designee shall review the~~

128 recommendation of the committee and the record of the grievance. If the
129 Superintendent/ designee finds that a meeting with the grievant would
130 assist in the final determination, the Superintendent/ designee may
131 schedule a meeting for the purposes of this review. The Superintendent/
132 designee's decision is the final and binding decision of the District.

133 **4. Reporting and Resolving Allegations of Harassment or Discrimination.--**

134 When the cause for the grievance is an allegation of discrimination or harassment
135 of an employee (including an applicant, as defined in Section (2)(e)), the following
136 procedures shall apply:

137 **a. Level One: Reporting to the Supervisor or EEO Coordinator and**
138 **Investigation by the EEO Coordinator/Designee**

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140 **i. Reporting Discrimination or Harassment.--** Any employee (including
141 an applicant as defined in Section (2)(e)) who believes he/she is a victim
142 of discrimination or harassment as prohibited by Policies 3.05 and 3.19,
143 may report the incident(s) in writing to the principal or other immediate
144 supervisor, as applicable. Due to the sensitive nature of sexual
145 harassment complaints, or in the event of an allegation of harassment or
146 discrimination by one's supervisor, the complaint may be filed in writing
147 directly with the District's Equal Employment Opportunity Coordinator
148 ("EEO Coordinator"). The EEO Coordinator is located at: 3370 Forest Hill
149 Boulevard, Suite A-115, West Palm Beach, Florida, 33406; Telephone:
150 (561) 434-8637.

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152 **ii. Complaints should be filed as soon as possible after the alleged incident,**
153 **but must be filed within sixty (60) calendar days after the employee**
154 **(including an applicant as defined in Section (2)(e)) first knows or should**
155 **have known of the grievable incident. Failure on the part of the**
156 **complainant to initiate and/or follow up on a complaint in a timely manner**
157 **may result in the complaint being deemed abandoned.**

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159 **iii. The principal/designee or other immediate supervisor (as applicable) or**
160 **EEO Coordinator may assist the individual in putting the complaint in**
161 **writing; reviewing it with the complainant; and obtaining the complainant's**
162 **signature. The complainant will be requested to provide signed, specific**
163 **information regarding the alleged discrimination or harassment, the**
164 **alleged offender(s), witnesses, and other relevant information. All**

165 complaints filed with the principal/designee or other supervisor must be
166 reported to the area superintendent (if applicable) and the EEO
167 Coordinator.

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169 iv. It is the responsibility of the principal, or other supervisor as applicable, to
170 forward all harassment or discrimination complaints to the area
171 superintendent (if applicable) and EEO Coordinator within two (2) work
172 days.

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174 b. Investigation by EEO Coordinator/Designee.-- The EEO
175 Coordinator/designee shall document and begin within two (2) work days to
176 thoroughly investigate all complaints of harassment or discrimination, including
177 the following steps:

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179 i. promptly talk with the complainant. The complainant shall have an
180 opportunity to describe the incident, present any evidence, name
181 witnesses, and put his/her complaint in writing if he/she has not already
182 done so;

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184 ii. talk with any witnesses or others who may have relevant information; and

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186 iii. conduct an investigative meeting with the accused/employee, and the
187 accused/employee's representative, if applicable, to discuss the
188 allegations and allow the accused/employee to respond to the allegations.

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190 iv. During the investigation, the EEO Coordinator may recommend to the
191 Chief Personnel Officer/designee any action deemed necessary to protect
192 the complainant or other employees, consistent with the requirements of
193 applicable laws.

