

	<b>Houston Independent School District Police Department Directives</b>	<b>DIRECTIVE: 420-002</b>
	<b>SUBJECT: Investigation of Employee Misconduct</b>	<b>EFFECTIVE DATE: September 8, 2015</b>  <b>REVISED DATE: January 13, 2022</b>

## **POLICY**

The department shall investigate all incidents of alleged misconduct brought to its attention. Regardless of rank, assignment, or function, all employees must cooperate in investigating complaints. The department's disciplinary system shall be governed in accordance with all applicable state and federal law and shall be guided by the *Houston Independent School District Police Department Corrective Action Manual*. This directive applies to all employees.

## **DEFINITIONS**

***Personal Representative:*** A non-participating employee of HISD Police.

***Reasonable Opportunity:*** This shall be construed to allow sufficient time to locate counsel or a representative, review the interrogatories and related documents, and obtain advice. However, this always depends on time and circumstances.

***Retaliation:*** Conduct or decisions that a reasonable employee would view as materially adverse and whose purpose or effect discourages employees from exercising their rights under policy or the law. These rights include filing a complaint under the policy; filing a complaint with an external government agency such as the Equal Employment Opportunity Commission (EEOC); assisting another employee in the filing of a complaint; providing information during an investigation, or testifying in a legal proceeding; or otherwise opposing conduct prohibited by policy.

***Supervisor:*** For this policy, a supervisor is a Sergeant or higher or a civilian (non-sworn) employee designated as a manager/Team Lead to include Senior Dispatchers.

## **TRUTHFULNESS**

Employees will not make false, untrue, or misleading statements (verbal or written). Any statement or omission of pertinent information which intentionally, knowingly, or recklessly misrepresents facts or misleads others will be considered a false statement. A violation of this policy may result in discipline up to and including termination.

## **TYPES OF COMPLAINTS**

### **Formal Complaint**

A complaint in writing, signed and notarized by a complainant, or a complaint made by a peace officer.

### **Informal Complaint**

Oral or unsigned complaint.

## **CLASSES OF COMPLAINTS**

The Internal Affairs Unit shall classify all complaints as:

### **Class I Complaints**

Alleged violations of federal or state laws or local ordinances, or alleged use of excessive force (e.g., hitting, slapping, kicking, striking with an object, causing pain, or other excessive force resulting in bodily injury). All Class I complaints shall be formalized and forwarded to the Internal Affairs Unit. If there are any questions about how a complaint should be classified, supervisors shall contact the Internal Affairs Unit.

### **Class II Complaints**

Complaints involving alleged violations of department policies or those that are not criminal. The employee's immediate supervisor or another supervisor from the employee's supervisor usually investigates these complaints.

### **Class II (X) Complaints**

Expedited cases typically involve administrative allegations (e.g., missed court or failure to qualify) and usually involve one employee.

### **Investigations Regarding Workplace, Sexual Harassment or Retaliation**

All cases involving workplace harassment, sexual discrimination, or retaliation, will be handled in accordance with Board Policy DIA (LOCAL). "Any employee who believes that he or she has experienced prohibited conduct or believes that another employee has experienced prohibited conduct should immediately report the alleged acts. The employee may report the alleged acts to his or her supervisor or campus principal."

The investigation may be conducted by the district official or a designee, such as the campus principal, or by a third party designated by the district, such as an attorney. When appropriate, the principal or supervisor shall be involved in or informed of the investigation.

To avoid the appearance of bias, all cases involving workplace harassment, sexual discrimination, or retaliation, will be referred to the Office of Human Capital Accountability, Title IX Coordinator for consultation and investigation.

## **DISPOSITIONS OF COMPLAINTS**

### **Exonerated**

The incident occurred but was lawful and proper.

### **Never Formalized**

The complainant did not submit a formal sworn statement.

### **Not Sustained**

The evidence was insufficient to either prove or disprove the allegation.

## **Sustained**

Evidence is sufficient to prove the allegation. Regardless of its classification, any sustained allegation may form the basis for disciplinary action.

## **Unfounded**

The allegation is false or not factual.

## **CLASS II INVESTIGATIONS**

Expedited Class II investigations should be used when discipline is the most appropriate response to an employee's continued performance deficiency. The *Houston Independent School District Police Department Corrective Action Manual* provides a list of administrative violations that may be resolved using an expedited Class II investigation and can be expanded to include misconduct when certain conditions are met.

