



LIEBERT CASSIDY WHITMORE

6033 WEST CENTURY BOULEVARD,  
5<sup>TH</sup> FLOOR  
LOS ANGELES, CALIFORNIA 90045  
T: (310) 981-2000  
F: (310) 337-0837

135 MAIN STREET,  
7<sup>TH</sup> FLOOR  
SAN FRANCISCO, CALIFORNIA 94105  
T: (415) 512-3000  
F: (415) 856-0306

5250 NORTH PALM AVENUE,  
SUITE 310  
FRESNO, CALIFORNIA 93704  
T: (559) 256-7800  
F: (559) 449-4535

550 WEST "C" STREET,  
SUITE 620  
SAN DIEGO, CALIFORNIA 92101  
T: (619) 481-5900  
F: (619) 446-0015

400 CAPITOL MALL  
SUITE 1260  
SACRAMENTO, CALIFORNIA 95814  
T: (916) 584-7000  
F: (916) 584-7083

# NATIONAL ASSOCIATION OF INDEPENDENT SCHOOLS (NAIS) ANNUAL CONFERENCE

## Responding to Complaints of Student/Employee Misconduct in the #MeToo Era

*3/1/2019*

*PRESENTED BY:*


Linda K. Adler, Grace Chan &  
Dr. Tekakwitha M. Pernambuco-Wise

# Responding to Complaints of Student/Employee Misconduct in the #MeToo Era

National Association of Independent Schools (NAIS) Annual Conference | March 1, 2019

Presented by: Linda K. Adler, Grace Chan and Dr. Tekakwitha M. Pernambuco-Wise

LCW LIEBERT CASSIDY WHITMORE



**Responding to Complaints of Student/Employee Misconduct in the #MeToo Era**  
National Association of Independent Schools (NAIS) Annual Conference | March 1, 2019

Presented By: Linda K. Adler, Liebert Cassidy Whitmore  
Grace Chan, Liebert Cassidy Whitmore  
Dr. Tekakwitha M. Pernambuco-Wise, Sea Crest School

---

---

---

---

---

---

---

---

**Agenda**

- Survey of Heads of Schools
- Investigations:
  - When Are Schools Obligated to Conduct Investigations?
  - Investigation Techniques and Best Practices
  - Special Considerations:
    - Interim Measures
    - Allegations of Conduct Occurring Years Ago
    - Corrective Action
- Communicating with School Community Members in the #MeToo Era
- Disclosure of Personnel or Student Information

2 | LCW LIEBERT CASSIDY WHITMORE

---

---

---

---

---

---

---

---

LCW LIEBERT CASSIDY WHITMORE

**Survey in the #MeToo Era**

---

---

---

---

---

---

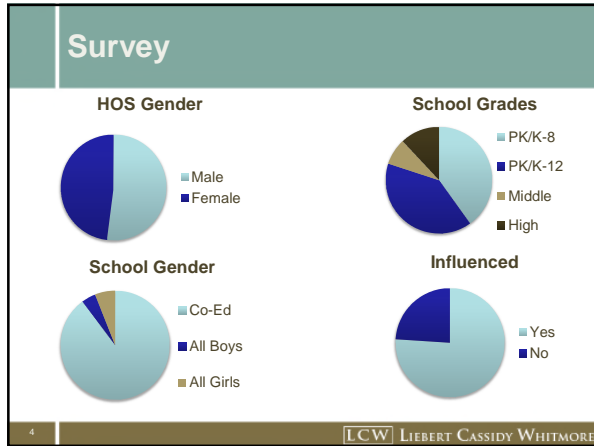
---

---

# Responding to Complaints of Student/Employee Misconduct in the #MeToo Era

National Association of Independent Schools (NAIS) Annual Conference | March 1, 2019

Presented by: Linda K. Adler, Grace Chan and Dr. Tekakwitha M. Pernambuco-Wise




---

---

---

---

---

---

---

---

**Survey: What Heads Experience**

- Greater readiness to accept any accusation as truthful as the baseline, without investigating.
- Parents are a lot less tolerant of typical developmental behavior.
- Things managed more casually in the past are now taken very seriously.
- Parents expect harsher and immediate punishments for boys for even the smallest infraction against girls.
- Some female adults feel more empowered and supported that what they experienced when they were younger was inappropriate.

5 | LCW LIEBERT CASSIDY WHITMORE

---

---

---

---

---

---

---

---

**Survey: What Heads Experience**

- Becoming harder to distinguish between being political and partisan.
- Parents are escalating situations.
- Parents increasing threats (lawsuits) to schools.
- So much change is happening continually that some Heads feel that they could write weekly responses to constituents, e.g. election, Kavanaugh hearings, school shootings, locker room culture.
- An added layer of thought before speaking/acting.
- Feeling galvanized to **do** something to actively change culture re: more diversity and inclusivity.

