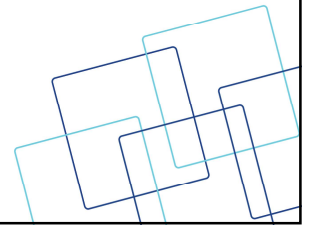




# Navigating the Maze of Employee Complaints and Investigations

Presented by: Eleanor M. Welke

Tulare County Office of Education  
January 25, 2023



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## Presenter

### Eleanor M. Welke

#### AT LOZANO SMITH

Eleanor M. Welke Partner in Lozano Smith's Los Angeles office. She is a member of the Labor and Employment and Student Practice Groups. Ms. Welke provides legal advice to administration on personnel matters, including discrimination, retaliation, sexual harassment, employee discipline, investigations, disability accommodations, and the Americans with Disabilities Act. Ms. Welke has extensive experience representing clients in both California State and Federal Courts and in front of administrative bodies, including the Equal Employment Opportunity Commission, Department of Fair Employment and Housing, and the California Labor Commissioner.



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## Goals and Objectives

- Understand the purpose of investigations.
- Recognize when urgent measures need to be taken in response to allegations of misconduct.
- Be familiarized with the District's complaint policies.
- Identify the necessary steps needed to conduct an investigation from start to close.



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## Individual Exercise No. 1: Meet Ms. Rose and Moody

Please turn to Individual Exercise No. 1

- Please read the Complaint you received against Ms. Moody from this morning.
- As we go through each step of this complaint investigation training, we are going to apply those steps and process Ms. Rose's Complaint.



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# 12 Steps for Effective Investigations

## Step 1 Receiving the Complaint



## Receiving a Complaint

### TYPES OF COMPLAINANTS

- Student
- Parent
- Employee
- Member of Public
- Anonymous Person

### TYPES OF COMPLAINTS

- Verbal
- Written
- No Complaint (Rumor or Observation)
- Formal v. Informal



## 12 Steps for Effective Investigations

### Step 2 Urgent Measures



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## Urgent Considerations



- Supportive Measures
- Paid Administrative Leave
- Student Suspension
- Mandated Report
- Criminal Acts
- Complainant's Request



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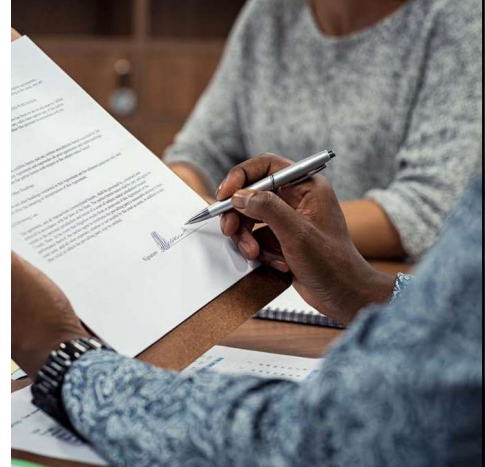
## Reporting Obligations

### Mandatory:

- If reasonable suspicion of child abuse or neglect, then follow mandated reporter obligations

### Discretionary:

- If potential criminal activity, call law enforcement
- If the allegations involve a student, determine whether the parents of the student should be notified



## 12 Steps for Effective Investigations

### Step 3 Assessing the Nature of the Complaint



## Assessing the Nature of the Complaint and/or Misconduct

- Conduct initial discussion with Complainant and obtain witness statements, if needed.
- Can this be informally resolved?
- Should a formal investigation be initiated?
- What policy applies?



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## Policies and Procedures for Investigating Employment Complaints

### POLICIES TO REVIEW WHEN ANALYZING COMPLAINTS:

- BP/AR 1312.1 – Complaints Concerning District Employees
- BP/AR 1312.3 – Uniform Complaint Procedures
- BP/AR 4030 – Nondiscrimination in Employment
- AR 4031 – Complaints Concerning Discrimination in Employment
- BP/AR 4119.11/42119.11/43119.11 – Sexual Harassment
- BP/AR 4119.12/42119.12/43119.12 – Title IX Sexual Harassment Complaint Procedures
- BP/AR – 4119.21/4219.21/4319.21 – Professional Standards



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## Hypotheticals: Which BP/AR applies?