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195 v. When necessary to carry out the investigation or for other good reasons,
196 and consistent with federal and state privacy laws, the EEO Coordinator
197 should discuss the complaint with any of the following persons, as
198 appropriate:

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200 A. Superintendent/designee;

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202 B. chief officer;

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C. area superintendent/designee ;

D. associate superintendents;

E. Chief of School Police;

F. Chief Personnel Officer;

G. Director of Labor Relations;

H. legal counsel for the Board;

I. another employee whose knowledge of the persons involved may help determine the truth;

J. the exclusive bargaining representative(s) or their legal counsel, if appropriate; and

K. the accused/employee.

c. **Decision of the EEO Coordinator/Designee.**--Upon completion of the investigation, the EEO Coordinator/designee shall make a decision, within thirty (30) calendar days of receiving the complaint if possible, about the validity of the allegations in the complaint. The EEO Coordinator shall discuss the determination and any recommended corrective action with the principal/designee or other immediate supervisor, as applicable. In reaching a decision about the complaint, the following should be taken into account:

i. written statements of witness, the complainant, and accused/employee (or representative thereof); and written or oral advice from District administrators listed above in Section (4)(b)(v)A-H;

ii. the details and consistency of each person's account;

iii. evidence of how the complainant reacted to the incident;

- 240 iv. evidence of past instances of harassment or discrimination by the
241 accused/employee (provided that, if evidence of past harassment/
242 discrimination is to be considered, the principal/designee must review in
243 their entirety the files regarding those past incidents);
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- 245 v. evidence of past harassment or discrimination complaints that were found
246 to be untrue (provided that, if evidence of past accusations or complaints
247 is to be considered, the principal/designee/supervisor must review in their
248 entirety the files regarding those past incidents); and
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- 250 vi. case law, state and federal laws and regulations, and Board Policies
251 prohibiting harassment and discrimination.
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- 253 d. To determine the severity of the harassment or discrimination, factors such as
254 the following may be considered:
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- 256 i. how the misconduct affected an employee's work;
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- 258 ii. the type, frequency, and duration of the misconduct;
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- 260 iii. the number of persons involved;
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- 262 iv. the subject(s) of harassment or discrimination;
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- 264 v. the place and situation where the incident occurred; and
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- 266 vi. other incidents at the site.
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- 268 e. The recommendations for action(s) to be taken, consistent with any applicable
269 collective-bargaining agreement provisions, to resolve a complaint of
270 harassment or discrimination by an employee may include, but are not limited
271 to, the following:
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- 273 i. no action, if the complaint is unsubstantiated;
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- 275 ii. training requirements for the accused/employee;
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- 277 iii. oral reprimand of the accused/employee;

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iv. written reprimand of the accused/employee;

v. suspension of the accused/employee; or

vi. termination of the accused/employee.

f. **Level Two: Appeal to the Chief Operating Officer/Designee.--** If the complainant or accused/employee wishes to appeal the action taken in resolution of the complaint, such appeal shall be filed in accordance either with this Policy or relevant collective bargaining agreement, as applicable. For those employees not in a bargaining unit, the appeal shall be filed in accordance with the following procedures:

i. If the grievant or accused/employee desires to appeal the EEO Coordinator's decision, it may be appealed in writing to the Chief Operating Officer/designee within ten (10) work days after receipt of the decision.

ii. If the Chief Operating Officer is directly involved with a complaint or with the parties to the complaint complainant or accused/employee, then the Chief Academic Officer shall be asked to review the matter.

iii. Notice of the appeal shall be given to the opposite party within two (2) work days of receipt of appeal.

iv. The Chief Operating Officer/designee shall review the written complaint, the accused/employee's response to the complaint, and all documentation pertaining to the alleged sexual harassment or discrimination, including the EEO Coordinator's decision.

v. The Chief Operating Officer/designee, in his/her discretion, may request additional information. The Chief Operating Officer/designee shall issue a written decision to the parties within twenty (20) calendar days of request of the appeal.

g. **Level Three: Appeal to the Superintendent.--** Within ten (10) work days after the Chief Operating Officer/designee issues a written decision, if a party

316 is not satisfied with the decision (or if no decision has been issued within ten
317 (10) work days of the meeting), the party may appeal the decision in writing to
318 the Superintendent. If the grievance is not forwarded to the Superintendent
319 within the designated time, the grievance is considered withdrawn from the
320 grievance process and shall be so noted in the grievance file.