6 | LCW LIEBERT CASSIDY WHITMORE

---

---

---

---

---

---

---

---

# Responding to Complaints of Student/Employee Misconduct in the #MeToo Era

National Association of Independent Schools (NAIS) Annual Conference | March 1, 2019

Presented by: Linda K. Adler, Grace Chan and Dr. Tekakwitha M. Pernambuco-Wise

**Survey: What Heads are Doing**

- Increased training, including coaches
- Parent education (external speakers)
- Increased use of external investigators
- Increased use of legal expertise in this area
- Establishment of Sexual Assault Task Force (board, attorney, key administrators)
- Established policies, procedures, protocols
- More transparency
- Link on school's website for alumni to report
- More intentional about transparent, fair and balanced communication

7 | LCW LIEBERT CASSIDY WHITMORE

---

---

---

---

---

---

---

---

**Survey: What Heads are Doing**

- Banned all types of intimacy in any school setting
- Increased use of law enforcement to investigate
- Teaching pupils about consent
- Educating boys and girls about sexual misconduct and assault
- Being more intentional about the language adults use around children
- Increased screening of potential new hires
- Addressing misogyny and locker room talk
- Formalized speaker vetting process
- Involving Board Chair much sooner than in the past about potential crises

8 | LCW LIEBERT CASSIDY WHITMORE

---

---

---

---

---

---

---

---

LCW LIEBERT CASSIDY WHITMORE

**Investigations  
in the #MeToo Era**

---

---

---

---

---

---

---

---

# Responding to Complaints of Student/Employee Misconduct in the #MeToo Era

National Association of Independent Schools (NAIS) Annual Conference | March 1, 2019

Presented by: Linda K. Adler, Grace Chan and Dr. Tekakwitha M. Pernambuco-Wise

**Investigations**

- When are Schools Obligated to Conduct Investigations?
  - Possible rule violations
  - Suspicion of employee / student misconduct
  - Complaints of misconduct
    - Harassment, discrimination, retaliation
    - Whistleblower
    - Bullying

10 | LCW LIEBERT CASSIDY WHITMORE

---

---

---

---

---

---

---

---

**Investigations**

- Legal Significance of Investigations
  - Investigation becomes key evidence in lawsuits filed by employees or families claiming they have been subjected to harassment, discrimination or retaliation.
- PR Significance of Investigations
  - Investigation is an affirmative act that demonstrates that the School takes complaint/concern seriously and is responsive.

11 | LCW LIEBERT CASSIDY WHITMORE

---

---

---

---

---

---

---

---

**Investigations**

- Best Practices: Basic Elements of an Appropriate Investigation
  - Promptness
  - Impartiality
  - Confidentiality
  - Training
  - Thoroughness
  - Effective questioning
  - Credibility determinations
  - Findings of fact

12 | LCW LIEBERT CASSIDY WHITMORE

---

---

---

---

---

---

---

---

# Responding to Complaints of Student/Employee Misconduct in the #MeToo Era

National Association of Independent Schools (NAIS) Annual Conference | March 1, 2019

Presented by: Linda K. Adler, Grace Chan and Dr. Tekakwitha M. Pernambuco-Wise

**Investigations**

- Best Practices: What is Not An Investigation
  - Simply collecting written statements from witnesses
  - Preparing a memo that just summarizes what each interviewee said
  - Preparing a chart of each allegation and then writing “sustained” or “not sustained” next to each finding

13 | LCW | LIEBERT CASSIDY WHITMORE

---

---

---

---

---

---

---

---

**Investigations**

- Best Practices: What An Investigation Conveys About School’s Actions
  - The School has an effective intake procedure for complaints
  - The School received and understood the complaint for what it was
  - The School recognized the need to investigate
  - The School took the complaint seriously

14 | LCW | LIEBERT CASSIDY WHITMORE

---

---

---

---

---

---

---

---

**Investigations**

- Best Practices: What An Investigation Conveys About School’s Actions – Cont’d
  - The investigator’s report is well-written, clear, and reflects a thorough investigation
  - The School took prompt corrective action (if appropriate) once the investigation was complete
  - The School took steps during entire process to prevent retaliation

15 | LCW | LIEBERT CASSIDY WHITMORE

---

---

---

---

---

---

---

---

# Responding to Complaints of Student/Employee Misconduct in the #MeToo Era

National Association of Independent Schools (NAIS) Annual Conference | March 1, 2019

Presented by: Linda K. Adler, Grace Chan and Dr. Tekakwitha M. Pernambuco-Wise

**Investigations**

A teacher makes a complaint to the School's human resources manager that the Assistant Head of School has been sexual harassing the teacher over the last year. The teacher claims that he reported this to the Head of School but the Head of School has not done anything.

