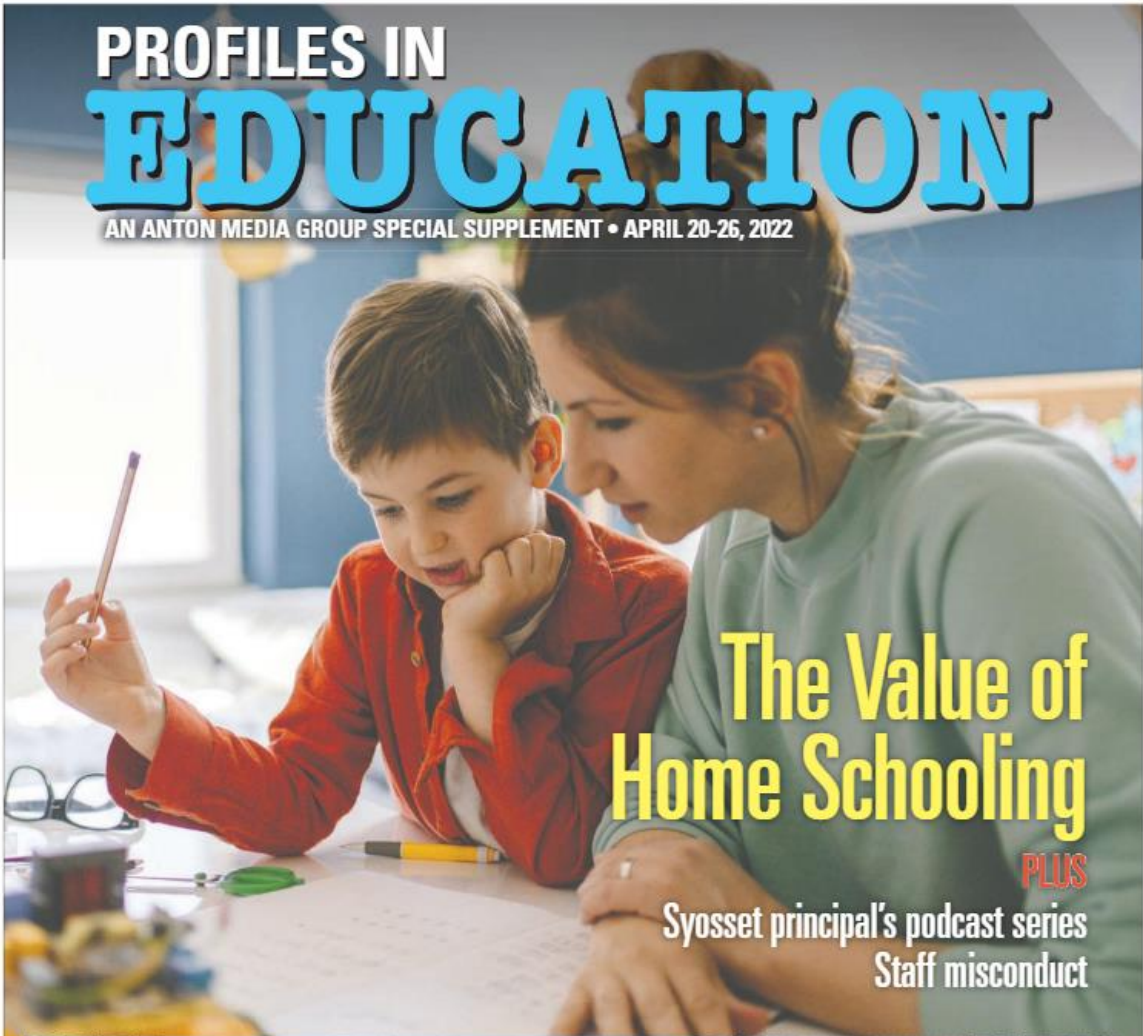


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How Schools Should Handle Employee Misconduct

BY LAWRENCE J. TENENBAUM, ESQ.
specialsections@antonmediagroup.com

We've all seen headlines about misconduct by teachers or other school employees. It may seem like it is simple—fire the employee. But firing a school employee may require a hearing. In addition, school officials should, and are often required to, perform an official investigation before taking

any action. How school officials investigate misconduct can affect the school's reputation, environment, and operations. Further, the school could be exposed to liability if the investigation is not properly conducted, and appropriate action is not taken.

