

Complaint/Request for Re-Consideration

We the undersigned want to publicly appeal to the board. This letter is to serve as a complaint/request for re-consideration by the undersigned to the Dover School Board as it relates to the termination of Dover High School Football Coaches. This Complaint is based upon statutory conflict and policy inconsistencies. We request you review our complaint and respond in writing to the following concerns within the 30-day allowance of policy GBEC. Furthermore, we ask you reconsider and remedy the existing results by making a reasonable and fair effort to restore the football program and the coach's eligibility for future consideration due to policy flaw and unfair interpretation by the Dover School Board's agent; the Superintendent Elaine Arbour.

In 2007 the New Hampshire School Board Association of New Hampshire released guidelines for investigating allegations of employee misconduct. The document states the first step is to determine whether the alleged misconduct is school related. Furthermore, the NH School Board Association specifies, even the most serious matters may be entirely private. With that, let the record reflect, none of the coaches are facing any criminal charges related to this or any other incident; yet, the agent of the school board enforced the harshest penalty.

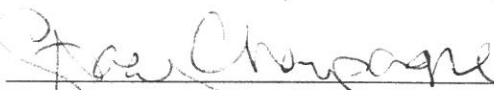
Please respond in writing your intention to remedy the following concerns:

1. Repair and re-issue with proper language an existing conduct policy to define "on vs. off duty" performance accountability connected to school AND school related events uniformly for teachers, support staff, coaches, and other relevant personnel.
2. Rectify the conflict that exists among professional and public employees when policy provides progressive disciplinary steps for one group and not the other. For example, school days and responsibility for students ends 20 minutes after the school day; yet, there is no similar language for coaches. Consequently, the conflict results when the administration holds coaches accountable due to policy that is unaccompanied with clear contract or handbook language.
3. Recognize the matter pertaining to the coaches did not violate any statute and in fact took action to comply with State Law since the Open Container Law (RSA 175:1) provides for an exemption when a hired vehicle is involved and includes a designated driver who controls its operation (enhanced even more so when the designated driver is a retired NH police officer).
4. Re-evaluate Policy GBEC (drug free work-place) part 6 given the district's latitude to take one of the following actions within 30 days of receiving notice with respect to any employee who is so convicted: take appropriate personnel action against such an employee **up to** and including termination **OR** require such employee to participate in drug abuse assistance or rehabilitation program. Per RSA 91-A, the people know the decision was made in four days. We ask the school board take the 30-days allowed by Policy GBEC to evaluate **ALL** viable options; not limited to, what we know city leaders suggested per RSA 91-A.
5. Recognize other mitigating factors (more than 75 combined years of volunteering experience, no complaints on file, no reported victim(s), no imminent danger, and no conviction) when evaluating

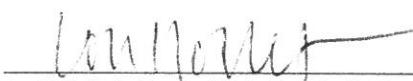
policy language and the totality of an individuals' actions. Policy GBEC implies options may range between a warning; suspension and letter; **up to** a letter and termination. The coaches received only a call; nothing in writing was issued. We ask the School Board institute progressive disciplinary steps in this matter as opposed to the drastic consequence given the mitigating factors already stated.

As a final note, it is hard to dismiss the preponderance of evidence that suggests the discharge of the coaches may have been motivated out of inexperience, malice, and/or retaliation. Per RSA 91-A, the people know, the school board was not informed of the circumstances until after the decision was made; consequently, inhibiting policy BCA (School Board Code of Ethics). RSA 91-A also reveals the superintendent managed this case from the beginning which seems entirely uncharacteristic in athletic matters. The people also know, the 30-day window of the policy and progressive language was dismissed for reasons that remain unclear to the public and players when other options existed under Policy GBEC. Not to mention, past practice with professional and public employees, with similar circumstances, did not result in termination. Recall, the parent letter stated, no students were present or involved in the matter, so safety was never an immediate concern.

