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Conducting Effective Internal Investigations

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Topics for Today

- Why conduct investigations?
- Benefits and components of an effective investigation
- Investigation planning and process
- Post-investigation considerations



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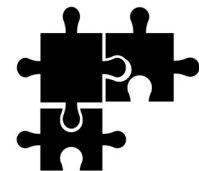
Investigations Overview

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General Purpose of Internal Investigations

The goal of every internal investigation is to gather facts so that a credible determination can be made as to whether there has been a violation of board policy, law, regulation, rule, or school policy.

- Discover the truth.
- Document the facts.
- Protect innocent parties.
- Provide management information for corrective action.
- Maintain a positive and fair workplace culture.



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Purpose of Investigations

- Gather facts and relevant evidence, so that appropriate corrective action can be taken – goal is to identify problematic conduct and prevent its recurrence
- Demonstrate your division's seriousness in addressing conduct contrary to the division's regulations and values (internal and external value)
- Demonstrate the division's fairness in addressing conduct contrary to the division's regulations and values (internal and external value)
- Obtain information that may assist the division in defending against possible legal claims or bad publicity

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Why is a “good” investigation important?

- It is the right thing to do
- Promotes a positive and productive environment for students, teachers, and staff
- A good investigation resolves problems and prevents litigation
- Judges, juries, constituents, and the public at large will closely scrutinize how we conduct investigations
 - Sometimes the response (or lack of response) to misconduct is worse than the misconduct
 - Expect your investigation report to be “Exhibit A” in a lawsuit

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THE GOLDEN RULE:

In every action you take and every decision you make during any investigation, always assume that your work will be viewed and scrutinized by the School Board, by the government, by a Court, by a jury, and by the public at large.

The stakes are always high.

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Common Types of Complaints

- Discrimination
- Harassment
- Employee misconduct (e.g., drug use, sexual misconduct)
- Failure to adhere to division policies
- Title IX



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Components of an Effective Investigation

1. **Complainant** has an opportunity to **tell their story** and to identify other sources of information, including witnesses.
2. **Witnesses** have an opportunity to **detail their account** of relevant events.
3. **Wrongdoer** has an opportunity to **give their side of the story**.
4. **Investigator** has an opportunity **examine and synthesize** all of the information gathered and to determine whether the allegation(s) are substantiated or unsubstantiated.

Benefits of an Effective Investigation

- Discipline (or discharge) bad actors and bad influences in the workplace
- Demonstrate to other employees that division policies will be enforced
- Avoid litigation
 - Limit a complainant's ability to embellish the story after conferring with a lawyer
 - Limit wrongdoer's ability to craft a defense after consulting with a lawyer
 - Also, the investigation itself may be a defense in a future lawsuit
- Manage publicity
- Improved work environment after problems have been resolved



Risks of a Flawed Investigation

- Bad actors are allowed to continue acting badly in the workplace
- Employees see that division policies will not be enforced
- Bad morale / culture
- Increased likelihood that complainant will sue
- If the underlying allegations are weak, the suit will attack the investigation as inadequate
- Lawsuit could lead to bad publicity for the division
- Reporting system has been devalued and shown to be worthless or – worse – likely to expose the whistleblower to retaliation



Importance of a Prompt Investigation

- To avoid liability, an employer needs to respond to allegations by beginning investigations **promptly**
- This is necessary to:
 - Protect the accuser from ongoing harassment
 - Show that employer is taking its policies seriously
 - Show that the employer's reporting and discipline systems work
 - Ensure the freshness of recollections
- Absent extenuating circumstances, the Division should strive to begin its investigation within a **week of receipt of complaint**
 - See e.g., *Sheriff v. Midwest Health Partners*, 619 F.3d 923, 931 (8th Cir. 2010) (employer liable when it took 7 weeks to begin investigation and months to enforce remedial measures)