As an attorney who focuses on education law and public sector labor and employment law, I offer the following practical advice on how schools should handle an investigation

effectively and what the public should expect before seeing any results:

Step 1: Intake

Typically, the complainant, if any, will be interviewed early in the process. If wrongdoing is uncovered by means other than a complaint, the school should speak with the source of the concern.

Step 2: Gather Evidence

Schools need to gather documents

and other evidence to establish a record to corroborate or disprove wrongdoing. Evidence might include letters, memos, emails, voicemail or text messages, phone records, footage from security cameras, etc. When applicable, computers, hard drives, flash drives, tablets and phones should be examined, and in some cases secured to protect the information.

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Step 3: Interviews

The first witness will typically be the complainant, if there is one. Other witnesses, if any, should be identified and interviewed to gather additional and/or corroborating evidence. The accused is typically interviewed toward the end of the investigation. He/she may be entitled to certain rights during the investigation and should be given an opportunity to present his/her side of the story. A tenured teacher generally cannot be compelled to provide self-incriminating information and may be entitled to refuse to answer questions in any pre-hearing investigation.

Step 4: Evaluate the Evidence

Investigations often result in conflicting information and sometimes come down to one person's word against the word of another. Determining the credibility of witnesses is particularly important in such situations. Schools need to consider whether a witness' statements make sense when considered alone, whether the evidence tends to support one account over another and whether any facts have been corroborated or refuted by credible evidence. Assessing the demeanor of witnesses is also appropriate in making credibility decisions.

Step 5: Reach a Conclusion and Take Action

Once the school reaches a conclusion regarding guilt or innocence, they can implement corrective action as appropriate such as training, a memo to the personnel file, re-assignment/transfer, separating individuals,

and discipline up to termination. Any such action must be consistent with applicable contracts and statutes.

Step 6: Advise the Parties

It is a good practice (and in some cases it is required) for the school to inform the complainant of whether the allegations were substantiated or unsubstantiated, and what action will be taken. They also need to notify the accused of the investigation's findings and the actions school officials intend to take.

Step 7: Follow Up

Once the investigation is complete and corrective action is implemented, schools should also follow up to ensure that there has been no post-investigation retaliation.

Public sector employee misconduct is different in some important ways from the private sector. While it may seem like things are being "swept under the rug" or ignored, laws, confidentiality concerns, employment contracts and collective bargaining agreements often dictate the procedures that must be followed to ensure a fair and thorough investigation before any action can be taken. Assumptions that nothing is happening are often incorrect.

I encourage schools to have a plan in place so they are ready if and when an incident occurs. Then follow the steps outlined above to act in a prompt, fair and impartial manner where allegations of misconduct have been raised. Doing so will protect the students, staff and school and contribute to an effective environment for all concerned.

—Lawrence J. Tenenbaum, Esq., is a partner at Jaspian Schlesinger LLP.

BOCES Appoints New Deputy Superintendent

The Nassau BOCES Board of Education has named James Widmer its new deputy superintendent, effective in February. Nassau BOCES is the largest Board of Cooperative Educational Services (BOCES) in New York and serves the 56 school districts in Nassau County.

"Mr. Widmer has been instrumental in the ongoing success of Nassau BOCES," said Dr. Robert R. Dillon, district superintendent. "We are confident that he will excel in his new role and help to build the BOCES of the future."

Widmer will provide guidance for all of the agency's programs and services. He will also assume the role of the district superintendent when Dillon is unavailable. He will continue to be responsible for the agency's nearly \$400 million annual budget.

"Mr. Widmer brings a long history of accomplishments to Nassau BOCES," said board President Susan Bergtraum. "He is masterful in his ability to make the complicated nature of the Nassau BOCES budget easily understood by administration, the board and our component districts. His dedication to our agency and its mission is beyond



James Widmer, newly appointed deputy superintendent at Nassau BOCES

question. We are thrilled to have him as our deputy superintendent."

Widmer, of Farmingdale, joined Nassau BOCES in 2003 as a senior accountant and rose through the ranks. Prior to joining the agency, he worked in private industry for 16 years. He holds an MBA from Dowling College and earned his undergraduate degree at Hofstra University. He has school business administration and school district administration certifications.

—Nassau BOCES