- A parent sends you an email alleging his daughter is being discriminated against by her science teacher. The parent states that the teacher, a white male, has been giving the daughter, an African American student, lower grades on her chemistry quizzes, tests, and homework despite having the correct answer, and that he makes the daughter argue for each point. He stated that, each time his daughter gets the right answers on her schoolwork but that the teacher marks it as incorrect and makes her argue with him as to why her answer is correct. She states that she has to argue with her teacher on every assignment. He says this is causing his daughter to hate school and causing tension between himself and his daughter. The parent told you that he tried to talk to the teacher but the teacher brushed him off and told him he did not have time to meet with him. The parent believes that the teacher's conduct is inappropriate and that it is based on his daughter's race.



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## Hypotheticals: Which BP/AR applies?

- One of the teachers comes to you and informs you that Mr. E. has been coming to her classroom during the lunch period and has been having lunch with her in her classroom. She did not invite him, but did not tell him to leave, and does not know how to tell him to stop. She has implied that she does not want him to come to her classroom during lunch, but he continues to stop by every day. He has been asking increasingly personal conversations about her dating life, her friends, and her family, as well as increasingly moving closer and closer to her desk every day. She came to you today because he asked her where she lived today and said he would love to stop by. She said she does not want to answer his questions, but she feels like she needs to because he is the teacher's department head. She has heard that he does not take kindly to people not agreeing with him and she is worried that he will retaliate against her if she tells him know. She just started working for the District this school year.



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## Hypotheticals: Which BP/AR applies?

- A classified employee walks into your office to tell you that she has been frustrated with the way her supervisor has been speaking with her for the last several years. She said that today was the final straw when he snapped at her about not three hole punching the documents he had her copy the day before. She said that he is rude and that he yells at her in front of her co-workers. She said that she believes he is going to write her up for her mistakes, but she believes that is totally unfair because he does not explain her assignments well and then yells at her when she does not do the assignments perfectly. She tells you that he is creating a hostile work environment and that she is seeing a doctor about her increased anxiety. She said the doctor is going to place her off work for two weeks.



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## Individual Exercise No. 2: Applicable Policy?

- Please turn to Individual Exercise No. 2.
- Let's apply this to Ms. Rose's Complaint.
- What policy do you think applies to the Complaint against Ms. Moody?



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## 12 Steps for Effective Investigations

*Step 4*

### Send Notice of the Investigation



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## Determining who is the Appropriate Investigator

- School Site Supervisor or Administrator
- HR
- Outside Investigator



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## Send “Notice” Letters to Complainant and Respondent

- Promptly send Acknowledgment of Receipt of Complaint to Complainant(s)
- Promptly send Notice of Complaint to Respondent(s)



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## Initiating the Investigation

- Consider when the letter will go out and what it should say.
- The letter may simply acknowledge receipt and promise follow-up or be more specific by indicating who will be investigating and the policy under which it will be investigated.
- Do not make promises with respect to timelines.
- Never direct the employee to keep the matter strictly confidential.
- Be sure to proofread and to cite to the proper policy.



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## 12 Steps for Effective Investigations

### Step 5 Frame the Scope



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## Understand the Scope- Frame the Allegations

- Prepare clear and concise “yes or no” questions or statements that the investigation will answer or address.
- Do not include legal terms such as “discriminated,” “harassed,” or “retaliated.”
  - Bad example: Did Suzie discriminate against Joe?
  - Good example: Did Suzie issue Joe a letter of reprimand for legitimate reasons consistent with District policy?
- Avoid ambiguous and subjective words such as “inappropriate” and “unfair.”
  - Bad example: Did Suzie act mean and unfairly toward Joe?
  - Good example: Did Suzie tell Joe “Go to Hell?”
- Make sure all relevant claims are included in the allegations. (Or, if you excluded something, be prepared to explain why.)



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## Let's Review Our Prior Hypotheticals

- How would you frame the scope of the following complaints:
  - The father who believes that his daughter's teacher is marking her schoolwork incorrectly based on her race?
  - The teacher whose department chair is making her uncomfortable?
  - The classified employee who alleges that her supervisor is treating her unfairly.



