Learning Objectives

Today you will learn:
- The purpose and significance of an investigation.
- The essentials of conducting an investigation.
- Common complaints about how investigations are conducted and communicated.

Why Conduct an Investigation?
- Have a factual basis to make and support decisions.
- Meet contractual obligations and those of fundamental fairness.
- Use as a defense in litigation.
- Retain trust and credibility within school community.
- Model the process by which individuals are held accountable for their conduct.
- Prevent future improper conduct.
The Five Essential Steps for Conducting an Investigation:

1. Assess the Complaint.
2. Check the School's Contracts and Policies.
4. Ensure Fundamental Fairness Before Reaching a Conclusion.
5. Communicate the Decision to the Complainant, the Accused, and Potentially Others.

Step 1: Assess the Complaint

When to Investigate

- Complaint is made
  - Can be verbal or written
- What triggers a duty to investigate?
  - Legal requirement?
  - Standard set out in policy?
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How to Communicate About Ongoing Investigations

- Acknowledge receipt of complaint to Complainant and notify of intent to investigate
  - Notify Complainant that he or she may not be retaliated against and provide contact person if there is a concern about retaliation
- Let the person who is the subject of investigation know about the investigation
- Determine if interim steps are necessary

Selecting an Investigator

Evaluate the most appropriate option:

- Internal investigator (school employee):
  - Head of School
  - Dean or Department Head
  - Human Resources Director
- External investigator:
  - Attorney acting in his or her capacity as an attorney
  - Licensed private investigator

Case Study

A teacher receives an anonymous complaint about bullying by students.

Is the school obligated to investigate the claim?

A department chair is accused of discrimination by a poor performing teacher.

Who should conduct the investigation?
Step 2: Check the School’s Contracts and Policies

Review School Rules, Policies, and Procedures

- Read the applicable rules, policies and procedures
  - Handbook
  - Separate policies
  - Past practices
- Follow the applicable rules, policies and procedures
  - Not following the rules, policies, and procedures will lead to a questionable investigation

True, False, or Maybe

The School’s employee handbook says that all complaints are taken seriously and will be investigated. There needs to be a full-blown investigation for any complaint of misconduct.
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Step 3: Gather Information from the Complainant, Witnesses, and the Accused

First: Understand the Scope of the Investigation

- Scope refers to the allegations to be investigated
- School (through person directing/coordinating investigation) determines the scope based on the allegations in written and/or verbal complaint
- Scope should not be whether a legal or policy violation occurred:
  - Was Employee sexually harassed?
  - Was sexual harassment policy violated?
- Scope should be whether asserted conduct occurred, e.g.:
  - Whether or not Employee touched co-worker’s breast?
  - Whether or not Employee told co-worker she is “sexy”?

Next: Gather, Review, & Research

- Gather and review
  - All written complaints
  - All relevant documents
    - E-mails, text messages
    - Physical evidence
    - Potentially: Personnel file or student records
  - All witness statements
- Research
  - Verifiable relevant information
  - Verifiable factual assertions
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Gather, Review, & Research

- Searches of school property:
  - Reasonable expectation of privacy?
    - Handbook
    - Computer use/electronic media policy
  - Can we search school email?
  - Can we search school computers/laptops?
  - Can we review social media pages?
- Can we search personal property?

Then: Interview

- Order of Witness Interviews:
  - The Complainant
    - Get a complete complaint
  - Witnesses
    - Talk to anyone else with knowledge
  - The Alleged Wrongdoer
    - Give her/him the last word
- However, be flexible

Interview

The Interview:
- Set welcoming, respectful, and professional tone
- Use outline as question guide only
- Focus, connect, and listen carefully
- Ask follow-up questions based on witness responses
- Take detailed notes, have a note taker, or tape record interviews
- Ask wrap up questions
  - “Have you told me everything?”
  - “Is there anything else you wish to add?”
  - “Is there a question you thought I’d ask but I haven’t asked?”
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True, False, or Maybe
Parents must be alerted before a student can be interviewed.

