

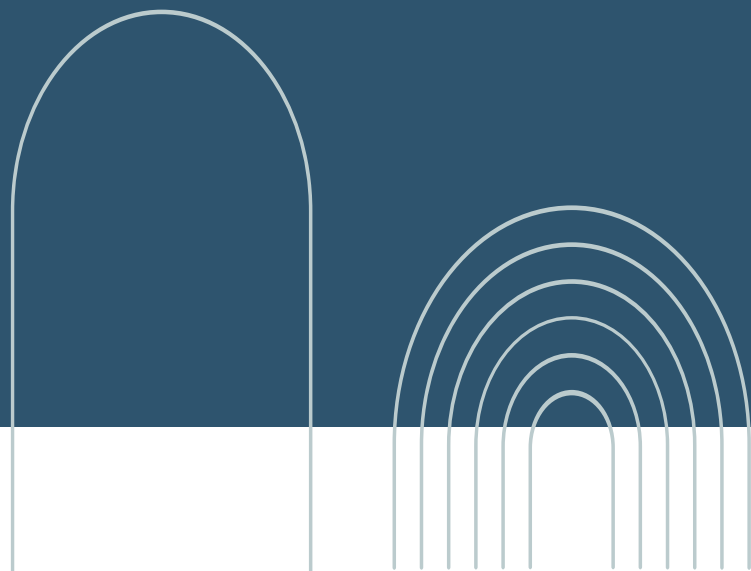


# *Investigations – Bootcamp* *CASS 2026*

*Presented by*



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# Overview of Session

- The focus will be on investigations related to ATA members
- Review aspects of the legal framework providing an overview
- We will address an investigation from start to the end process with a scenario following an investigation process
- We will ask that you have discussion at each of your tables and if you could report back on suggestions or strategies
- We will then review the suggestions and provide feedback and suggestions



# Overview

- Investigation process to support
  - Due diligence approach by supervisor
    - Education Act measures
    - Board policy and procedure
    - Occupational Health and Safety Act (supervisor)
  - Decisions to support
    - Student safety
    - Staff safety
    - Performance management
    - Progressive discipline



# Overview

- Reporting and Communication
  - Education Act provisions
  - Code of Professional Conduct for Teachers and Teacher Leaders
- Investigation Plan
  - Internal
  - External
  - Supports (Technology Department, forensic audit)



# Professional Development

This session addresses the following professional practice standard competencies including

## 1. Superintendent Quality Standard

- a. 2b., 2c.
- b. 4 f.
- c. 6 c., d., h.

## 2. Leadership Quality Standard

- a. 2 a., 2b.,
- b. 7 b.
- c. 8 a., d., f.,
- d. 9 e.



# Investigation Checklist

## 1. Understand the Allegations

- Identify alleged victim(s)/complainant(s) and accused(s)
- Assess nature, urgency, and gravity of allegations
- Review applicable legislation, Board Policies, and Administrative Procedures (AP's) to determine which ones are engaged
- Occupational Health and Safety considerations
  - Student and staff safety

## 2. Establish Reasonable Timelines

- Proportionate to nature, urgency, and gravity of allegations
- Sufficient time to adequately address allegations with available resources



# Investigation Checklist Cont'd

## 3. Assemble the Investigation Team

- Who should lead investigation (internal vs external)
- Consider experience, expertise, resources, and time commitment
- Support required from central office and/or third parties (e.g. RCMP)

## 4. Investigation Plan

- Articulate objective(s) and determine main issues
- Identify what is required to sufficiently address allegations
- Follow process outlined in Board Policy / Administrative Procedure / collective agreement if any
- Searches, maybe (physical, electronic)
- Create a list potential witnesses revise as required



# Investigation Checklist Cont'd

## 5. Communication Plan

- Outline expectations to complainant/alleged victim, accused, and witness re: conduct during investigation process (good faith, no retaliation)
- Disclosure to registrar / police, parents, elected officials/staff members as required
- Communication to keep others safe without compromising privacy interests
- Streamline point of contact for consistent messaging

## 6. Documentation

- Keep file of all relevant documents (written complaint, AP's, employment contract, reviewed and signed statements identifying interviewee/er, date/time, place of interview, overall chronology of events, disciplinary records, etc.) show your work