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## Individual Exercise No. 43: Framing the Scope.

- Please turn to Individual Exercise No. 3.
- How would you frame the scope of the Complaint against Ms. Moody?
- What factual and policy questions do we need to be able to answer?



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## 12 Steps for Effective Investigations

### Step 6 Gather, Review, and Preserve Evidence



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## Reviewing and Preserving Evidence

### Documentation & Evidence

- Emails
- Phone records
- Attendance records
- Security records
- Computer records/files
- Complaint
- Internet usage and websites visited
- Voicemail messages
- Pictures
- Audio/Video
- Credit Card Receipts
- Observing Locations

*\*Note: If you receive a document from a witness, make sure to note who provided the document, when it was received, and how it was received.*



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## Electronic Searches

4<sup>th</sup> Amendment: illegal search and seizure



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## Reasonable Expectation of Privacy

- Bags, purses, drawers, cabinets—what can you search?
- Electronic devices—what can you search?
  - Just because it's a district device doesn't mean the user has no reasonable expectation of privacy
  - Search of personal emails on government server may violate 4th Amendment rights.
  - *In re Grand Jury Subpoena (U.S. v. Kitzhaber* (9th Cir. July 13, 2016) 828 F.3d 1083 (9<sup>th</sup> Cir. 2016).)
  - SB 178 instituted a clear, uniform **warrant rule** for electronic information.



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## Child Pornography

- Call HR and Police Department right away before touching anything
- Third party witness
- Track chain of custody

**Warning:** It is a state and federal crime to possess and/or distribute child pornography. There is no exception for school administrators or investigators.



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## 12 Steps for Effective Investigations

### *Step 7* Make a List of Witnesses



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## Preparing to Conduct Interviews

- Prepare your list of witnesses to interview.
- Complainant, Respondent, other witnesses who you believe have knowledge of the allegations.

### Other Considerations

- Consider potential conflicts of interest.
- Consider location, timing, and order.



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## Individual Exercise No. 4 – The Witness List

- Please turn to Individual Exercise No. 4.
- Who do you need to interview for Ms. Rose’s Complaint?
- Any other evidence you need to preserve or collect?



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## 12 Steps for Effective Investigations

### Step 8 Draft Questions for and Interview the Complainant



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## Interview with the Complainant

- Start with Complainant, then witnesses, and end with Respondent.
- Set the stage for why you are interviewing the person.
- You want to let the Complainant tell his or her story. However, always have an outline of questions or issues prepared to help guide the Complainant if needed and to be sure you hit important issues.
- Be flexible, but also be sure you are able to go back and understand chronology and order of events.
- Never promise complete confidentiality.
- Take legible notes and label them.



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## Trauma-Informed Approach

- Do NOT Victim-Blame
- Choose a Comfortable Setting That is Not Triggering
- Build Rapport
- Ask Difficult Questions With Care - Explain Why You're Asking the Question
- Allow the Witness to Freely Speak and Then Ask Follow Up Questions



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## 12 Steps for Effective Investigations

*Step 9*  
Conduct Interviews of Witnesses and Respondent



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## Witness Interviews

- Start with an outline of questions, but be flexible.
- Avoid leading questions. Start broad and then drill down.
  - Ex: Who, what, where, when, who did you tell and when?
- Use the outline as more of a roadmap for issues you need to touch on with each witness.
- Keep in mind big picture goals.
- At the end, ask: Is there anything else?
- Take legible notes.



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## Common Questions and Issues

- What if the witness is a minor?
- What if the witness is biased or lies?
- Do all witnesses get a union representative or support person?
- What if the witness refuses to be interviewed or wants their identity to remain confidential?



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## Lybarger/Spielbauer Warning/Rights



- Fifth Amendment Protection Against Self-Incrimination
- Spielbauer/Lybarger Warning – Public employees may be compelled to answer potentially incriminating questions about their job performance as long as they are not required to waive the constitutional protections.



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## Fifth Amendment Rights for Students

- School cannot use student's silence during an investigation against them in a disciplinary proceeding as an admission of guilt.
- However, you may inform the student of the impact of withholding their side of the story.