Supervisors have broad discretion whether or resolve complaints using Supervisory Intervention (SI) or Class II investigations except when expressly limited. To the extent that prudence and good order dictate, discretion is encouraged. Likewise, it is encouraged to use expedited Class II in circumstances other than administrative-type violations when the employee acknowledges culpability and accepts responsibility for all alleged misconduct.

Usually, Class II investigations are conducted by the employee's immediate supervisor. If the immediate supervisor is the complainant or has any personal involvement regarding the alleged misconduct, then any other supervisor within the department division shall be assigned to conduct the Class II investigation.

## **EMPLOYEE PROCEDURES**

All complaints coming to an employee's attention shall be reported to the employee's immediate supervisor.

*Retaliation* in any form is prohibited. Any employee found to have retaliated against any employee or non-employee shall receive disciplinary action up to and including indefinite suspension.

Employees who receive information about or observe incidents involving unnecessary or excessive use of force, misconduct, violations of criminal statutes, or abuse of authority by any other employee shall first take immediate action to protect the citizen. Employees who receive such information shall report the incident to their immediate supervisor. If there is a need to safeguard the confidentiality of the information, reporting employees may bring the matter directly to Internal Affairs Unit.

If a complainant is anonymous, the employee receiving the anonymous complaint must certify under oath the complainant was, in fact, anonymous.

## **SUPERVISOR PROCEDURES**

First-line supervisors shall take an active role in the development, motivation, and, when necessary, discipline of employees they supervise. Supervisors have broad discretion when implementing the disciplinary process.

All complaints (except those going directly to the Internal Affairs Unit) shall be referred to a supervisor. The supervisor shall record all complaints (except as specified in the following), including complaints from third-party witnesses, and forward them as provided by this directive.

When receiving complaints, supervisors shall:

- a) Accept complaints from third-party witnesses to an incident. Any third-party non-witnesses attempting to make a complaint shall be referred directly to the Internal Affairs Unit. The Internal Affairs Unit Sergeant may determine whether to accept a complaint from persons other than the aggrieved party.
- b) Accept and record phone-in complaints involving serious misconduct allegations (Class I). Other phone-in complainants shall be advised to make the complaint in person to obtain a notarized statement with the complaint. Supervisors may also advise complainants to mail their notarized statement with specific incident details directly to the Internal Affairs Unit.
- c) Forward all mailed written complaints to the Internal Affairs Unit for processing.
- d) Record complaints on the *Issue Record Form* (IRF). Upon receipt and recording of complaints, supervisors shall immediately notify their captain.
- e) Immediately notify the Assistant Chief if they receive a Class I complaint under either of the following circumstances:
  1. A delay would hinder the investigation of the complaint.
  2. The complaint involves a felony or a breach of the peace that is occurring or just occurred.

If an involved employee is present at the complaint scene, supervisors shall not allow the employee to leave until the Internal Affairs Unit Sergeant authorizes it.

An employee's immediate supervisor or a supervisor discovering an infraction shall determine whether to proceed through the formal complaint process as a Class I or II complaint or as an SI after consultation with their captain.

When supervisors discover possible infractions by employees not within their command, they should consult with the employee's immediate supervisor or a supervisor within the employee's chain of command before initiating a Class II complaint.

Supervisors have the right, duty, and responsibility when the alleged infraction is discovered to inquire about the facts of a circumstance or situation to make management, operational, administrative, or organizational decisions. A 48-hour notice is not required before discussing the original infraction with an employee. However, if the inquiring supervisor becomes the complainant in Class I or II complaint, the same inquiring supervisor may not further investigate such alleged violation.

Additionally, if the inquiring supervisor becomes the complainant in Class I or II complaint, the same inquiring supervisor may not participate in the process of recommending discipline for the violation.

Supervisors should consider that job performance, and productivity issues do not equate to disciplinary issues. Concerns regarding an employee's job performance and productivity, or lack thereof, should not be handled through the disciplinary process. Job performance and productivity issues should be addressed by implementing appropriate management techniques (e.g., scheduled and unscheduled prescriptive plan for assistance (PPA) performance reviews). Discovered violations of department policy while addressing job performance or productivity concerns should be handled through the disciplinary process.

