



**Washoe County School District**  
Every Child, By Name And Face, To Graduation™

# Office of the General Counsel Newsletter

May 2019

Volume 1, Issue 4

## In This Issue

- To IDP or Not To IDP
- If It Isn't Written Down, It Didn't Happen
- Responding to Surveillance Video Requests
- The Ever Popular and Often Misunderstood Weingarten Rights

## Contact Us

### **Legal Department**

**Neil A. Rombardo**  
Chief General Counsel

**Christopher B. Reich**  
Deputy Chief General Counsel

**Sara K. Montalvo**  
General Counsel

**Breanne Read**  
Advanced Certified Paralegal

### **Department of Civil Rights Compliance**

**Gina C. Session**  
Director

**America Gillespie**  
Executive Assistant

### **Department of Labor Relations**

**Virginia Doran**  
Director

**Anthony Spotts**  
Labor Relations Specialist

**America Gillespie**  
Executive Assistant

### **Administrative Investigations**

**Amanda Gormley**  
Administrative Investigator

## To IDP or Not To IDP

That is the question, and much like the Bard's Danish Prince, administrators and supervisors are often confronted with a conundrum they don't know how to solve. "Should I proceed to a formal Investigatory Due Process meeting? Or would just talking to the employee be enough?"

When determining whether something rises to the level of an IDP, we advise you ask yourself the following question: *Should the allegations against the employee, if proven to be true, result in formal discipline?*

If, after asking that question, you **do not** believe you would impose formal discipline against an employee for the incident, you should proceed with informal action. Informal action is meeting with the employee, discussing the incident with him/her, and following-up in writing either with an e-mail or with a Counseling Memo. Counseling Memos are **not** discipline under state law or the Negotiated Agreements.

If you **do** believe the incident may require formal discipline, you should proceed down the route of an IDP. You would not discuss the alleged misconduct with the employee until you have drafted the Notice of IDP and Right to Representation and provided it to the employee with enough notice to review the allegations (at least two working days). Then allow the employee to secure representation, at his/her election, and conduct the IDP meeting.

Regardless of whether you proceed down an informal meeting or a formal discipline path, you should always reference the behaviors you discuss with the employee in his/her evaluation. In that way, you are also handling the situation from a performance perspective as well as a misconduct one. You do not reference the actual discipline issued in the evaluation, but only address the behaviors.

As always, if you are still unsure of what you should do with an employee's alleged misconduct, contact the Department of Labor Relations to discuss the situation and seek guidance. We are here to assist and be your sounding board. Just give us a call or send an email.

## If It Isn't Written Down, It Didn't Happen

When investigating, it is easy to overlook timely recordkeeping while we deal with other time and task constraints. Please remember that documenting conversations, incidents, and/or interviews will provide you, the investigator, with the necessary evidence to support your decision and resolve potential issues.

## Responding to Surveillance Video Requests

With surveillance cameras becoming more common in school districts, the U.S. Department of Education Family Policy Compliance Office (FPCO) recently provided guidance on how to provide requested video footage without violating the Family Educational Rights Protection Act (FERPA).

## Quick Tips/Links

- Office of the General Counsel webpage
- Civil Rights Compliance Forms
- Staff Resources – Student Bullying Complaints, Investigation and Resolution Process

## Topics for Future Newsletters

- Do you have a topic you would like covered in a future OGC Newsletter? Email your ideas or areas of interest/questions/concerns to [bread@washoeschools.net](mailto:bread@washoeschools.net) for consideration of coverage in a future issue.

### Upcoming Staff Training Dates

- **Civil Rights Compliance**
  - Look for an upcoming training with School Police (details to follow)
- **Labor Relations**
  - ✓ Conducted in the West Conference Room from 4:00 to 6:00
  - ✓ Open to all administrators and supervisors
  - ✓ Register thru MyPGS
  - Thursday, September 5, 2019
    - Navigating the Certified Contract
  - Tuesday, October 1, 2019
    - Navigating the ESP Contract
  - Tuesday, November 5, 2019
    - Discipline & Due Process for Certified Staff
  - Tuesday, December 3, 2019
    - Discipline & Due Process for ESP Staff

General surveillance videos are not education records protected by FERPA. However, if the surveillance video captures a fight between students, Neil and Chris, and the school maintains the video for purposes of discipline, the video becomes an education record. Up until 2017, a district could deny access to a video if it showed other children. Now, the FPCO encourages districts to redact the other children from the video, if possible without extreme costs and/or futility. When faced with a request for a video, we recommend the following:

- **Determine whether the video is an education record.** Keep in mind, a bus video detailing an accident does not involve a particular student and is not an education record.
- **If the video is an education record, try to obtain consent from the other student's parents.** In the altercation between Neil and Chris, if Neil's parents request the video, attempt to obtain consent from Chris' parents. Even if Chris' parents do not consent, Neil's parents may still view the video. **Please note you do not have to provide a copy of the video, and we recommend against it.** Keep in mind, the video is not an educational record for student bystanders watching the altercation.
- **If you cannot obtain consent, try to redact images of other children.** Redact the images to the best abilities of the District. If blurring the image is not enough, try to block out the images of other children. If redaction makes the video useless, it does not need to be shown.
- **Call Legal.** We are here to help.

---

## The Ever Popular and Often Misunderstood Weingarten Rights

In short, if being questioned by administration, public employees in Nevada may have a union representative attend the questioning if the employee believes (subjective test) that discipline may ensue as a result of the questioning. The law requires the employee to invoke the Weingarten Right. **However**, if you, as the administrator, believe the employee may be subject to some level of discipline based on answers to questions at the meeting, it is a good practice to inform the employee that he/she may want a representative at the meeting. The Department of Labor Relations has a template "Notice of Investigatory/Due Process with Rights of Representation" letter for use by District administrators.

At times, employees and/or union representatives want the union representative at meetings when there is no possibility of discipline. There is no right to representation for evaluations or counseling meetings. If the employee states he/she believes the meeting may result in discipline and the administrator is certain no discipline will result, the administrator can alleviate that subjective apprehension by clearly informing the employee that no discipline will result. With the subjective apprehension gone, so is the right to representation. Keep in mind that it may behoove you as an administrator to invite the union representative to some of these non-discipline type meetings. The union representatives who work in this District can be very helpful and contribute in a positive way with employee evaluations and counseling. It is important to build good working relationships with the union representatives. Keep in mind that if your invited guest acts inappropriately or becomes disruptive to your meeting, you have the right to ask that guest to leave.

The Local Government Employee-Management Relations Board (EMRB) case [Education Support Employees' Association v. Clark County School District, et al., Case No. A1-045782, Item No 568B Decision and Order \(2005\)](#) ("Item No 568B") discusses the Weingarten Rights for public employees in Nevada. It is a good read and gives a good indication where the Clark County School District administrators went afoul and where you should avoid going. The union representative may take an "active role in assisting the employee." (See Item No 568B at page 14, paragraph 6).

Please contact the Department of Labor Relations if you have any questions.