*What should the HR Manager do next?  
Who should investigate this matter?*

16 | LCW | LIEBERT CASSIDY WHITMORE

---

---

---

---

---

---

---

---

**Investigations**

- Best Practices: Who Should Investigate?
  - Employment level of investigator
  - Credibility of investigator
  - Training experience
  - Time constraints
  - PR concerns (e.g. public visibility of accused)
  - Personality/strengths of investigator
  - Impartiality
  - Report-writing ability
  - Location and hourly rates (if outside)

17 | LCW | LIEBERT CASSIDY WHITMORE

---

---

---

---

---

---

---

---

**Investigations**

- Best Practices: Who Should Investigate?
  - Training Providers:
    - Professional HR organizations (SHRM, NCHRA, PIHRA, AWI)
    - Enforcement agencies (EEOC)
    - Law firms/vendors providing harassment prevention & investigations training

18 | LCW | LIEBERT CASSIDY WHITMORE

---

---

---

---

---

---

---

---

# Responding to Complaints of Student/Employee Misconduct in the #MeToo Era

National Association of Independent Schools (NAIS) Annual Conference | March 1, 2019

Presented by: Linda K. Adler, Grace Chan and Dr. Tekakwitha M. Pernambuco-Wise

**Investigations**

- Special Considerations: Interim Measures
  - Paid Administrative Leave
  - Transfer / alter schedule and/or duties
  - Warnings against retaliation
  - Monitor the School environment

19 | LCW LIEBERT CASSIDY WHITMORE

---

---

---

---

---

---

---

---

**Investigations**

- Special Considerations: Allegations of Conduct that Occurred Many Years Ago
  - Conduct that occurred within the last few years
  - Conduct that occurred many years ago (e.g., 10 years ago)
    - Are any of accused still involved with School community?

20 | LCW LIEBERT CASSIDY WHITMORE

---

---

---

---

---

---

---

---

**Investigations**

- Special Considerations: Corrective Action
  - Oral counseling
  - Training
  - Reprimand
  - Suspension / demotion / termination
  - Apology?

21 | LCW LIEBERT CASSIDY WHITMORE

---

---

---

---

---

---

---

---



# Responding to Complaints of Student/Employee Misconduct in the #MeToo Era

National Association of Independent Schools (NAIS) Annual Conference | March 1, 2019

Presented by: Linda K. Adler, Grace Chan and Dr. Tekakwitha M. Pernambuco-Wise

LCW LIEBERT CASSIDY WHITMORE

## Communicating with School Community Members in the #MeToo Era

---

---

---

---

---

---

---

---

### Communicating with School Community Members in the #MeToo Era

- What to Say About an Ongoing Investigation
  - Notify complainant of receipt of complaint and intent to investigate
  - For student complaints, notifications to parents
    - Their child is a complainant or “victim” of an alleged violation of major school rules
    - Their child is the subject of an alleged violation of major school rules – depends on circumstances
    - Their child is a witness to an alleged violation of major school rules – depends on circumstances

23 LCW LIEBERT CASSIDY WHITMORE

---

---

---

---

---

---

---

---

### Communicating with School Community Members in the #MeToo Era

- What to Say About an Ongoing Investigation
  - For employee complaints, notifications to
    - The “victim” of an alleged violation of major school rules if the “victim” is not also the complainant
    - The accused that he/she is the subject of an alleged violation of major school rules
    - All employees who have been identified as a witness to an alleged violation of major school rules

24 LCW LIEBERT CASSIDY WHITMORE

---

---

---

---

---

---

---

---

# Responding to Complaints of Student/Employee Misconduct in the #MeToo Era

National Association of Independent Schools (NAIS) Annual Conference | March 1, 2019

Presented by: Linda K. Adler, Grace Chan and Dr. Tekakwitha M. Pernambuco-Wise

**Communicating with School Community Members in the #MeToo Era**

- What to Say About an Ongoing Investigation
  - Should we notify school community?
    - Is it necessary to retain trust & credibility with the school community?
    - Be careful of impact on morale of faculty and staff
    - Determine who will respond
      - Head of School
      - Board Chair
        - » May want to have statements/talking points from select Board members and/or HOS