# Legislative Framework

1. Professional staff, school administrators, teachers
  - a. Teaching Quality Standard / Leadership Quality Standard/Superintendent Leadership Quality Standard
  - b. Code of Professional Conduct for Teachers and Teacher Leaders
  - c. Collective agreement provisions
  - d. Education Act provisions / Back to School Act
  - e. Board policy and procedure
2. Non regulated members (support staff Technology or Maintenance Department supervisors)
  - a. Collective agreement provisions / employment contract
  - b. Board policy and procedure



# Legislative Framework

With respect to teachers in the Province of Alberta, the employment relationship between a school board and a teacher may end in one of four ways:

1. For just cause, with the provision of written reasons, acting reasonably, and by providing the teacher with 30 days statutory notice as required under the Education Act whether the termination be completed by the Board of Trustees or Superintendent of Schools as the case may be;
2. By operation of Section 214 of the Education Act, which provides that a contract of employment automatically terminates upon suspension or cancellation of the certificate of qualification of the teacher by the Minister of Education;
3. By mutual agreement between the parties; or
4. Through resignation or retirement.



# Policy Framework

With respect to teachers or school administrator  
Superintendent of Schools

1. Has the Board delegated the authority to suspend or terminate a teacher in accordance with the Education Act?
  - a. This could determine who investigates
  - b. Who plays the quasi judicial role of hearing recommendation of termination
    - a. Board of trustees
    - b. Superintendent of Schools



# Policy Framework

2. With respect to teachers and principals be mindful of conduct versus performance
  - a. Conduct for teachers
    - i. Boundary violations
    - ii. Inappropriate classroom management strategies
    - iii. Criminal conduct theft, fraud
    - iv. Insubordinate actions and insolent comments
    - v. Teaching Quality Standard
  - b. Performance
    - i. Failing to meet Teaching Quality Standard
    - ii. Performance evaluation process consistent with Teacher Growth, Supervision and Evaluation Policy
  - c. Inappropriate classroom management strategies
    - i. Teacher Growth, Supervision and Evaluation Policy



# Evidentiary Burden

- Justice O’Leary set out the standard of proof for a school board to meet in a Board of Reference hearing in *Gazdarica v. The Board of Trustees of the Calgary Roman Catholic Separate School District No. 1* [1988] A.J. No. 613 (Alta. Q.B.) at page 3:
  - The respondent has the onus of establishing reasonableness and in order to succeed must do so on the balance of probabilities. The respondent must provide that one or more of the reasons for termination set out in its notice to the appellant existed in fact. If one or more reasons are proved the respondent must satisfy the Board of Reference that such reason or reasons would justify dismissal for cause at common law.



# Evidentiary Burden

Whether or not evidence of just cause exists will depend on the facts of a given case. In order to determine whether grounds for just cause exist one must consider:

- the nature of the employee's misconduct;
- whether the employer had a duty to warn the employee that their behaviour was unacceptable;
- if the impugned conduct is related to an underlying medical issue and thereby triggering a duty to accommodate;
- whether the employer had previously condoned, overlooked or forgiven certain misconduct; and
- whether the impugned conduct is a fundamental breach of contract, undermining a continued employment relationship.



# Conduct of Teachers

- The Supreme Court of Canada commented on the standard of conduct to which teacher must be held in *Attis v. Board of School Trustees, District No. 15*
  - Teachers are inextricably linked to the integrity of the school system. Teachers occupy positions of trust and confidence, and exert considerable influence over their Students as a result of their positions. The conduct of a teacher bears directly upon the community's perception of the ability of the teacher to fulfil such a position of trust and influence, and upon the community's confidence in the public school system as a whole. ...



# Conduct of Teachers

- In Edwards v. Pembina Hills School Division 2023 upheld by the Court of Appeal 2026
  - This involved a teacher essentially performing a lap dance on a student
  - It was argued that
    - » progressive discipline must occur
    - » The Division had progressive discipline Administrative Procedure and it was suggested that despite the wording of the procedure that all of the steps proceed in a linear order
    - » That lesser forms of discipline must be followed first
  - The referee held one incident can constitute sexual harassment or sexual assault ... appropriately attracts the most significant form of discipline
  - termination was proportional for significant and serious misconduct



# Suspension - Education Act Considerations

1. In assessing whether there is just cause to discipline, suspend or terminate for conduct requires evidence
  - a. S. 213(1) requires gross misconduct for a disciplinary suspension – final decision
  - b. S. 213(2) administrative notice of suspension ... the superintendent may suspend a teacher from the performance of the teacher's duties without prior notice if the superintendent is of the opinion that the welfare of students is threatened by the presence of the teacher



# Suspension - Education Act Considerations

213(10) If the suspension is appealed to the Board of Reference and the Board of Reference confirms the suspension, the board may

- (a) reinstate the teacher, or
- (b) terminate the teacher's contract of employment, and the board is deemed to have acted reasonably.