Anyone being interviewed has a right to have his or her attorney present.

Step 4: Ensure Fundamental Fairness Before Reaching a Conclusion

The Legally Compliant Investigation
What standard does an investigation have to meet?

“Investigative fairness contemplates listening to both sides and providing employees a fair opportunity to present their position and to correct or contradict relevant statements prejudicial to their case without the procedural formalities of trial.”

Assessing Witness Credibility

Investigators are expected to make credibility determinations when necessary in order to reach a conclusion.

- Credibility Factors
  - Inherent plausibility
  - Motive to lie
  - Corroboration
  - Extent to which a witness was able to perceive, recollect, or communicate about the matter
  - History of honesty/dishonesty
  - Habit/consistency
  - Inconsistent statements
  - Manner of testimony
  - Demeanor - but be careful

Evaluate the Evidence

- Burden of proof:
  - Preponderance of the evidence
  - Is it more likely than not that the alleged misconduct occurred or did not occur?

- Evaluate:
  - Did the alleged wrongdoer commit the alleged acts?
  - Consider each allegation separately
  - Did the conduct violate school policy and/or rules of conduct? (If asked to determine)

Case Study

During an investigation an employee credibly denies wrongdoing. There are ambiguous emails that are not determinative. Several employees contradict the employee who denied wrongdoing.

What is the result of the investigation?
Step 5: Communicate the Decision to the Complainant, the Accused, and Potentially Others

Evaluating Discipline and/or Corrective Action

• Impose appropriate discipline in accordance with school policies, enrollment contracts, etc.
• There must be a policy, contract, rule, etc. violated in order to discipline a student.
• Follow-up to make sure that the situation has been resolved.
• Consider non-disciplinary remedial measures (if appropriate).

Communicating with the Complainant

• If allegation(s) ARE sustained: Provide general notification to Complainant that appropriate corrective action(s) will be taken
• If allegation(s) ARE NOT sustained:
  • Balance: Accused’s rights to privacy vs. School’s interest in disclosure
  • Generally: No disclosure of investigative report
## Five Essential Steps for Conducting an Investigation

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### Communicating with the Accused

<table>
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<tr>
<th>Wrongdoer</th>
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<td>• If allegation(s) ARE NOT sustained: Simply advise Accused of the findings</td>
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<tr>
<td>• If allegation(s) ARE sustained: Communicate to Accused at least the general basis for sustaining the allegations and determining that school policies were violated</td>
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<td>• Generally: No disclosure of investigative report</td>
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### Communicating with the Community

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<td>• Typically no statements to community</td>
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<td>• If there are communications, they must be:</td>
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<td>– Factual</td>
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<td>– Legitimate/Reasonable Need</td>
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<td>• May want to hire PR firm (through attorney)</td>
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### Communicating with the Board

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<td>• Duty of Board to exercise proper oversight</td>
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<td>• Provide information on a “Need to know” basis</td>
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<td>• Have attorney present to keep discussion privileged</td>
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Checklist for a Fair Investigation

- Investigation is thorough and investigator is unbiased
- Both complainant and accused have full opportunity to present their side of events, preferably in person
- Investigator follows up on evidence that supports either side’s version of events
- Investigator interviews relevant witnesses and reviews relevant documents
- Investigation is consistent with the school’s rules & policies and its normal investigative practices
- Investigator assesses witnesses’ credibility
- Investigator reaches a reasonable and fair conclusion based on information collected, reviewed & analyzed during investigation

Case Study

You finish an investigation and terminate an employee. She makes false statements about her misconduct and the investigation. Families demand to know what really happened.

What can you say?

Would your answer be different if the situation involved a student who was expelled?

Thank You!

Michael Blacher
Partner | Los Angeles Office  
Phone: 310.981.2000 | mblacher@lcwlegal.com  
www.lcwlegal.com/our-people/Michael-Blacher

Kimberly Cole
Senior Resolutions Counsel | United Educators  
Phone: 240.482.4714 | KCole@UE.ORG