25 | LCW LIEBERT CASSIDY WHITMORE

---

---

---

---

---

---

---

---

**Communicating with School Community Members in the #MeToo Era**

- What to Say About an Ongoing Investigation
  - Do not disclose factual details about an ongoing investigation
    - May impair investigation
    - May later be found to be incorrect and could lead to liability for defamation or loss of credibility
    - Could be used to argue that School “rushed to judgment” or investigation was a “sham”
    - Limit information to persons with a “need to know”

26 | LCW LIEBERT CASSIDY WHITMORE

---

---

---

---

---

---

---

---

**Communicating with School Community Members in the #MeToo Era**

You, the Head of School, inform the parents of a male senior student that their son has been accused of sexual misconduct, and that the School will be conducting an investigation. The parents are outraged and claim that the accusations are a byproduct of #MeToo and that their child will not get a fair investigation because of today's political climate.

*How do you respond?*

27 | LCW LIEBERT CASSIDY WHITMORE

---

---

---

---

---

---

---

---

# Responding to Complaints of Student/Employee Misconduct in the #MeToo Era

National Association of Independent Schools (NAIS) Annual Conference | March 1, 2019

Presented by: Linda K. Adler, Grace Chan and Dr. Tekakwitha M. Pernambuco-Wise

**Communicating with School Community Members in the #MeToo Era**

- Communication After the Investigation
  - Communicating findings to complainant or victim:
    - Follow rules in student/parent or employee handbook
    - General finding
    - Appropriate action taken
    - Confidentiality
    - No retaliation
    - No disclosure of investigative report

28 | LCW | LIEBERT CASSIDY WHITMORE

---

---

---

---

---

---

---

---

**Communicating with School Community Members in the #MeToo Era**

- Communication After the Investigation
  - Communicating findings to alleged wrongdoer
    - Follow rules in student/parent or employee handbook
    - Specific findings (if sustained)
    - Corrective action(s) to be taken
    - Confidentiality
    - No retaliation

29 | LCW | LIEBERT CASSIDY WHITMORE

---

---

---

---

---

---

---

---

**Communicating with School Community Members in the #MeToo Era**

- Communication After the Investigation
  - Communicating findings to faculty/staff
    - Privacy rights
    - General vs. specific information
    - Sending a message
    - Morale

30 | LCW | LIEBERT CASSIDY WHITMORE

---

---

---

---

---

---

---

---

# Responding to Complaints of Student/Employee Misconduct in the #MeToo Era

National Association of Independent Schools (NAIS) Annual Conference | March 1, 2019

Presented by: Linda K. Adler, Grace Chan and Dr. Tekakwitha M. Pernambuco-Wise

**Communicating with School Community Members in the #MeToo Era**

- Communication After the Investigation
  - Communicating findings to school community
    - Communicate only minimum amount of information necessary, if any
    - Often required to respond to parent concerns
    - Maintain confidentiality to extent possible
    - Reassure parents of School's positive attributes and commitment to students
    - Consult with legal counsel and PR firm on message

31 | LCW LIEBERT CASSIDY WHITMORE

---

---

---

---

---

---

---

---

LCW LIEBERT CASSIDY WHITMORE

**Disclosures in the #MeToo Era**

---

---

---

---

---

---

---

---

**Disclosure of Personnel or Student Information**

- Policy Requirements / Restrictions
  - Employment references
  - Reporting of student discipline
- Privacy rights
- Defamation, disparagement

33 | LCW LIEBERT CASSIDY WHITMORE

---

---

---

---

---

---

---

---

# Responding to Complaints of Student/Employee Misconduct in the #MeToo Era

National Association of Independent Schools (NAIS) Annual Conference | March 1, 2019

Presented by: Linda K. Adler, Grace Chan and Dr. Tekakwitha M. Pernambuco-Wise

**Thank You!**

**Linda K. Adler**  
Partner | San Francisco Office  
Phone: 415.512.3000 | [ladler@lcwlegal.com](mailto:ladler@lcwlegal.com)  
[www.lcwlegal.com/our-people/Linda-Adler](http://www.lcwlegal.com/our-people/Linda-Adler)

**Grace Chan**  
Associate | San Francisco Office  
Phone: 415.512.3000 | [gchan@lcwlegal.com](mailto:gchan@lcwlegal.com)  
[www.lcwlegal.com/our-people/Grace-Chan](http://www.lcwlegal.com/our-people/Grace-Chan)

**Dr. Tekakwitha M. Pernambuco-Wise**  
Head of School | Sea Crest School  
Phone: 650.712.9892 | [tpernambucowise@seacrestschool.org](mailto:tpernambucowise@seacrestschool.org)

34 | **LCW** LIEBERT CASSIDY WHITMORE

---

---

---

---

---

---

---

---