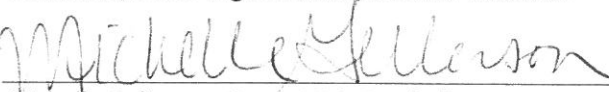
On behalf of the players, booster parents, community members that signed the petition, and for the health of our city government, we respectfully submit this public complaint and request for reconsideration. Thank you in advance for your time and attention to this matter.


Stacy Champagne, Dover High Football, Booster President
1/8/17
Date


Christine Bolden, Dover High Football, Booster Vice-President
1/8/17
Date


Lori Nollet, Dover High Football, Booster Secretary
1/8/17
Date


Vera Haus, Dover High Football, Booster Treasurer
1/8/17
Date


Michelle Gellerson, Dover High Football, Concession Stand Manager
1/8/17
Date

DOVER SCHOOL DISTRICT	POLICY CODE: GBEC
DATE OF ADOPTION: FEBRUARY 13, 2006	PAGE 1 OF 1

DRUG-FREE WORKPLACE

The Dover School District will provide a drug-free workplace in accordance with the Drug-Free Workplace Act of 1988 and its implementing regulations. The Dover School District certifies that it will:

1. Publish a statement notifying its employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the district's workplace and that disciplinary action will be taken against employees for violation of such prohibitions.
2. Establish a drug-free awareness program to inform employees about (a) the dangers of drug abuse in the workplace, (b) the district's policy of maintaining a drug-free workplace, (c) any available drug counseling, rehabilitation, and employee assistance programs, and (d) possible penalties that may be imposed on employees for drug abuse violations occurring in the workplace.
3. Make it a requirement that each employee whose employment is funded by a federal grant be given a copy of the statement as required.
4. Notify the employee in the required statement that as a condition of employment under the grant, the employee will abide by the terms of the statement and will notify the district of any criminal drug statute conviction for a violation occurring in the workplace no later than five days after such conviction.
5. Notify the federal agency within ten days after receiving notice from an employee or otherwise receiving notice of such conviction.
6. Take one of the following actions within thirty days of receiving notice with respect to any employee who is so convicted: take appropriate personnel action against such an employee up to and including termination or require such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a federal, state, or local health law enforcement, or other appropriate agency.
7. Make a good faith effort to continue to maintain a drug-free workplace through implementation of all provisions of this policy.
8. Establish the following as grounds for disciplinary action:
 - a. Working under the influence of alcohol or illegal drugs, no matter where consumed.
 - b. Having an unsealed container of alcohol or consuming alcohol on school property. (Any employee who finds any type of container of alcohol on school property should report it to the administration as soon as possible.)

- c. Possessing or distributing controlled substances on school property.
- d. Consuming, possessing, or distributing alcohol or illegal drugs at official school functions not on school property.

Statutory/Regulatory/Policy Cross References

RSA 193-B

DOVER SCHOOL DISTRICT	POLICY CODE: BCA
DATE OF ADOPTION: NOVEMBER 14, 2005	PAGE 1 OF 1

SCHOOL BOARD MEMBER CODE OF ETHICS

Dover School Board members will subscribe to the following Code of Ethics:

As a member of the Dover School Board, I will strive to improve public education, and to that end, I will strive to:

Attend all regular scheduled Dover School Board meetings and become informed concerning the issues to be considered at those meetings;

Recognize that I should endeavor to make policy decisions only after full discussion at publicly held Dover School Board meetings;

Render all decisions based on the available facts and my independent judgment and refuse to surrender that judgment to individuals or special interest groups;

Encourage the free expression of opinion by all Dover School Board members and seek systematic communications between the Dover School Board and students, staff, and all elements of the community;

Work with other Dover School Board members to establish effective Dover School Board policies and to delegate authority for the administration of the schools to the Superintendent of Schools;

Communicate to other Dover School Board members and the Superintendent expressions of public reaction to Dover School Board policies and school programs;

Inform myself about current educational issues by individual study and through participation in programs providing needed information, such as those sponsored by my state and national school boards associations;

Support the employment of those persons best qualified to serve as school staff and insist on a regular and impartial evaluation of all staff;

Avoid being placed in a position of conflict of interest and refrain from using my Dover School Board position for personal or partisan gain;

Take no private action that will compromise the Dover School Board or administration and respect the confidentiality of information that is privileged under applicable law or is received in confidence or nonpublic session;

Remember always that my first and greatest concern must be in the educational welfare of the students attending the public schools.