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## Recording the Interview



- Take detailed notes or have a second administrator or confidential employee involved to take notes
- Audio or video recording—pros and cons



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## Confidentiality & Preserving the Integrity of the Investigation

- Confidentiality cannot be promised to a witness. Reassure witnesses that you will maintain confidentiality to the extent possible.
- Witnesses themselves should maintain confidentiality to the extent necessary to protect the integrity of the investigation (excluding discussions with their union representative or lawyer).
- Explain that the integrity of the investigation requires witnesses to maintain confidentiality.



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## Prohibition Against Retaliation

- Individuals who make complaints and/or those who cooperate in an investigation must be protected from retaliation.
- Parties should be told that retaliation violates the law and District policies. Respondent should be warned not to retaliate.
- Examples include, but are not limited to the following: terminations or demotions, changes in assignments or schedules, being ostracized or the subject of gossip, etc.
- Retaliation can occur at any time, not only right after an incident is reported or an investigation is started.



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## Individual Exercise No. 5: Questions for Complainant and Respondent

- Please turn to Individual Exercise No. 5
- What questions do you have for Complainant (Ms. Rose) and Respondent (Ms. Moody)?



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## 12 Steps for Effective Investigations

### Step 10 Conduct Additional Interviews If Needed



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## Conduct Additional Interviews

- Review your witness summaries and evidence and ask yourself if there are any holes.
- Do you have all the information you need to thoroughly address each allegation?
- It is ok to conduct follow-up interviews of witnesses if needed.



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## 12 Steps for Effective Investigations

### Step 11 Prepare the Report and Findings



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## Content of Investigation Report

*The investigator is the finder of fact and must make factual findings based upon the credibility of witnesses and the quality of other types of evidence*



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## Individual Exercise No. 6: Questions for Complainant and Respondent

- Please turn to Individual Exercise No. 6
- Let's review the facts gathered during your investigation.



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## Legal Framework

Preponderance of the  
Evidence  
(Standard for Investigations)



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## Credibility Determinations

1. Demeanor;
2. Inherent plausibility;
3. Motive to lie;
4. Corroboration, or lack thereof;
5. Past record of conduct;
6. Opportunity and capacity to observe/actual knowledge;
7. Consistent or inconsistent statements;
8. Reputation for veracity or deceit; and
9. Bias.



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## Investigation Findings

- Best practice is to document the outcome of the investigation in separate complaint findings letters to the Complainant and the Respondent.
- Use template as a starting point.
- Content of the complaint findings letters will depend on which Board Policy you are processing the complaint under.
- Need to have specific factual findings based on the scope questions.
- Need to make sure to have policy findings / conclusions of law when required (*i.e.* discrimination and harassment claims based on a protected class).



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## Independent Exercise No. 7: Factual and Policy Findings

- Let's Check in With Our Investigation Regarding Ms. Moody.
  - Previously we:
    - Reviewed the allegations against Ms. Moody.
    - Determined which policies applied.
    - Framed the allegations by drafting investigation scope questions.
    - Crafted questions to ask the Complainant and Respondent.
    - Created a witness list.
    - Reviewed the evidence gathered during our investigations.
  - Now let's look at the results of our investigation and practice drafting our factual and policy findings.



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## 12 Steps for Effective Investigations

### *Step 12* Corrective Action and Tying Up Loose Ends



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## Corrective/Supportive Actions

### OPTIONS

- Staff/student discipline (various forms).
- Ensuring no retaliation.
- Additional support for victims or witnesses.
- Generalized training for staff/students in class, school, or district-wide.
- Generalized notification of policies/rules.
- Increased monitoring and check-ins.
- Changes to District practice.



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# FAQS

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## FAQs

- How do I respond to a union request for a copy of complaint?
- How do I address non-cooperative respondent(s) and/or witness(es)?
- How do I address interviewing a complainant/respondent or witness that is out on leave?
- How does the validation meeting process with a union-represented respondent relate to an investigation?
- How do I address complainant/respondent or witness interviews during summer?
- Is a Commission on Teacher Credentialing (CTC) report required?
- Have all mandated reporter duties been satisfied if child abuse or neglect is at issue?



