

issue	Investigation		19-20 Contract		Auditor Analysis	Auditor Questions	Evidence/Comments
	PDF Page	Contract Language Cited	PDF Page	Language in 2019-20 Contract			
1	147	Personnel Files: "With the exception of items which are duplicates of those in the District [personnel] file, evaluation materials. ...and other official records, materials in the supervisor's building file, including Letters of Expectation, shall be removed when the supervisor or the professional educator is transferred."	Removing documents upon transfer prevents the district from discovering a pattern of inappropriate behavior. ... Letters of expectation document that an educator has been made aware of certain District policies, directives, or procedures. ... Building files should remain intact and be passed on to all future supervisors.	7	No Change: With the exception of items which are duplicates of those in the District file, evaluation materials as described in the Portland Public Schools Handbook for Professional Growth and Evaluation, and in-service records, and other official records, materials in the supervisor's building file, including Letters of Expectation, shall be removed when the supervisor or the professional educator is transferred. However, it is not clear that letters of expectation are the only documents in a building file that might pertain to concerns about sexual conduct (or other misconduct). The investigation report does not make this clear. Retaining this provision means that the remainder of the building file documents that weren't also in the personnel file would be eliminated.	* Are letters of expectation no longer kept in building files? * What other documents can be removed from building files?	As relates to the documents of concern in the Whitehurst investigation, all investigation reports, outcomes, and related discipline or letters of expectation are maintained indefinitely in the District's investigation file, also known as Origami. Origami maintains records of "Employee Incidents" by employee and is now the system of record for tracking alleged misconduct as reported and over time. Letters of expectation may be maintained in a supervisor's building file, but that file is not the personnel or investigation file of record. Pursuant to PAT Contract 26.2, letters of expectation "shall be removed when the supervisor or the professional educator is transferred," but that provision doesn't inhibit the District's tracking of employee behavior over time, across buildings, and under different supervisors through the investigation file/Origami. Also pursuant to section 26.2, documents other than evaluation materials as described in the Portland Public Schools Handbook for Professional Growth and Evaluation, in-service records, and other official records can be removed from building files when the teacher or supervisor is transferred.
2	149	Personnel Files: "A professional educator may request and have granted that any materials in the District personnel file (excluding evaluations and letter stating final disciplinary action) be removed from his/her file if after three (3) years of being written no subsequent similar entries have been made into the professional educator's personnel file." "Letters of Expectation shall be removed from a professional educator's building file three (3) years after the date of the Letter of Expectation."	Similar to removing materials from building files, this article cleans the slate for an educator who may, over time, exhibit a pattern of inappropriate conduct with students. Conduct that does not rise to the level of discipline should remain in files so a pattern can be detected if that educator engages in similar conduct in the future. Materials relating to allegations of an educator's sexual contact with students should not ever be removed from any files.	7	A professional educator may request and have granted that any materials in the District personnel file (excluding evaluations and letters stating final disciplinary actions) be removed from his/her file if after three (3) years of being written no subsequent similar entries have been made into the professional educator's personnel file. 26.8 Letters of Expectation shall be removed from a professional educator's building official district personnel file three (3) six (6) years after the date of the Letter of Expectation.	* Why did the district and PAT extend the retention period from three to six years instead of eliminating the ability to remove them as the investigation suggested? * Are there other documents pertaining to an educator's sexual conduct with a student, aside from Letters of Expectation, that could be eliminated under the three-year clause?	As described above, in partial response to the Whitehurst report and in consultation with the Whitehurst lead investigator, the District now maintains all documentation related to allegations and investigations of alleged sexual conduct in an electronic, searchable investigation file (Origami). Letters of expectation, which are not discipline, will be maintained indefinitely in the investigation file (Origami), so the agreement on their retention period in other sources does not impede the District's tracking, investigating, and monitoring allegations as they are reported and over time. PAT Contract section 26.7 allows for educators to request that materials, including final disciplinary action, in personnel files be removed if, after 3 years of being written, no subsequent similar entries have been made. Whatever documents an educator might request be removed from a personnel file related to sexual conduct allegations, they would not be removed from the investigation file/Origami, the system of record for those documents.