At the conclusion of the investigation, if the target's employee investigation resulted in a sustained violation of departmental policy (other than an SI), the employee's supervisor (unless the supervisor initiated the complaint) shall hold a Conference for the Record meeting with the employee. The supervisor will not hold a Conference for the Record if the discipline recommendation is an indefinite suspension.

## **INVESTIGATIVE RESPONSIBILITIES**

All Class I allegations against an employee shall be investigated by a supervisor designated by the Assistant Chief or Chief of Police. All Class II allegations against an employee shall be investigated by the employee's supervisor unless otherwise determined by the Chief of Police.

The concerned employee and the complainant shall be notified in writing by the assigned investigator whenever a complaint has been received and filed. However, if the Chief of Police designates the complaint confidential, the employee shall not be notified.

## **INTERNAL AFFAIRS INVESTIGATOR**

The Internal Affairs Investigator shall serve as a fact-finding entity for investigations of employee misconduct. The Assistant Chief shall classify all complaints brought to the department's attention as Class I or II complaints.

The employee's captain shall notify employees and complainants of the disposition of Class I and II complaints upon receiving the final decision from the Chief of Police. If a complaint is deemed confidential, notification shall be made at the discretion of the Chief of Police. Captains shall notify employees and complainants of SI dispositions.

Files of completed investigations shall be maintained in a secured file located in the administrative office or another area designated by the Chief of Police. The complaints and professional standards files shall be kept in a secure area and shall be retained in accordance with the required records retention period applicable to those records. No such records shall be destroyed unless the Chief of Police determines no further agency needs, legal or administrative, to maintain the records.

The Chief of Police shall direct a periodic audit of complaints to ascertain a need for training or a policy revision. A statistical summary of complaints and Internal Affairs Investigations shall be completed annually by the Chief of Police.

No employee, regardless of rank, assignment, or function, shall contact or interfere with Internal Affairs Unit personnel or other department investigators regarding any employee's ongoing administrative or criminal investigations. Any inquiries regarding these matters shall be directed to the Assistant Chief.

## **CONFIDENTIAL COMPLAINT**

The Chief of Police or Assistant Chief may designate a complaint as confidential and may restrict access to the file of the investigation to only those persons deemed necessary. The Chief of Police may require progress reports regarding any complaint being investigated by the department at any time.

## **PREINTERROGATION PROCEDURES**

An investigation may still be conducted if the complainant does not verify the complaint in an affidavit. However, the employee cannot be required to respond to interrogation.

Employees who are the subject of the following types of complaints may be required to respond to interrogation.

- a) When a peace officer is a complainant, no affidavit is necessary.
- b) If a third-party witness of police misconduct is a complainant.

If employees inquire, they must be told the identities of all investigators taking part in their interrogation. If the investigator or the employee intends to record the interrogation, prior notification must be given to the other party.

## **48-HOUR NOTICE**

Supervisors have the right, duty, and responsibility when the alleged infraction is discovered to inquire about the facts of a circumstance or situation to make management, operational, administrative, or organizational decisions. Therefore, a 48-hour notice is not required before discussing the original infraction with an employee.

The department shall provide employees with a 48-hour notice of the time and location of a meeting or hearing (including interviews and interrogations) that is administrative. (See *Corrective Action Manual*.)

Any employee under investigation for a Class II violation investigated by a supervisor shall be required to receive only one Notice of Interrogation at least 48 hours before the first interrogation in any form. Any subsequent interrogation of the same employee on the same complaint or any extension or collateral issue related to the same complaint shall require the employee to be afforded a *reasonable opportunity* to consult with counsel or a representative before responding to such subsequent interrogations. A 48-hour notice may be voluntarily waived.

Supervisors and investigators shall follow the guidelines in the *Corrective Action Manual*. If a supervisor is investigating the scene immediately after an incident occurred, the investigator may proceed with the investigation and furnish the concerned employee with written notification as soon as possible.

## **INTERROGATION PROCEDURES**

### **Supervisor's Presence**

Accused employees have the option of having their immediate supervisor present during interrogations regarding investigations of non-criminal misconduct.

### **Counsel's Presence**

Accused employees are not permitted to have counsel present during an interview regarding an investigation of non-criminal misconduct. Accused employees are allowed to have counsel present during an interrogation regarding an investigation of criminal conduct.

Investigators shall not threaten employees with punitive action during interrogations. Investigators may inform employees that failure to truthfully answer reasonable questions directly related to the investigation or cooperate in the investigation entirely may result in punitive action.