321 i. Notice of the appeal shall be given to the opposite party within two (2)
322 work days of receipt of appeal.

323 ii. The Superintendent/designee shall appoint an ad hoc grievance review
324 committee as specified in Section (3)(d)(ii), above.

325 A. In an effort to resolve the grievance, within ten (10) work days after
326 the committee is designated, the committee shall meet with the
327 appealing party and, if deemed appropriate, may also meet with the
328 opposite party. Other persons may be presented as witnesses at the
329 meeting by either the appealing party or the opposite party.

330 B. The committee shall issue a written recommendation within ten (10)
331 work days after the meeting, determining whether any violation has
332 occurred, and if so, recommending an appropriate remedy. A copy
333 of the recommendation shall be provided to both parties, the
334 grievant's supervisor and the Director of Labor Relations (if
335 appropriate), and the Superintendent.

336 iii. The Superintendent/designee shall review the recommendation of the
337 grievance review committee and the record of the grievance. If the
338 Superintendent/designee finds that a meeting with the grievant and/or
339 accused/employee would assist in the final determination, the
340 Superintendent/ designee may recommend scheduling a meeting for the
341 purposes of this review. The Superintendent/designee's decision is the
342 final and binding decision of the District.

343 h. If the complainant is not satisfied with the results of the procedures contained
344 in this Section, he/or she may utilize other means for resolution as provided by
345 law, including seeking recourse through the federal Office for Civil Rights
346 ("OCR") or Equal Employment Opportunity Commission ("EEOC").

347 **5. Rights of Employees (Including Applicants as Defined in Section (2)(e))**

- 348 a. During any of the grievance levels, the employee (including an applicant as
349 defined in Section (2)(e)) may be represented by a person of the
350 employee's/applicant's choice once the grievance is filed with the supervisor,
351 Department of Employee Labor relations For grievances governed by Section
352 (3) that are filed by employees/applicants who choose to be represented by
353 legal counsel, the process will begin at the chief officer phase of Level 3 under
354 Section (3)(c).
- 355 b. **No retaliation or reprisals of any kind** shall be taken by any member of the
356 administration or other employee against the employee, representative, or any
357 other participant in the grievance procedure by reason of such participation.

358 **6. General Provisions**

- 359 a. Grievance report forms for filing a grievance shall be available in the
360 Department of Employee Labor Relations. Employees are to be notified of the
361 procedures in this Policy through the Policy's distribution to schools and
362 departments and its posting on the School Board Policies web site.
- 363 b. Failure of the employee/applicant to advance the grievance through the
364 procedure within the time lines designated will result in immediate dismissal of
365 the grievance.
- 366 c. If a preliminary investigation is begun regarding a complaint, the written
367 complaint and documents relating to the investigation are confidential,
368 pursuant to Fla. Stat. §§ 119.07(3)(p) & (u), 231.291(3)(a)1, and
369 231.262(1)(a), until the investigation is either concluded or ceases to be
370 active.
- 371 d. All records pertaining to a grievance shall may be filed in a separate grievance
372 file and will may not be kept in the official "personnel file" of the
373 employee/applicant, but this grievance file will be treated as provided by Fla.
374 Stat. §§ 119.07 and 231.291(4). All decisions of management are to be
375 forwarded to the labor relations department, which may be designated as the
376 custodian of those records for grievances involving a bargaining unit member.
377 However, said The grievance file is subject to disclosure pursuant to the Public
378 Records law and Fla. Stat. § 231.291(4).
- 379 e. If a grievance is filed under the grievance procedure in a collective bargaining
380 agreement, the employee may not pursue a the grievance under this

381 procedure.