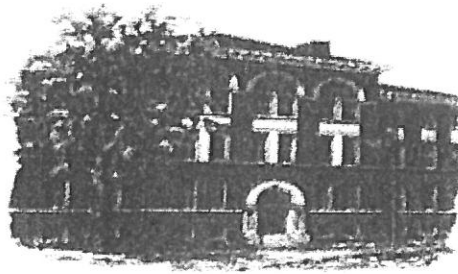
This policy will be distributed annually to all School Board members.

ELAINE M. ARBOUR, Ed.D.

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THE DOVER SCHOOL DISTRICT

SCHOOL ADMINISTRATIVE UNIT #11

McCONNELL CENTER

61 LOCUST STREET SUITE 409

DOVER, NEW HAMPSHIRE 03820-4132

TEL (603) 516-6800

FAX (603) 516-6809

October 20, 2016

Dear Parents and Families of the Dover High School Football Team,

Earlier this week, I learned that several volunteer and assistant coaches consumed alcohol while on duty travelling back to Dover High School after the game in Keene on October 14th. I met with each coach individually, as well as the Athletic Director Peter Wotton, the Head Coach Ken Osbon, and Dover High School Principal Peter Driscoll. As a result of this incident, the volunteer and assistant coaches involved will no longer be associated with the Dover High School football program. I want to assure all of you that no students were present or involved in this incident, nor was their safety ever in jeopardy.

The administration and the athletic department are working hard to ensure that the successful season continues without being affected. We appreciate your cooperation and understanding as we move forward. If you have any questions or concerns, please reach out to me at e.arbour@dover.k12.nh.us or (603) 516-6804.

Sincerely,

Elaine M. Arbour, Ed.D.
SAU #11 Superintendent of Schools

Dover School District Mission Statement

Strengthening our community by educating every child, every day!

NEW HAMPSHIRE SCHOOL BOARDS ASSOCIATION

Theodore E. Comstock, Executive Director Barrett M.
Christina, Staff Attorney

603-228-2061 www.nhsba.org



Investigating Allegations of Employee Misconduct

October 2007

The following information is intended as instructional and reference material only. It should not be construed as specific legal advice. You are encouraged to seek the advice of your own attorney regarding specific questions you may have about the following material.

Investigating Allegations of Employee Misconduct

School officials are often called on to investigate allegations of employee misconduct. Officials receive complaints of misconduct from numerous sources – coworkers, students, and members of the public. Investigating these complaints can create complex situations. The purpose of this publication is to identify problem areas and to assist school administrators and school boards when conducting investigations of employee misconduct.

Identifying the Nature of the Complaint

The first step is to determine whether the alleged misconduct is school-related. Even if the misconduct is serious, it may be an entirely private matter (e.g., extra-marital affair). If the alleged misconduct does not affect or significantly relate to the school, the best practice is not to investigate the matter.

Next, the alleged “victim” should be identified. If the alleged victim is a student, that student’s parents/guardian should be notified immediately about the allegations. Conversely, there may not be a victim, but rather an allegation that the employee violated a school policy.

It should then be determined if the allegation relates to past conduct or more present conduct, and if there is risk that the alleged misconduct might be repeated. If there is a significant threat that the alleged conduct could or will be repeated, the administration may need to take affirmative action to protect others before an investigation can be resolved, such as a temporary suspension with pay or a reassignment. It is recommended you consult your collective bargaining agreement prior to taking any of these steps.