# Termination - Education Act considerations

S. 237(2) of the Education Act with respect to termination of contract a board of reference may take in to consideration any matter it considers relevant but consider at least the following:

- (a) whether the teacher is guilty of gross misconduct;
- (b) whether the teacher refused to obey a lawful order of the board without justification;
- (c) the risk to the safety of students, co-workers and the teacher;
- (d) the ability of the teacher to perform teaching duties effectively;
- (e) the effect of reinstatement on the future relationship between the board and the teacher;



# Termination Education Act Considerations

S. 237(2) continued

(f) the possibility of recidivism;

(g) whether the reinstatement would have the effect of undermining the confidence of Albertans in general in the public education system;

(h) fairness to the teacher.

S. 237(3) the Board of Reference shall not make an order under subsection (1)(c)(i) or (d) if the Board of Reference determines that

(a) the teacher should not be engaged in teaching for a board, or

(b) there is just cause for terminating the contract of employment or designation.



# *Education Act – S. 33(1)(d)*

## **Board Responsibilities**

**33(1)** A board, as a partner in education, has the responsibility to

(d) Ensure that each student enrolled in a school operated by the board and each staff member employed by the board is provided with a welcoming, caring, respectful and safe learning environment that respects diversity and fosters a sense of belonging



# Other Potential Framework Components

- Board Policies and Administrative Procedures
- Employment contract
  - Temporary teaching contract
  - Substitute teacher
  - Term contract
- Education Act
  - Duty report
  - Code of Professional Conduct for Teachers and Teacher Leaders
  - Back to School Act collective agreement provisions



# Code of Professional Conduct for Teachers and Teacher Leaders

- When is the duty to report triggered?

3 In relation to colleagues, the teacher or teacher leader shall ...

(d) in addition to other reporting required by law, report to the Commissioner **the conduct of another teacher or teacher leader who is alleged to cause or have caused psychological, emotional, physical or sexual harm or abuse to a student.**



# Education Act

## Limitations

2 The exercise of any right or the receipt of any benefit under this Act is subject to the limitations that are reasonable in the circumstances under which the right is being exercised or the benefit is being received.



# Education Act duty to report Registrar

- **225.99993(2)** An administrator shall make a complaint under section 225.91 about a teacher's or teacher leader's conduct if
  - (a) a teacher or teacher leader employed by an employer
    - (i) is placed on non-teaching duties or non-leadership duties by the employer,
    - (ii) is suspended from employment,
    - (iii) is terminated from employment,



# Education Act duty to report Registrar

**225.99993(2)** continued,

(iv) resigns from employment,

(v) retires from employment, or

(vi) is subject to other consequences with respect to employment, and

- results from conduct that brings into question the suitability of the teacher or teacher leader to hold certificate under the Act
- No action for a complaint made in accordance with subsection (2) in good faith



# Education Act duty to report Police

- **Duty to report to police 225.99994(1)** A person referred to in subsection (2) who reasonably believes that a teacher or teacher leader has engaged in conduct that involves
  - (a) physical harm to a student,
  - (b) sexual abuse or sexual exploitation of a student, or



# Education Act duty to report

## Duty to report to police continued

(c) any other matter that may, in the opinion of the person, threaten the safety of a student shall report that conduct to a police service.

- The following persons are required to report under subsection (1)
  - ...(c) a superintendent;
  - ...(h) the executive director of CASS



# Education Act duty to report

## Duty to report to police continued

- When a person referred to in subsection (2)(b) to (h) makes a report under that subsection, the person shall notify the Registrar of the following:
  - (a) that a report has been made;
  - (b) the name of the teacher or teacher leader who is the subject of the report;



# Education Act duty to report

## Duty to report to police continued

(c) the nature of the conduct.

**(5)** You are not required to make a report if the Registrar has disclosed in writing that a report has been made.

**(6)** This applies notwithstanding that the information is confidential and its disclosure is prohibited under any other Act.