General Investigation Timeline

	Activities	Possible Timeline
Part 1: Open and Categorize a Case	Receive and categorize the complaint; notify the relevant officials; assign investigator(s)	1 to 3 days
Part 2: Plan the Investigation	Determine the required investigation tasks, including document reviews and interviews	1 to 3 days
Part 3: Conduct Investigation	Complete planned investigation tasks	1 to 2 weeks
Part 4: Determine Appropriate Follow-Up	Convene the investigation team and the relevant staff to decide on appropriate disciplinary action or other follow-up	1 day to 1 week
Part 5: Close the Case	Communicate investigation results to case stakeholders and complete case report	1 day to 1 week

The Ideal Investigator

What you must BE

- Accurate
- Objective
- Thorough
- Fair
- Organized

What you must DO

- Gather information
- Collaborate
- Draw evidence-based conclusions
- Document methods and findings



Set the bar high for every investigation!

Investigation Process

Five Stages of Investigation

- **Stage 1:** Intake
- **Stage 2:** Frame and understand the allegations and develop plan
- **Stage 3:** Factfinding: Identify, gather, and review relevant documents; conduct witness interviews
- **Stage 4:** Analyze and report
- **Stage 5:** Take action



Intake

- ✓ Review and **acknowledge** complaint
- ✓ Decide whether investigation is needed
- ✓ Who should investigate? (internal vs. third-party)
- ✓ Safety / security issues
- ✓ Acknowledge receipt of complaint
- ✓ Preservation of evidence (documents and people)
- ✓ Notify relevant stakeholders (complainant / respondent)
- ✓ Consider whether **interim action** is necessary

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Internal vs. External Investigations: When Each Approach Makes Sense

Internal Investigation

- ✓ Suitable for low-risk or minor issues
- 🚀 Quicker to initiate with existing staff
- 💰 More cost-effective for routine matters
- 👤 Familiar with internal policies, people, and culture
- 📁 Allows for close oversight and flexibility
- 🤝 Existing relationships may ease cooperation

External (Third-Party) Investigation

- ✓ Ideal for high-stakes, complex, or sensitive cases
- 🎯 Brings impartiality and avoids internal bias
- 🛡️ **Privilege**; reduces legal and reputational risk
- 📚 Offers specialized expertise and investigative training
- 🌱 Builds trust with staff, unions, and the wider community
- 🔒 Avoids conflicts of interest and perceptions of favoritism

Both approaches have value. The right choice depends on the **nature of the issue**, **risk level**, and the need for **neutrality and credibility**.

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Reviewing the Complaint: Issues and Scope

- **Questions to consider**
 - What do you know based on the complaint?
 - How serious is the alleged misconduct? (Do we pull in Legal?)
 - How have similar complaints been handled in the past?
 - What else do you need to know to understand what happened?
 - What are the best sources of this information (e.g., other students, teachers, etc.?)
- **Careful thought at the beginning** can help you avoid wasting time or overlooking important facts as you investigate

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Interim Action: General Considerations

- Interim action is action taken to protect parties or Division, or prevent further harm, while an investigation is pending
- Should complainant and respondent be separated while the investigation is pending?
 - Discussion of admin leave on next slide
- Should other resources or supportive measures should be offered to the complainant?
- Preservation of evidence
 - Prevent access to computers / electronic records?
 - IT monitoring / collection?
 - Legal hold?
- Witness availability – is anyone about to leave?

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Interim Action: Administrative Leave?

- Administrative leave may be appropriate if:
 - Allegations of physical or mental harm where the threat is ongoing / continuing and cannot be mitigated through other measures
 - Allegations that will bring heavy publicity or carry significant reputational risk
 - Allegations in which complainants or witnesses appear intimidated by Respondent
- Note that placing someone on leave – even paid leave – could be viewed as retaliatory so do not do it for complainant unless you have consent or a compelling reason
- This a big decision with big consequences – proceed with caution

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Evaluating Impartiality

- Evaluate your impartiality
- Factors that could disrupt impartiality:
 - Reporting relationship between investigator and (1) Complainant, (2) Respondent, or (3) witnesses
 - Investigator's personal / social relationship with any party or witness
 - Investigator's previous knowledge of events involved in complaint
- Perceived conflicts can be problematic too