Last, a determination should be made whether illegal or criminal wrongdoing has been alleged. If so, the school district may be required to notify local law enforcement officials or state agencies. These requirements are discussed below.

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Is an Investigation Warranted?

After these initial determinations are made, school officials need to decide if a full investigation is necessary. As stated above, if the allegation relates to a school matter or has the possibility of affecting school functions, an investigation should be undertaken. If the administration is unsure or hesitant, it is recommended that an investigation be conducted. School districts may face liability for their failure to properly investigate and rectify allegations of misconduct. As such, it is best to err on the side of caution and conduct an investigation.

If a student is involved, either as a victim or potential witness, the parents/guardian should also be notified of the allegations, of the ongoing investigation, and that the student may need to give an official written or oral statement.

The complainant should put his/her allegations in writing. This will provide the investigator a framework from which s/he can conduct the investigation. It will allow the accused to fully and adequately know what the actual allegations are. It also ensures that the allegations are coming directly from the accuser, and have not been “filtered” by anyone else.

If the accuser is a young student and is not capable of drafting a complete and coherent written statement, an oral interview may be justified. If this is necessary, it is recommended that the student’s parent/guardian be present during the interview. Whoever conducts the interview should transcribe a written account of the interview as soon as the interview ends.

Who Should Investigate?

If school officials decide to conduct a formal investigation, an investigator needs to be chosen. Consult your current school board policies to ascertain if a policy already addresses this issue. Normally, investigatory duties and responsibilities lie with the superintendent. New Hampshire RSA 193-C:4 and Department of Education Rule 302.02 both state superintendents are charged with overseeing and supervising staff.

However, depending on the nature of the allegations, you may want to hire an independent third person such as a private investigator or outside attorney. The school board should make this decision. Hiring an independent third party ensures that the investigation is conducted fairly and objectively. Also, these persons may be more experienced in conducting similar investigations, especially if the allegations relate to serious wrongdoing such as sexual abuse or other gross misconduct.

For numerous reasons, the New Hampshire School Boards Association strongly recommends that the school board or individual school board members do not conduct the investigation. School board members should leave the investigatory process to individuals who have experience conducting prior investigations. Furthermore, because the school board may eventually sit as “judge and jury” during a dismissal hearing or non-renewal hearing, the

potential for bias or due process violations is significant if board members conducted the investigation.

The Investigation Process

The accuser should be interviewed first. Then, all witnesses should be interviewed and encouraged to provide written statements. The accused employee should be interviewed last. This way, his/her statements can be compared to information already gathered from the investigation.

If the employee is a union member, request that the employee's union representative be present for the interview, even if the employee declines union representation. The investigator should request that the accused provide a written statement of his/her version of events or defense. The investigator should also draft a written memorandum of the interview as soon as the interview concludes. Under no circumstances should the investigator discuss the accusations or investigation with the accused "off the record."

An "investigation file" should be opened and maintained in a safe, confidential place. The investigation file should not be part of the employee's personnel file until any disciplinary action is taken against the employee.

A strict chain of custody for all physical evidence should be established. As few people as possible should have access to physical evidence. Evidence should be stored in a secure, discreet location. Evidence that is illegal to possess, such as narcotics or firearms, should be immediately turned over to local law enforcement authorities. If this is necessary, the investigator should request a written verification from law enforcement stating they took the evidence.

After the Investigation is Complete

The investigator must make a written report of his/her findings. If the allegations prove false, the written report should state as such. If the investigator is someone other than the school superintendent, the superintendent should receive the written report as soon as possible.

Factors the investigator needs to consider before making a final determination include the credibility and objectivity of the accuser and witnesses, the consistency of testimony, and whether there is enough proof to substantiate the allegations of wrongdoing.

If the investigation yields sufficient evidence of wrongdoing, the superintendent may take appropriate disciplinary action against the employee. Prior to taking disciplinary action, superintendents should consult their applicable collective bargaining agreement/master agreement to review discipline procedures and requirements. Generally, the superintendent has the authority to impose discipline anything short of dismissal.