3	150	Professional Educator Rights and Just Cause: "... Letters of expectation may be placed in the building file. ... Letters in the Letter of Expectation file shall be organized District-wide by school year and shall be removed from the file after three (3) years."	Short shelf life of letters and maintenance at district office by school year rather than name of educator both protect educators, not students. A system that tracked letters of expectation by individual employee and did not remove these notices would improve the District's ability to adequately address complaints of educator sexual conduct.	3	23.9.2 Letters of Expectation may shall be placed in the building official district personnel file. Letters of Expectation shall be placed in a District "Letter of Expectation" file maintained by the Human Resources Department. Letters in the Letters of Expectation file shall be organized District-wide by school year and shall be removed from the official district personnel file after three (3) six (6) years. Professional educators who have received a Letter of Expectation have the right to review any letters of expectation addressed to them in the District Letter of Expectation file and attach a response.	See above	See response above. It is important to note that the investment in and implementation of a centralized electronic filing system greatly improves the District's ability to maintain, track, and access the full history of sexual misconduct allegations and investigations, going above and beyond what was contemplated by the recommendations.
4	152	Complaint Procedure: "If the supervisor decides to proceed further with the written complaint, it shall be processed within ten (10) workdays of receipt under the following circumstances..."	In cases of sexual conduct, the District may not have sufficient time to process the complaint. We understand this provision to mean that the supervisor will notify the educator of a complaint in detail within 10 days, not that the complaint will be investigated in 10 days. Being fully prepared for this meeting may require more than 10 workdays. At a minimum, this deadline should be aspirational and not enforceable for a complaint of educator sexual conduct.	6	No Change: If the supervisor decides to proceed further with the written complaint, it shall be processed within ten (10) workdays of receipt under the following circumstances:	* Why did the district and PAT retain the 10-day processing time limit given the investigators' concerns?	School Compliance Officers, the building administrators that are designated to report allegations of sexual conduct, are trained to promptly call the Sexual Misconduct hotline (SMIH) in response to allegation of sexual conduct. The 10-day "processing" includes initiation of an investigation and notice to the employee regarding the nature of the complaint and if the District believes that they will be placed on Paid Administrative Leave for longer than 10 days. We do respond to sexual conduct claims promptly. In any event, the 10-day period in 25.4 doesn't require completion of the investigation. That timeline is governed by ORS 339.388. (In addition, the Complaint procedure in Article 25 of the PAT contract governs the behavior of an educator's "supervisor." 25.4 also is limited to articulated circumstances, most of which are not in play in addressing an allegation of sexual misconduct.)
153		Complaint Procedure: If the complaint is used in any manner to support actual or recommended discipline, administrative transfer, nonrenewal or dismissal, such record shall be placed in the personnel file and the complainant's name shall be disclosed if the unit member so requests.	Disclosure of complainant could lead to under-reporting of complaints and fear of retaliation by the educator accused of misconduct. Per the current contract, if the Districts intends to formally reprimand the educator based on a confidential complaint, the complainant's identity must be revealed upon request. Given this limitation to confidential complaints, it would be beneficial for the District to train on and strictly enforce the non-retaliation provisions of its complaint policies.	6	No Change: If, however, the complaint is used in any manner to support actual or recommended discipline, administrative transfer, nonrenewal or dismissal, such record shall be placed in the personnel file and the complainant's name shall be disclosed if the unit member so requests.	* Why did the district not change this language? * What has the district done to improve training and enforcement of non-retaliation provisions?	A change to this language was not agreed to with PAT, and the District cannot unilaterally change it. Even if this language were to change, the District is subject to Title IX provisions and PECBA case law requiring us to provide the name of complainants to the employee. The District has numerous policies that make clear that retaliation is strictly prohibited, and those policies are trained on regularly. The following policies expressly prohibit retaliation: Anti-Racist & Anti-Oppression Learning Communities 2.10.015-P; Anti-Harassment 4.30.060-P; Formal Public Complaints 4.50.032-P; Reporting of Suspected Abuse of a Child 4.50.051-AD; Affirmative Action 5.10.025-P; Workplace Harassment 5.10.060-P; Sexual Harassment Complaint Procedure 5.10.061-AD; Professional Conduct Between Adults and Students 5.10.064-P. Additionally, District staff receives annual training on Professional Conduct; Adult Sexual Misconduct; Title IX; Workplace Harassment; and Child Abuse Reporting.