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## Questions



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# Lozano Smith

ATTORNEYS AT LAW

## **INDIVIDUAL EXERCISE NO. 1:**

**Please take five minutes to review the written Complaint against Ms. Moody you received from her Instructional Aide, Ms. Rose, this morning.**

January 25, 2023

District Human Resources Department  
Problem Elementary School  
Problem Unified School District  
123 School Street  
Problem City, CA 12345

Dear District Human Resources Department:

I am submitting this letter as a complaint against third grade teacher, Ms. Moody. I do not wish for you to share this complaint with Ms. Moody, because I fear that she will retaliate against me. I have been assigned to work in Ms. Moody's class since the beginning of the school year. I have tried to work with her and put up with her inappropriate behavior but cannot take it any longer. At this point, I feel that my mental health is suffering, and I struggle to get to work every day. Simply stated, she is rude and disrespectful, and has subjected me and others to bullying behavior over the last year. I feel harassed on a daily basis and believe that she is treating me unfairly.

I am writing this complaint now because, on Monday morning, Ms. Moody screamed at me in class in front of students and told me "get your act together," while raising her arm in a sweeping motion when she learned that that I had forgotten to put together the folders for the science project that we planned to do today. I emailed her yesterday about how this incident made me feel and Ms. Moody responded with a snarky three-line response denying the incident and accusing me of not doing my job and being unprepared. However, I believe that the class parent Ms. Sam was in the room and witnessed Ms. Moody yell at me that day, as well as other days during the school year.

Another time, when I reported that one of the students forgot their reading book at home during silent reading, she slapped her ruler on my table and yelled me, telling me to help him pick another book. I was so startled and so were the students in my reading group. I fought back tears while in class the rest of that day. Another instructional aide, Ms. Kate was passing by the class when this happened, and I remember her peeking her head in to see what was going on. These are not the only times that she has yelled at me too. She has been yelling at me and talking to me in a rude tone of voice all year.



I also believe that Ms. Moody is acting inappropriately with the students. I have been in the school yard before when students are lined up and waiting to be led inside by Ms. Moody. I have seen her lose her patience with children fidgeting in line (and she yells at me to keep them in line). It seems to me that she mostly picks on the Hispanic students in the class and, being Hispanic myself, I have started to wonder if that is why she treats me the way that she does.

In speaking to other instructional aides who have worked with Ms. Moody in the past, I know I am not alone in my feelings about her. The other day, I had a parent express concern about Ms. Moody's behavior to her child as well. I have heard the other children say that Ms. Moody is mean and scary and that she treats some kids differently than others.

I feel that I can no longer work with Ms. Moody and cannot keep quiet about her harassment and discrimination against me any longer. I also think that Ms. Moody does not appear to be well suited to work with young children. I have spoken to Principal Sarah about these incidents and my concerns with Ms. Moody, but I don't feel like she took appropriate action in response to my complaints. I request that you look into this matter immediately and that you transfer me to another classroom.

Sincerely,  
Ms. Rose – Upset Instructional Aide.

**INDIVIDUAL EXERCISE NO. 2:**

**Under what policy should Ms. Rose's Complaint be investigated and analyzed?**

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Why?

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**INDIVIDUAL EXERCISE NO. 3:**

**What is the scope of the investigation?**

**Based on the allegations in Ms. Rose's written Complaint, what do you think is the scope of the investigation? Brainstorm three factual scope questions that you believe the investigation will need to answer?**

1. \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

2. \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

3. \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Based on the allegations in the written complaint, what policy findings / conclusions of law do you believe will need to be made after the investigation is complete?**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**INDIVIDUAL EXERCISE NO. 4:**

**Based on your scope questions above, brainstorm six witnesses you will need to interview in this investigation and whether there is any other evidence you should collect.**

**Witnesses?**

1. \_\_\_\_\_

2. \_\_\_\_\_

3. \_\_\_\_\_

4. \_\_\_\_\_

5. \_\_\_\_\_

6. \_\_\_\_\_

**Other evidence to preserve or collect?**

1. \_\_\_\_\_

2. \_\_\_\_\_

3. \_\_\_\_\_

**INDIVIDUAL EXERCISE NO. 5:**

**Based on your scope questions, think about how you would start the interview with Complainant and Respondent. Also, brainstorm two (2) questions you want to ask to get more information from the Complainant during an intake interview and Respondent during her interview.**

Sample Introduction Statements To Complainant And Respondent

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Questions for Complainant Ms. Rose

1.