# Back to School Act collective agreement provisions

## 16.X Discipline and Association Representation

16.X.1 For disciplinary actions that are not regulated by the Education Act, no Teacher, substitute teacher, teacher with a principal or other administrative, supervisory or consultative designation shall be formally disciplined without just cause. **Such cause shall be provided to the Teacher in writing within five (5) operational days from when the Teacher is informed of a formal disciplinary action.**

16.X. 2 Before the imposition of any formal disciplinary action or investigation, **the Teacher shall be given particulars of the matter being considered or investigated that may lead to any formal disciplinary action.**



## Back to School Act collective agreement provisions

16.X.1 Teachers shall have a right to Association representation during any proceedings and/or any meetings **where there is a substantial likelihood that the allegation(s) being investigated or discussed, if substantiated, would lead to formal disciplinary action**, except where the Education Act authorizes the School Division to proceed without notice.

16.X.2 Where circumstances permit, the School Division shall schedule a proceeding and/or meeting referred to in 16.X.1 **with the Teacher by giving reasonable advance notice which shall not be less than 24 hours**, with reasonable consideration for non-operational days. At such proceeding and/or meeting a teacher may be accompanied by a representative of the Association and the Association representative shall have the opportunity to be present and participate fully on behalf of the Teacher.



## Back to School Act collective agreement provisions

16.X.3 The School Division shall inform the Teacher prior to such proceeding and/or meeting taking place that a representative of the Association may accompany the Teacher. However, should the Association representative be unavailable in a reasonable amount of time, the School Division shall not be prevented from proceeding with the disciplinary process. The Association shall not withhold or unreasonably delay requested representation.



## Disciplinary Procedures—Non-Compliance with collective agreement provisions

If you fail to give notice or offer representation

- Traditionally arbitrators have been inclined to assume that the employee has been irreparably harmed
- Whatever discipline was imposed is void “ab initio” (from the beginning)
- More recently procedural defects may be remedied by
  - requiring employers to pay compensation
  - ruling that any evidence tainted by a procedural defect is inadmissible at any subsequent arbitration hearing
  - If a technicality 23 hours versus 24 hours no irreparable harm, some particulars missing



## Practice Review of Teachers and Teacher Leaders Regulation Code of Professional Conduct for Teachers and Teacher Leaders

*3 In relation to colleagues, the teacher or teacher leader shall ...*

*...*

*(d) in addition to other reporting required by law, report to the Commissioner the conduct of another teacher or teacher leader who is alleged to cause or to have caused psychological, emotional, physical or sexual harm or abuse to a student.*

- Common Law duty of loyalty to report to a supervisor may be triggered as well for your direct reports
  - Board administrative procedures may require an employee to report misconduct to supervisors which should include central office administration



# Investigation Confidentiality

- In a formal investigation, absolute confidentiality cannot and should not be guaranteed, except in limited circumstances.
  - Disclosure between Victim and Accused;
  - Identifiable investigation team;
  - Statutory disclosure (ex. Education Act provisions, collective agreement provisions );
  - Reports to police.
  - privacy obligations such as those contained in the Access to Information Act and the Protection of Privacy Act “Need to Know”
- Comply with expectations in your board policy and procedure and educate your teams on your expectations.



# Scenario

- Report by parent Mary to principal about a strange relationship.
  - Mary’s daughter Lisa and friend Janice are both in Grade 11 students. Lisa is concerned about a situation involving a teacher that has been texting “weird things” to Janice evenings and weekends
  - Teacher named is James, but no other details are provided to the principal
  - Principal calls the ATA
  - Three weeks after the disclosure the Principal reports the information to central office administration



# Discussion

- Do you investigate?
  - Internal or external investigation?
- Who would you want meet with first?
  - And why?
- Do you inform the teacher James?
- What if any reports will you make at this time?
  - Code of Professional Conduct for Teachers and Teacher Leaders
  - Education Act provisions
    - Registrar?
    - Police?
- What would you expect your principal to have done?



# Investigation Steps

- How start the investigation?
- I suggest meeting the parent Mary to do the following:
  - Explain process why the principal is not conducting the investigation of James the teacher
  - Explain your role title along with anyone assisting
  - Obtain parental consent to interview daughter in writing
  - Get the parent's their views on their child's ability to relay information
  - Get any relevant information about the friend Janice
  - Explain to parent that if present during Lisa's interview that the information must come from Lisa



# Investigation Steps

- Interview of any student witness:
  - The goal is to get their information
  - Gain level of comfort
  - Often best to let witness relay all information without interruption
    - Then ask clarifying questions
  - To confirm understanding paraphrase the responses in a neutral light
  - Get the details the 5 Ws (who, what, when, why and where)
  - Assess credibility
    - Did the teacher discipline the student recently



# Investigation Steps

- Interview of any student witness:
  - Ask open ended questions
  - Take notes during the meeting
  - Have the witness and or parent if present review the notes and confirm the accuracy
  - With respect to younger students or students with disabilities you need to assess their ability to relay informationc.
    - Have you learnt about telling the truth at home?
      - What did you learn?
      - Why is it important to tell the truth?