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Create an Investigation Plan: Special Board Considerations

- How are you going to initiate the investigation? (public or in closed session?)
- Are you going to publicize the investigation?
- Are you going to make the findings public?
- What is the **purpose** of the investigation? (legal advice vs. fact-finding)
- How do you want to receive the findings? (investigation report? Read-out?)
 - FOIA implications
 - Discovery / privilege implication

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Gathering Documents

- How will the investigator compile relevant documents?
 - Designated liaison?
- Where will documents be stored?
- How will we ensure that relevant documents are preserved?
- Does your division have means to conduct targeted email/document searches to facilitate document collection?

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Witness Interviews

- Broad to narrow
- Start with broad questions, then specific, then “catch-all” (e.g., “Anything else?”)
- Allow the witness to explain in his or her own words
- Who, what, when, where, how
- Toward the end of an interview, however, leading questions can be useful to pin the witness down on specific issues
- At the very end of an interview:
 - Is there anything you thought I would ask that I haven't asked?
 - Is there anything else I need to know?
 - Who else do I need to talk to?

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Witness Interviews – Don'ts

- Suggest to the Complainant that they are somehow to blame
- Take the matter lightly or be dismissive
- Appear to take sides
- Agree with statements; it is okay to express empathy, but it is not okay to suggest you “believe” them and have reached a conclusion
- Promise a particular outcome or corrective action
- Promise absolute confidentiality
- Express your own feelings or opinions

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Questions to Consider While Factfinding

- Does your division have an investigation policy? If so, follow it.
- Does your division require investigations to be finished by a certain period of time (and allow extensions if needed)? (i.e., within ten days of receipt of Complaint)
- Does your division consider implementing interim supportive measures that need to be in place while investigation is completed?
- Do you want the investigator to conduct check-ins with the board during the course of the investigations? (pros and cons)

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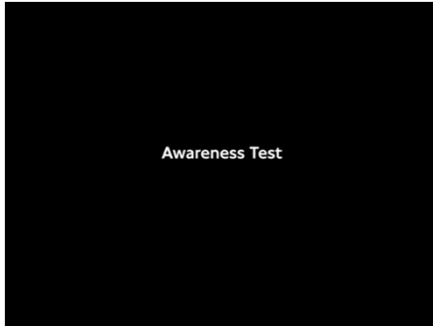
Determination

- The most critical task of each investigation is the evaluation of the facts and evidence collected
- How will you want the factfinder to compile the findings?
- How will the factfinder report those findings to you?
 - Closed session considerations (certifications, handouts, reports)
- Are there **other** potential problems that warrant further factfinding or a separate investigation?

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Avoid “Tunnel-Vision”



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You have the findings...now what?

- **Review findings objectively**
 - Ensure the board reviews the report with a neutral, fact-based lens—separate from personal opinions or internal politics.
- **Assess policy compliance and legal risk**
 - Determine whether policies were violated and if there is any potential legal exposure or liability for the division.
 - Use the findings to identify and correct any underlying issues (e.g., gaps in training, unclear policies, poor leadership, etc.).
 - Update relevant policies, procedures, or codes of conduct to prevent similar issues in the future.
- **Consult legal counsel (if needed)**
 - Bring in legal guidance to confirm that any next steps are consistent with employment laws, collective agreements, and due process rights.
- **Evaluate the need for disciplinary action**
 - If misconduct is substantiated, determine appropriate and proportionate consequences, while ensuring fairness and consistency.

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You have the findings...now what?

- **Consider organizational impact**
 - Reflect on how the issue and its resolution may affect division culture, staff morale, and public trust
- **Communicate outcomes appropriately**
 - Plan how to communicate the results—what can be shared and with whom—while respecting confidentiality and privacy laws.
- **Commit to follow-up**
 - Ensure there's accountability for implementing recommendations and tracking changes over time.
- **Promote a culture of safety and accountability**
 - Reinforce the district's commitment to ethical behavior, transparency, and a safe working environment for all staff and students.

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Questions or Comments?

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