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2.

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Questions for Respondent Ms. Moody

1.

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2.

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## **INDIVIDUAL EXERCISE NO. 6:**

**Please take 10 minutes to review the facts that you collected during the investigation. After you review the facts, please answer the two questions at the bottom of Exercise 6 regarding whether you would sustain or deny Allegation No. 1 (below) of the Complaint.**

**ALLEGATION NO. 1:** Ms. Moody slapped her ruler on Ms. Rose's table in November of 2022, yelled at Ms. Rose, and told her that Ms. Rose needed to help find Student 1 another book.

### **SUMMARY OF THE FACTS FROM THE INVESTIGATION:**

- **COMPLAINANT MS. ROSE:**
- Ms. Rose was interviewed. In addition to what is in her written Complaint, she stated that the incident with Ms. Moody when Ms. Moody yelled at her and told her to get her act together took place on January 23, 2022. Ms. Rose stated that she believes that Ms. Sam (the class parent) witnessed that statement but is not positive. Ms. Rose stated that she does not recall the exact date that the incident with the ruler occurred, but it was sometime in November before Thanksgiving because they were working on putting together their turkey paintings in Art the same day.
- Ms. Rose stated that she is Hispanic but admitted that she did not have any other facts or incidents to support her feeling that Ms. Moody “mostly picks on Hispanic students” or that she treats Ms. Rose differently because Ms. Rose is Hispanic. Ms. Rose stated that she just “has a feeling” that she has. She admits that her conversations with the other instructional aides and parents have been about how Ms. Moody is mean and scary to the students and staff and that she thinks that maybe this might be happening to everyone. She admits that she mostly said that she believes that Ms. Moody is treating kids differently because everyone feels that the treatment is completely unfair and unwarranted. Ms. Rose refused to provide the names of the other parents referenced in her complaint letter. Ms. Rose did say that you should speak with the other instructional aides who have worked with Ms. Moody over the years.
- Other than Ms. Rose's feeling that she was being treated differently because she is Hispanic and that she believes that Ms. Moody is stricter with Hispanic children, there was no other evidence in any of the interviews. Ms. Rose stated that Ms. Moody has never said anything to her regarding the fact that she is Hispanic or has said anything derogatory or inappropriate about Ms. Rose's race or national origin.
- **STUDENT WITNESSES:**
- The three students who were sitting at Ms. Rose's reading table during the ruler incident. All three students recalled without prompting the day that Student 1 forgot his reading book at home and did say that Ms. Moody did yell at Ms. Rose on that day. Student 1 said that he recalled that Ms. Moody told Ms. Rose to help him get another book. Students 2 and 3 did not remember what Ms. Moody said, only that she yelled at Ms.

Rose. Student 1 and Student 2 remembered that Ms. Moody had a ruler in her hand and that she hit the table with the ruler when she yelled at Ms. Rose, but they could not remember how hard she hit the table with the ruler. Student 3 remembered that Ms. Moody had a ruler but did not remember her hitting the desk with it. All three students recalled that Ms. Rose was upset that day and looked like she was going to cry. Students 2 and 3 said that they remembered being startled by Ms. Moody that day and that it made them afraid to forget their books at home like Student 1.