# Scenario

- You have Mary's information and Lisa's information.
- Lisa's relayed that the teacher James has been sending text messages to Janice about
  - Play lists that they share
  - About her skipping school
  - James texted Janice about his recent separation from his wife and loneliness
  - Janice shared copies of text messages with Lisa
  - there are teacher/student boundaries violations but no smoking gun



# Discussion

- Who would you want meet with next?
  - And why?
- Do you inform the teacher James at this time?
- Do you inform or speak to the Alberta Teachers' Association?
- What if any reports will you make at this time?
  - Code of Professional Conduct for Teachers and Teacher Leaders
  - Education Act provisions
    - Registrar?
    - Police?
    - Alberta Teachers' Association?



# Scenario

- Janice parent to get her permission same process is followed
  - You inform parent of concerns they consent to an interview
  - Janice confirms
    - The text messaging
    - States that she initiated it
    - The teacher James asked her to keep quiet and not tell anyone
    - She advise of social media contacts with James – during and after school



# Discussion

- The interview isn't over.
- What information do you want from Janice or her parent?
- What if any other avenues of investigation are available to you?
  - Division Technology Department
  - Acceptable Use Agreement or Administrative Procedure addressing use of technology or social media



# Scenario

- Parent offers to provide copies of text messages
- Janice advises through her mother
  - She deleted email as per Teacher James' request but used a school email address
  - You are told greeting cards were sent by James to Janice but no copies are provided
  - Not a sexual relationship buy not the same as with other teachers
  - She advises you what social media she uses
  - No one but Lisa is aware of anything



# Discussion

- Any investigation avenues to be considered before the obvious next meeting?
- Letter of direction warned meeting notice to James.
  - Particulars must provided
- What if any reports will you make at this time?
  - Code of Professional Conduct for Teachers and Teacher Leaders
  - Education Act provisions
    - Registrar?
    - Police?
    - Alberta Teachers' Association?



# Next Steps

- Direct teacher James to a meeting.
  - Have two people from a management present.
  - Do not actively engage in questioning
  - Explain a concern has arisen that suggests he engaged in conduct that violates normal teacher/student boundaries
  - Advise him of his right to consult with ATA representative
  - Offer to leave the room suggest he contact the Alberta Teachers' Association to get advice
  - Advise that you are prepared to offer him unassigned duties if he makes the request



# Next Steps

- Explain that unassigned duties means that he does not come to work and receives full pay and benefits but that letter outlining the conditions will follow
- If he makes any statements or admissions write them down be conversational
- Listen to his information if he offers up details take them down
- Advise that fair and thorough process will be undertaken
- If he requests unassigned duties whether he speaks with the Alberta Teachers' Association or not follow up in writing setting out the conditions and include any information he relayed



# Next Step - Obtain Evidence

- Now you need to get all of the information from
  - the student,
  - the teacher and
  - any potential witness
- Direct your Technology Department to review and find any email exchanges as between the teacher and the student
  - preferably before you meet with the teacher for a full interview



# Next Step - Obtain Evidence

- Request copies of any information that the parent or student says exists
  - Text messaging
  - Cards
  - Social media sites
  - A full statement from the student



# Scenario

- Information from Janice shows
  - Sharing of personal nature
  - Some references to personal feelings for each other
- Email audit shows and inordinate amount of email between James and Janice unrelated to school
  - Talks about meeting up for coffee after school and on the weekend
- You receive a copy of a birthday card to Janice signed “J with love”



# Meeting With Investigated Teacher

- Direct teacher to a meeting and comply with notice provisions
  - At least 24 hours notice usually several days / weeks
  - Provide the particulars – details of the alleged behaviours
  - The right to have ATA representative attend
- What if any reports will you make at this time?
  - Code of Professional Conduct for Teachers and Teacher Leaders
  - Education Act provisions
    - Registrar?
    - Police?



