

Conducting HR Investigations



EdCounsel LLC
SCHOOL ATTORNEYS

1. Determine the Allegations

- How did we receive the allegations?
 - Where is the documentation regarding the initial allegation?
- When did the District first receive notice of an issue?
- What are the possible angles?
 - State and Federal law
 - Employment issues
 - Student/parent issues
 - Discrimination/Harassment issues
- Create an outline of individuals involved in order to perform steps 2 and 3



2. Immediate Actions

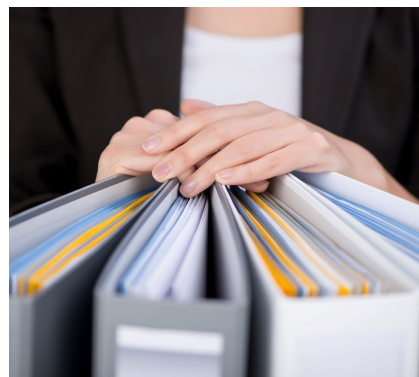
- Mandatory reporting
- Law enforcement notification
- Notification to the compliance officer
- Develop a response plan and one P.O.C.
 - Inquiries made by staff
 - Inquiries by parents/students
 - Media requests
 - Board of Education notification
- Consider whether removal of an employee is immediately required
 - Written statement THEN
 - Paid administrative leave
 - Lock down access/contacts

3. Interim Measures

- Job duties/locations
- Administrative directives
- Extra duties
- Student-related measures (e.g. safety plans)
- If sexual harassment is alleged, consider additional interim measures
- Paid administrative leave (non-disciplinary)
- Notices of non-retaliation

4. Securing Documentation

- Ask the reporter to reduce the allegations to writing
 - Collect other evidence/documentation available at that time
 - If unwilling or unable to provide information:
 - Ask reporter to verify a written statement
 - OR (last resort) reduce to writing without verification
- Create a comprehensive investigation outline
 - Separate individual allegations
 - Make a list of witnesses and determine best order for interviews
 - Students?
 - Parents?
 - Staff?
 - Organize by time/date
 - Review policies/regulations and procedures
 - Policies that apply to specific kinds of investigations
 - Also policies that may be at issue regarding violations
 - Calendar deadlines



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5. Collect Evidence

- Review all documentation immediately available
 - Personnel files
 - Email correspondence
 - Electronic files/data
- Meet with individuals involved
 - Obtain written statements
 - Take notes
 - Collect evidence other than written statements
 - Inquire about others who may have information
 - Discuss confidentiality and retaliation
 - Inform regarding timeline of investigation
- Always obtain written statements
 - Various effective methods for this
- Ensure that you request/collect firsthand evidence
 - Cell phone records
 - Photos/videos
 - Email correspondence
- Student interview tips
- Parent interview tips
- Personnel interview tips
- Interacting with law enforcement
- Preserve evidence we have control over
 - Digital files
 - Video files
 - Computer data

7. Notify Individuals of Determination

- This step is very scenario-specific
 - Requirements regarding confidential personnel information
 - Board Policy re: discrimination/harassment
 - Appeal rights under policy
 - Non-retaliation
 - Consider face-to-face meetings versus written notice, or both
- Develop notification/communication plan for other stakeholders
 - Staff
 - Parents/students
 - Board
 - Media

6. Prepare Documentation of the Investigation

- Compile evidence related to each separate allegation
- Review the relevant policies and procedures
- Draft a report addressing each allegation
- Come to a conclusion about violations of policy
 - Preponderance of the evidence standard
 - Credibility weighing
- Determine remedial action required for each allegation
 - Fact-specific
 - Calendar follow-ups to determine whether remedial action is effective
- Maintain documentation in appropriate files within the district



Assessing the Risk Associated With Investigation Outcomes

- Employee disciplinary action factors
 - Employment status
 - Timeframe
 - Cost
 - Weighing risk of termination versus other remedial action
 - Board sentiments/community norms
- Discrimination, harassment and retaliation issues
 - Alleged victim?
 - Alleged perpetrator?
 - Special considerations related to sexual harassment
- Precedent
 - What precedent is in place?
 - What precedent will this set?