382 f. ~~The grievant is precluded from processing a grievance when the subject of the~~
383 ~~grievance and/or the relief requested has been or currently is the subject of~~
384 ~~another administrative action or appeal before governmental body or agency~~
385 ~~or court proceeding.~~

386 g. The filing of a grievance shall not interfere with the right of the School Board to
387 carry out its responsibilities, subject to the final decision on a grievance.

388 7. Superintendent, Chief Counsel, and District Auditor

389 a. When the Grievant is a Direct Board Report.-- Employees who report
390 directly to the Board (Superintendent, Chief Counsel, and District Auditor)
391 shall file any grievance in writing with the Board Chair. The Chair should
392 request appropriate District personnel to begin the investigation/ resolution
393 process set forth in Section (3) or (4) above, as applicable.

394 b. When the Grievant is an Employee in the Office of a Direct Board
395 Report.-- Employees of the Office of Superintendent, Office of District Auditor,
396 and Office of Chief Counsel should file any initial grievance with their direct
397 supervisor (or the EEO Coordinator, if the allegation is based on harassment
398 or discrimination) pursuant to Section (3) or (4) above (unless the grievance is
399 against a direct Board report, in which case subsection (c) below shall apply).
400 If the grievance is not resolved at this level, the grievance may be appealed as
401 set forth under Section (3) or (4), as applicable.

402 c. When the Accused is a Direct Board Report.-- When a direct Board report
403 (the Superintendent, Chief Counsel, or District Auditor) is the accused, the
404 grievant shall file the complaint in writing with the Board Chair, who shall take
405 prompt action as specified below:

406 i. First, the Chair shall notify the accused of the complaint.

407 ii. Second, the Chair shall notify the Board of the complaint. The Board
408 shall determine if the complaint appears to merit formal investigation.

409 iii. If the Board deems the complaint to merit formal investigation, the Board
410 shall set the parameters for the investigation. The investigation should
411 seek the accused/employee's response as well as the statements of the

412 grievant and witnesses.

413 iv. If a preliminary investigation is begun, the written complaint and
414 documents relating to the investigation are confidential, pursuant to Fla.
415 Stat. §§ 119.07(3)(p) & (u), 231.291(3)(a)1, and 231.262(1)(a), until the
416 investigation is either concluded or ceases to be active.

417 v. To conduct the investigation, the Board may consider:

418 A. retaining outside special counsel (which should be an attorney or law
419 firm that is not currently retained by the Board and has not handled
420 any matters for or against the Board within the past five years);

421 B. requesting the personnel-investigation department of another Florida
422 school district to conduct the inquiry;

423 C. contracting with the DOE Office of Inspector General; or

424 D. if applicable, referring the matter to the State Attorney's Office, the
425 Commission on Ethics, or other applicable state agency.

426 vi. The Board and the employee should receive the final investigative report
427 at the same time.

428 vii. Upon receiving the report, the Board shall determine whether any action
429 is required. The accused/employee and/or the employee's representative
430 shall have a right to address the Board at the meeting where the decision
431 will be made.

432 viii. Consistent with the employment contract, if informal action such as a
433 reprimand is deemed necessary, such action may be reflected in the
434 employee's evaluation and personnel file. In accordance with the
435 employment contract, if formal action such as demotion, suspension, or
436 termination is deemed necessary, the employee shall receive appropriate
437 notice and opportunity for a hearing under Fla. Stat. §§ 120.569 and
438 120.57, and the Board's final order may be appealable pursuant to Fla.
439 Stat. § 120.68.

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- 441 STATUTORY AUTHORITY: §§ 230.22(2); 230.23(47)(22); 230.23005(11),
442 231.001, Fla. Stat.
- 443 LAWS IMPLEMENTED: §§ 119.07(3)(p) & (u); 228.2001; 230.22(1); 231.001,
444 231.291; 231.262(1), Fla. Stat.
- 445 HISTORY: 3/11/87; 9/22/99; / /02

Legal Signoff:

The Legal Department has reviewed the proposed revisions to Policy 3.31 and finds them legally sufficient for development by the Board.

Attorney

Date