- Student 1 stated that he got scared when Ms. Moody did that and that he wanted to cry but did not want to cry in front of his friends. Student 1 said that he cried when he got home. Sam said he got so scared. He wanted to cry, but he did not want to cry in front of his friends, so he held it in until he got home. He thinks Ms. Kate was in the room, but he can't remember.
- Five other kids in Ms. Moody's class were randomly selected to be interviewed. Three of the five students interviewed said that they saw Ms. Moody slap a ruler on the table one time. They described the ruler slap as "loud," and "super scary." The other two students witnesses did not witness the slap. The attendance clerk confirmed that all five students were present in class on the day of the incident. None of the kids interviewed could remember if Ms. Sam was in class during that time. None of the students recalled Ms. Moody ever saying "get your act together" to Ms. Rose. None of the students believed that Ms. Moody treats any particular students differently and said that she can be mean sometimes to everyone.
- Four other students who identified as Hispanic were randomly selected to be interviewed from Ms. Moody's class. None of those students reported any concerns about Ms. Moody or her class but did say that she seems mad a lot. The students reported that she does not seem to get madder at any specific students, but that she seems to be mad at all of them every day.
- CLASS PARENT MS. SAM:
- Ms. Sam was interviewed. Ms. Sam is the class parent for Ms. Moody's 3<sup>rd</sup> grade class. She stated that she is in Ms. Moody's class every day, but not all day. Often, she is there in the morning during math but not always. She is usually in and out of the classroom when she is there performing various tasks. She did not witness any incident where Ms. Moody slammed a ruler on any table desk. She also does not recall ever hearing Ms. Moody say "get your act together" to Ms. Rose. However, she has seen Ms. Moody hold the ruler as a pointer to point to certain things on the bulletin board. Overall, Ms. Sam said she thinks that Ms. Moody is too harsh with the children and Ms. Rose and raises her voice in a way that is inappropriate for 3<sup>rd</sup> graders. Ms. Sam reported that she does not believe that Ms. Moody treats Hispanic students differently (or more harshly) than the other students. Ms. Sam said that she has never heard Ms. Moody say anything inappropriate based on anyone's race or national origin. Ms. Sam reported that she believes that Ms. Moody is too harsh with all of the children and that she has witnessed her raise her voice towards each child in the class at some point during this school year. Ms. Sam has not witnessed anything that would suggest that Ms. Moody treats students

or Ms. Rose differently because they are Hispanic. Ms. Sam's son is in the class, but she reports that he has otherwise been happy with Ms. Moody as a teacher this year.

- INSTRUCTIONAL AIDE MS. KATE:

- Ms. Kate was interviewed. She said that she often walks past Ms. Moody's classroom and waves to the students and Ms. Rose. She does not recall ever hearing Ms. Moody slap a ruler on a table or yell at Ms. Rose. She said that Ms. Rose did tell her that Ms. Moody told her to "get her act together" in January but does not recall her telling her about an incident where she hit a ruler on the desk. Ms. Kate used to work in Ms. Moody's class. Ms. Kate said that she finds Ms. Moody to be tough on the students and staff but she did not have any problems with working in that classroom. Ms. Kate stated that she does not take anything personally and just gets her work done every day. She said that she knows that Ms. Rose is much more sensitive than she is so she believes that it would have been harder for Ms. Rose to deal with Ms. Moody's personality.

- INSTRUCTIONAL AIDE MR. H:

- Mr. H is an instructional aide who worked for Ms. Moody three years ago for two full school years. Mr. H. was also interviewed. His report was very similar to Ms. Kate's report of Ms. Moody. He stated that he worked with Ms. Moody for two years. He stated that Ms. Moody is a tough teacher, and she demands perfection from her students and her instructional aide. He said that she is very direct when she speaks with people and that her tone of voice may be considered rude by others. He did not recall Ms. Moody ever yelling at him or slapping a desk or table with a ruler. He did say that she can be harsh and that she does raise her voice at times. Mr. H stated that he has talked to other instructional aides' and other parents about how Ms. Moody could improve her manner of communication in that regard. However, Mr. H. stated that he believes that Ms. Moody is a good teacher.

- RESPONDENT MS. MOODY:

- Ms. Moody denied "slapping" on the table with the ruler although she does admit to holding the ruler often during the school day to use to point towards things on the board. She said that she has been having problems with Ms. Rose all year. She said that Ms. Rose seems distracted and frazzled every day. She only gets about half of her assigned tasks completed each day and seems unable to problem solve at all. She does recall being frustrated on one occasion when Ms. Rose told her that one of the students forgot his reading book. Ms. Moody denied yelling at Ms. Rose on that incident (in addition to denying that she slapped the ruler on the desk). She said that she asked Ms. Rose to help the student find another book. Ms. Moody admitted that she probably sounded frustrated because that is something that Ms. Rose should have been able to problem solve for herself and should not have bothered Ms. Moody about it, who was working with a different group. Ms. Moody did admit that she is known as a tough teacher and that she does raise her voice at times when she needs to. Ms. Moody denies ever treating Ms. Rose or any students differently because they are Hispanic and stated that she would never do so. She said that she holds everyone to the same high expectations.