### **Requirement to Answer Questions**

Employees can be required to answer questions and are subject to discipline with measures, including indefinite suspension for refusal to answer questions. Any required statements may be used against employees in disciplinary action or other civil proceedings.

### **Time, Place, and Length of Interrogations**

Employees may be interrogated only during their regular duty hours unless the Chief of Police or an *Internal Affairs Sergeant* determines the seriousness of the investigation requires interrogation at another time. If employees are interrogated during a time other than their regular duty hours, they shall receive overtime for that period. The Chief of Police shall not hold employees responsible for normal duty time missed because of their required participation in an investigation.

Employees shall not be interrogated at their homes without their permission. The interrogation shall not be unreasonably long, and provision must be made for physical necessities.

### **Attorney General Letter**

If a letter is sent to the Texas Attorney General, a copy shall be furnished to the employee under investigation at the time of the interrogation or at the time of issuance unless the case is confidential (if issued after the initial or subsequent interrogation).

### **Photographs of Employees**

An employee can be required to be photographed to aid in conducting investigations in which the identity of the employee is in question or when it is necessary for comparison with other photographs.

### **Polygraph Examinations**

The Chief of Police may order an employee to submit to a polygraph examination in compliance with state law.

### **Submission to Examination**

Employees can be required to submit to a medical or laboratory examination at the department's expense as part of an internal investigation.

### **ADMINISTRATIVE DISCIPLINARY COMMITTEE (ADC)**

The ADC Committee shall review investigations of complaints submitted to it by the Chief of Police. Upon completing the review of a complaint, the ADC shall submit a report to the Chief of Police documenting the sufficiency of the investigation and describing recommended disciplinary action.

### **DISPOSITION OF CASE**

Captains shall prepare a written recommendation on all sustained investigations on employees under their supervision. The recommendation shall be forwarded through the offending employee's chain of command to at least the assistant chief level, depending on the violation.

After the Chief of Police receives the file of a completed investigation in which there are sustained allegations, the Chief of Police may:

- a) Choose to sustain the allegation, impose the recommended discipline, or other disciplinary action. The captain shall forward the entire file to the Assistant Chief for final processing.
- b) Resubmit the file to the ADC for further review and recommendations.
- c) Return the case to the Assistant Chief or the investigating supervisor for further investigation.

After the captain receives the final recommended disposition signed by the Chief of Police, the captain shall notify the employee of the disposition of the complaint in writing. The Assistant Chief must ensure the case's final disposition is entered into the Issue Tracking System.

If the recommended discipline is indefinite suspension, the Chief of Police shall have the affected employee relieved of duty by a supervisor. The Chief of Police shall allow a meeting with the affected employee. At the meeting, employees shall be allowed to state their case before the Chief of Police finalizes.

The employee's captain shall handle all disciplinary suspensions. The HISD PD identification, badge, and hat shield shall be confiscated and stored in those cases.

## **RELIEVED OF DUTY**

The Chief of Police may relieve an employee of duty at any point during a misconduct investigation, especially when allowing an employee to remain on duty may compromise the department's integrity.

If any supervisor becomes aware of a situation requiring an employee to be relieved of duty, the supervisor shall immediately contact the Assistant Chief. When a supervisor places an employee on relieved-of-duty status, the employee's captain (and the employee when practical) shall sign a letter explaining what is expected. A copy shall be given to the employee.

The supervisor shall take custody of the following items from the employee:

- a. Official police identification
- b. Badge and hat shield
- c. Security identification
- d. Keys and computer access cards

These articles shall be sent to the Business Manager's Office along with a copy of the *Relieved of Duty* letter. When an employee is relieved of duty, any leave requested by the employee must be approved by the Assistant Chief before being scheduled by the regular supervisor.

## **RETURN TO DUTY**

Upon notification by the Chief of Police, the employee's captain shall formally reinstate an employee relieved of duty. The captain receiving the information shall prepare a *Return to Duty* letter advising the affected employee of their status.

The Business Manager shall return all property to the employee and refer the employee to their captain.

## **SUSPENSION AND TERMINATION**

All suspensions and terminations shall be in accordance with HISD Board Policy. All terminations shall be coordinated with HISD's Office of Professional Standards.

Approved By

  
Pedro Lopez Jr., Chief of Police