# Meeting With Investigated Teacher

- Have a plan to obtain and review the evidence
  - Need to assess training and knowledge of teacher of conduct expectation
  - You need to give the teacher an ability to respond to the allegations
  - Do not exaggerate or mischaracterize the complaint
  - Be organized
  - Be prepared for tactics used to stall
  - Direct the teacher to provide
    - Copies of text messages with Janice
    - Any exchanges with the student



# Investigated Teacher Tactics

- Sick leave is requested in 70%-80% of these situations
- Teacher claims they are unable to participate in investigation owing to illness
  - Get medical certificate
- Unsigned statement provided at the start of the interview by ATA representative claiming a full response to the concern
  - Likely prepared by the ATA representative and possibly not even read by the teacher
  - Ask the teacher if he wrote it and what it says (do not recall) or a summary of their career highlights
  - Review later unless time permitting



# Investigated Teacher Tactics

- ATA will attempt to disrupt the interview and attempt to answer questions
  - Try to ensure the answers come from the teacher
- ATA will ask for entire personnel file prior to attending the meeting or continuing with the meeting
  - Have the personnel file ready to go can avoid delay
- ATA representative will claim bias
- ATA will claim the Division is acting illegally
  - Misquote cases
  - Personal attacks of central office administration or attack the process and claim human rights violation or a violation rules of natural justice



# Evidence Gathering Completed

- Does the conduct violate normal teacher/student boundaries?
- Is it serious in your opinion?
- Do you need expertise?
  - Independent medical exam grooming behaviour
  - A grooming behaviour is conduct that can involve befriending and establishing an emotional connection with a child, and sometimes the family, to lower the child's inhibitions with the objective of engaging in sexual relations with the child.
- Can the employment relationship be rehabilitated?



# Evidence Gathering Completed

- Obtain a prior legal opinion to determine if just cause to terminate the employment relationship
  - Maintain insurance coverage
  - Assist in making the recommendation of termination
- If just cause to terminate the employment relationship exists hearing must be held in accordance with the policy framework before either
  - Before board of trustees
  - Superintendent of Schools
- Anticipate an appeal to a board of reference



# Settlement Discussions

- Ensure that conversation that are without prejudice are clearly without prejudice
- At times the ATA representative will comingle the two
- Prior to hearing “easy way hard way” conversation
  - Without prejudice discussion
  - Have a plan in terms of authority
  - Often the teacher will resign without a full investigation
  - Take principled but pragmatic approach



# Investigation Do's

- ✓ Act promptly and diligently
- ✓ Take the time necessary to complete a thorough investigation
  - ✓ cutting corners or going too fast can result in mistakes
- ✓ Use a serious and respectful tone
- ✓ Stay focused on the relevant questions and main issues
- ✓ Take detailed notes (including notes re: non-verbal cues)
- ✓ Inform on a need to know basis (principal, teacher, education assistant, janitor)



# Investigation Don'ts

**DO NOT** place an alleged victim and abuser in a confrontational setting

**DO NOT** do nothing in hopes that the complaint goes away

**DO NOT** reject complaints without thorough consideration

**DO NOT** make assumptions based on past experience or reputation of the alleged victim or accused

**DO NOT** collect, use, disclose or destroy documentation against privacy obligations and applicable regulations

**DO NOT** issue gratuitous or “off the cuff” opinions and comments

**DO NOT** make any promises other than to complete a fair and thorough review

**DO NOT** discuss potential results with a witness, complainant or third parties



# The ideal investigation

- Will comply with
  - collective agreement provisions
  - Education Act provisions
  - Board policy and procedure
  - Rules of natural justice
- Success can depend on knowledge of reporting expectations
  - Fire drills or lock down drills guide actions
  - Ensure that staff know reporting obligations before the “smoke arrives” in the way of report of conduct that transgresses normal teacher student boundaries



# The ideal Investigation

- Sufficiently addresses the allegations
- Will be timely
- Allows you to arrive at a reasonable conclusion to allow reasonable measures for redress
- Discharges your legal obligations
- Avoids dangerous situations at school
- Reduces probability of litigation
  - Grievance
  - Appeal to a board of reference
  - Statement of Claim/Dispute Note
- Ensures insurance coverage



# Final Take-Aways

- Do not lose sight of what is most important:
  - The safety and well-being of students and staff members
- Adopt a due diligence approach
  - Document the work completed
  - Due diligence approach in all circumstances
  - Show your work
- Ensure staff members are on same page
  - Staff understand and follow
    - Reporting expectations
    - Communications plan





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