- PRINCIPAL SARAH:

- Principal Sarah reported that Ms. Moody has been at the site for 6 years. Principal Sarah received at least two complaints against Ms. Moody in the past two years. One complaint generally reported that Ms. Moody made “rude” comments in class. The other complaint alleged that Ms. Moody threw a student’s notebook on the floor after noting that the student had not completed his homework from the night before. However, the Principal, after looking into these complaints, was not able to sustain the allegations and did not issue any kind of disciplinary notice to Ms. Moody. Principal Sarah described Ms. Moody as one who “is not warm and fuzzy,” and has a reputation for being very strict with the students.

**YOUR FACTUAL FINDINGS:**

1. Is Allegation No. 1 Sustained, Not Sustained, or Partially Sustained? \_\_\_\_\_

\_\_\_\_\_

2. On what facts to you base this factual finding?

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

## **INDIVIDUAL EXERCISE NO. 7:**

**Now that we have a factual finding, please review the non-discrimination policy below and make a policy finding regarding whether Ms. Moody's conduct in Allegation No. 1 rose to the level of violating that policy.**

**NOTE: Please remember that this is only sample language and that you will need to use your own district's / county office of education's non-discrimination / harassment policy.**

### Non-Discrimination / Harassment – BP/AR 4030

The Board of Trustees is determined to provide a safe, positive environment where all district employees are assured of full and equal employment access and opportunities, protection from harassment and intimidation, and freedom from any fear of reprisal or retribution for asserting their employment rights in accordance with law. For purposes of this policy, employees include job applicants, interns, volunteers, and persons who contracted with the district to provide services, as applicable.

The District's Board Policy and Administrative Regulation 4030 – Nondiscrimination in Employment Harassment – provides that no district employee shall be discriminated against or harassed by any coworker, supervisor, manager, or other person with whom the employee comes in contact in the course of employment, on the basis of the employee's actual or perceived race, color, ancestry, national origin, age, religious creed, marital status, pregnancy, physical or mental disability, medical condition, genetic information, military and veteran status, sex, sexual orientation, gender, gender identity, gender expression, or association with a person or group with one or more of these actual or perceived characteristics

Discrimination in employment based on the characteristics listed above is prohibited in all areas of employment and in all employment-related practices, including the following:

1. Discrimination in hiring, compensation, terms, conditions, and other privileges of employment.
2. Taking of an adverse employment action, such as termination or the denial of employment, promotion, job assignment, or training.
3. Unwelcome conduct, whether verbal, physical, or visual, that is so severe or pervasive as to adversely affect an employee's employment opportunities, or that has the purpose or effect of unreasonably interfering with the individual's work performance or creating an intimidating, hostile, or offensive work environment.
4. Actions and practices identified as unlawful or discriminatory pursuant to Government Code [12940](#) or 2 CCR [11006-11086](#).

The Board also prohibits retaliation against any district employee who opposes any discriminatory employment practice by the district or its employees, agents, or representatives or who complains, testifies, assists, or in any way participates in the district's complaint process pursuant to this policy.

**YOUR POLICY FINDINGS:**

Following a complete and thorough investigation, and based on the factual findings, the following conclusions of law were made as set forth below:

**ALLEGATION NO. 2:** Based on the Findings of Fact set forth above, and based on a preponderance of the evidence standard, the allegation that Ms. Moody slapped her ruler on Ms. Rose’s table in November of 2022, yelled at Ms. Rose, and told her that Ms. Rose needed to help find Student 1 another book was sustained. The preponderance of the evidence in this investigation found that \_\_\_\_\_

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As such, the investigation [**DID / DID NOT**] find that the conduct that was sustained rose to the level of a violation of BP/AR 4030

Disclaimer: These materials and all discussions of these materials are for instructional purposes only and do not constitute legal advice. If you need legal advice, you should contact your local counsel or an attorney at Lozano Smith. If you are interested in having other in-service programs presented, please contact [clientservices@lozanosmith.com](mailto:clientservices@lozanosmith.com) or call (559) 431-5600.

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