155		Multiple files for misconduct include five files:	The multiple files, even if vigilantly maintained, make it difficult to track a complaint or concern from start to finish, for an educator's current and subsequent supervisors to "connect the dots," and for the public to gain access to files they may be allowed to see.	See below	The district appears to have eliminated the Letter of Expectation file, but the other four files remain.	* Why is the district retaining four separate files - doesn't this continue the risk of making a concern difficult to track from start to finish, as the investigators suggested for five files?	Please see responses, above, re implementation of investigation files/Origami, which is the system of record for investigations of alleged sexual conduct. Other files are irrelevant to the system of record and do not impede tracking of individual investigations and allegations of misconduct over time in that investigation file.

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	155	1. Investigation File: Article 19.G.8 states, "The written notice of [a meeting that could result in disciplinary action or termination] shall not be placed in the professional educator's building file or personnel file but may be kept in an investigation file." Article 19.I.4 states, "The District shall place paid administrative leave letters in the investigation file, not in the professional educator's personnel file."	Part of multiple files issue noted above.	First Citation p 3 2nd Citation p 4		5 No change	<ul style="list-style-type: none"> * Where is the investigation file kept? Do administrators/supervisors have access to it, or only HR personnel? * Are investigation documents also kept in the district's official personnel file? * How would a new supervisor or a district employee making a job recommendation know that there had been a complaint or investigation? 	See above re Origami. Administrators/supervisors do not have access to investigation files/Origami; only HR and Legal do. Investigation documents are not kept in personnel files. HR is the recipient and overseer of misconduct allegations in real time. If there is a recurring pattern of concerning behavior, this should be addressed at the time of the most recent allegation, not at the time a candidate moves. As each new allegation is made and documented, the employee's history of reported misconduct is reviewed and addressed accordingly. This addresses the concerns related to Whitehurst's employment history.
	155	2. Letter of Expectation File: Article 19.H.2 states, "Letters of Expectation may be placed in the building file. Letters of Expectation shall be placed in a District 'Letter of Expectation' file maintained by the Human Resources Department."	Part of multiple files issue noted above.	3	Reference to the Letter of Expectation file removed per cell F9 above.	All references to the Letter of Expectation file were eliminated in the 2019-20 contract per an auditor search for the term. This file appears to have been eliminated.	N/A.	
	155	3. Building File: Articles 21 and 22 refer to the supervisor's building file and the constraints currently put upon maintaining documents in that file for any length of time.	Part of multiple files issue noted above.	3	Building file still in use, though does not contain letters of expectation per cell F9 above or written notice of a meeting or investigation determination (goes in investigation file per F16 above).	<ul style="list-style-type: none"> * Do supervisors/building administrators have access to the district personnel file, investigation, and grievance files? * How would a new administrator or supervisor be aware that an educator they are supervising has had letters of expectation, complaints, grievances, or investigations in the past? 	Building administrators have access to personnel files, but not investigation or grievance files. A review of a personnel file will disclose recent discipline and letters of expectation. Any concerns they have about conduct under their supervision will be reported to HR, where the investigation, allegation, and discipline history will have been documented in Origami and reviewed by HR at the time of the new allegation.	
	155	4. Personnel File: Article 22.A states, "There shall be one official District personnel file, which shall be maintained by the Human Resources Department."	Part of multiple files issue noted above.	7	Same language as noted by investigators.	Are complaints, investigation documents, and grievances included in the personnel file?	Final discipline is contained in the personnel file.	
	155	5. Article 26.C.8 states, "All documents, communications and records dealing with the processing of a grievance shall be filed in a separate grievance file which shall constitute a 'personnel file,' within the meaning of the confidentiality provisions of ORS 342.850. Access to those files shall be limited to those with a valid business interest in the case."	Part of multiple files issue noted above.	23	Same language as noted by investigators.	File not eliminated. Per references in investigation report, grievances can be used in sexual conduct cases (e.g. pdf 97 - the grievance process may deter principals from formal discipline.)	N/A and see above responses.	