If the investigator or superintendent believes dismissal is appropriate, the school board should be notified immediately. The requirements of RSA 189:13 must be followed if the employee is a teacher. If the misconduct occurred at the hands of a non-certified employee, the school board should refer to the collective bargaining agreement for disciplinary provisions, if applicable. In the absence of a collective bargaining agreement, school boards should refer to board policies regarding termination or dismissal.

If the investigation bears evidence of wrongdoing, certain reporting requirements may be triggered. First, law enforcement authorities should be notified if allegations of illegal conduct seem legitimate. Second, Department of Education Rule 510.01 requires superintendents and other educators report to the Department all charges of misconduct against a teacher who holds state credentials. This rule also mandates that teachers who suspect another teacher has abused or neglected a student report their suspicions to the Department of Education as well as to the Department of Health and Human Services.

Also, RSA 189:14-d mandates the immediate dismissal of school district employees who have been convicted in court of homicide, child pornography, aggravated felonious sexual assault, felonious sexual assault or kidnapping. This may be relative if the school district did not conduct an investigation of its own, but rather waited for the criminal justice process to run its course.

Additionally, your school district's liability insurance carrier should be notified immediately if an investigation yields evidence of physical harm, property damage, discrimination, harassment, or any other similar misconduct perpetrated by an employee.

Checklist: Investigating Allegations of Employee Misconduct

1. Identifying the Nature of the Complaint

- ☐ School-related matter or private matter?
- ☐ Does the matter stand to affect the school?
- ☐ Past conduct or present conduct?
- ☐ Threat to safety and welfare of students or staff?
- ☐ Possibility the conduct will be repeated?
- ☐ Temporary suspension or reassignment necessary?
- ☐ Has illegal or criminal conduct been alleged?

2. Is an Investigation Warranted?

- ☐ Conduct an investigation if the matter affects school function.
- ☐ If unsure – conduct the investigation.
- ☐ Is a student a victim or witness? If so, have the parents/guardian been notified?
- ☐ Have accuser provide the complaint in writing.

3. Who Should Conduct the Investigation?

- ☐ Consult current school board policy stating who investigates.
- ☐ Does an independent third party need to be hired?
- ☐ Has a school official ever investigated a similar matter?
- ☐ Does the chosen investigator have experience investigating these or similar matters?

4. The Investigation Process

- ☐ Interview accuser first. Get written statement.
- ☐ Interview witnesses accordingly. Get written statements.
- ☐ Interview the accused employee last. Get written statement or written defense.

- ☐ If accused is a union member, request union representative be present at all interviews with the accused (even if accused declines union representation).
- ☐ Investigator should draft written memo of interview with the accused employee.
- ☐ Never discuss the investigation with the accused employee "off the record."

5. The Investigation File

- ☐ Maintain in safe, secure, confidential place.
- ☐ Do not place investigation file in accused employee's personnel file.
- ☐ Develop chain of custody for all physical evidence.
- ☐ If physical evidence is illegal contraband, contact law enforcement to procure it.
- ☐ Get documentation from law enforcement stating they have received the evidence.

6. After the Investigation is Complete

- ☐ Provide written, final report to superintendent.
- ☐ Report must include a statement of findings.
- ☐ Is there sufficient proof and evidence to justify discipline?
- ☐ If so, and the accused is a teacher, review collective bargaining agreement.
- ☐ If the accused is not a teacher, consult board policies regarding discipline.
- ☐ Is dismissal appropriate? If so, the school board must be contacted.
- ☐ If dismissal of teacher is recommended, follow requirements in RSA 189:13.
- ☐ Does the Department of Education or Department of Health & Human Services need to be contacted?
- ☐ Does law enforcement need to be contacted?
- ☐ Has the employee been convicted of a crime described in RSA 189:14-d? If so, the employee must be dismissed.
- ☐ Contact the school district's liability insurer.