

Successful Investigations at School: A Guide



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NOTE: The information set forth in these materials is intended to provide an outline of the law existing as of the presentation date. It is not intended as, nor should it be considered, “legal advice.” If you are presented with a specific issue, you should consult with legal counsel.



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PRE-INVESTIGATION CONSIDERATIONS

When might an investigation be necessary?

The circumstances that could trigger a need to conduct an investigation are endless.

EXAMPLES

- ***Complaint Reported to the School:***
 - A parent contacts your school to ask about graphic text messages exchanged by students.
- ***Observation of Possible Misconduct:***
 - A supervisor becomes aware of inappropriate conduct by an employee that could constitute harassment, but no complaint is reported.



PRE-INVESTIGATION CONSIDERATIONS

Should you make a report to law enforcement?

Issues to Consider

- Does the incident or activity possibly involve criminal conduct?
- Don't take steps to investigate allegations of misconduct that could compromise a criminal investigation.
- Don't make a decision against making a report based on a belief that law enforcement will not take any action.
- In matters involving suspected student misconduct, be careful about telling the parents of the student alleging misconduct by another student of their right to make a report to law enforcement, rather than have the school make the report.

PRE-INVESTIGATION CONSIDERATIONS

Should you notify the insurer?

Factors to Consider

- Is there possible coverage under any applicable policy?
- Is there a formal complaint, such as an MHRA, EEOC, or formal lawsuit?
- What are the insurer's requirements about notice?



PRE-INVESTIGATION CONSIDERATIONS

Are there student or employment policies that might be applicable?

- Review the parent/student or employee handbook.
- Have the policies been distributed to:
 - Parents and students in the case of suspected student misconduct?
 - Employees?
- Has the employee or the parents of the student accused of misconduct acknowledged receipt of the handbook?
- Do the policies contain any requirements about when or how an investigation is to be conducted?
- Are there deadlines in any policy for completing any investigation?
- Is there any reference to the burden of proof necessary to establish a violation?
- Is there a policy statement about information or reports that are required to be provided to participants in the investigation?

PRE-INVESTIGATION CONSIDERATIONS

Should any interim steps be taken?



- Consider whether to offer counseling to employee or student who made the complaint.
- Consider whether the alleged wrongdoer (accused student or employee) should be suspended or placed on leave of absence.
- In the case of students, consider whether a classroom separation or other measures are warranted.



PRE-INVESTIGATION CONSIDERATIONS

Selecting the Investigator

Don'ts:

- ❖ Don't select an investigator who is perceived as having a bias.
- ❖ Don't select an investigator who has a friendship or reporting relationship with the complainant or accused. (Supervisors are usually not good investigators.)
- ❖ Don't select an investigator who is inexperienced.



PRE-INVESTIGATION CONSIDERATIONS

Selecting the Investigator *(continued)*

Dos:

- ❖ Select an investigator who is viewed as impartial and unbiased by all parties.
- ❖ Select an investigator who is experienced, knowledgeable, and comfortable with the investigation process.
 - The investigator must be able to discuss the subject matter without embarrassment.
- ❖ Consider selecting an outside investigator when the circumstances warrant.
- ❖ Consider race, sex, age, and other factors relevant to the investigation when selecting the investigator.
- ❖ Legal counsel for the parish or school may not be able to simultaneously conduct the investigation and provide legal advice about the investigation to the school or parish.



PRE-INVESTIGATION CONSIDERATIONS

Prepare for the Investigation

Dos:

- ❖ Review accused employee personnel file or student file for prior complaints.
- ❖ Identify potential witnesses (this likely will change as the investigation unfolds).
- ❖ If the investigation will be conducted “in-house”:
 - Identify who needs to be informed about planned interviews.
 - Supervisor of employees / parents of students?
 - Prepare outline of topic areas to cover and possible questions.
 - Decide on preliminary order of interviews (typically complainant first, respondent last).
 - Select a neutral location where interviews can be conducted in private.



INVESTIGATION PROCEDURES

Interview Protocols for All Witnesses

Don'ts:

- ❖ Don't prejudge the outcome of the investigation.
- ❖ Don't communicate personal views concerning the claim or persons involved.
- ❖ Don't use leading questions.
- ❖ Don't promise complete confidentiality.
- ❖ Don't be afraid to ask embarrassing questions.
- ❖ Don't be tied to your outline or list of questions.



INVESTIGATION PROCEDURES

Interview Protocols for All Witnesses

(continued)

Dos:

- ❖ Thank the person for participating in the fact-finding process.
- ❖ Provide general explanation about the purpose of the interview.
 - Claim has been made.
 - You have been identified as a possible witness.
- ❖ Explain the importance of the person providing truthful information.
- ❖ Explain role of investigator (collect information, be fair and impartial).
- ❖ Assure person being interviewed that parish/school prohibits retaliation against anyone who participates in an investigation.



INVESTIGATION PROCEDURES

Interview Protocols for All Witnesses (continued)

Dos:

- ❖ Be calm, patient, neutral → Instill confidence.
- ❖ Use open-ended questions → Encourage story-telling.
- ❖ Focus on getting clear facts → 6 W's (Who, What happened, When, Where, Why, other Witnesses).
- ❖ Tell the witness to respect the confidential nature of the investigation by not discussing it with other students or coworkers, as may be applicable.
- ❖ Make credibility assessment.

INVESTIGATION PROCEDURES

Interviewing the Complainant

Preliminary Comments About the Process

- Reason for interview.
- Role of investigator.
- Refer to any applicable policies.
- State that parish/school does not tolerate retaliation.
- Ask the complainant not to discuss the contents of the interview with others.
- Don't promise complete confidentiality or anonymity.
- Ask complainant if there are concerns about neutrality and impartiality of investigator.

INVESTIGATION PROCEDURES

Interviewing the Complainant (continued)

Questions About Allegations

- For employment matters, confirm employee's role in parish/school.
- For student matters, confirm student's grade level.
- Ask W's:
 - Who involved?
 - Where did misconduct take place?
 - When did it happen? (Pin down dates.)
 - What happened?
 - Why conduct occurred?
 - Witnesses.



INVESTIGATION PROCEDURES

Interviewing the Complainant (continued)

Questions About Allegations

- How has alleged misconduct affected:
 - Job? (*for employee*)
 - School environment? (*for student*)
- Did the complainant make any prior report?
 - If so, to whom, when, and what happened?
- Are there any relevant documents (photos, videos, emails, text messages)?
- Is there any specific outcome or remedy requested?
- Assess the credibility of the complainant.

INVESTIGATION PROCEDURES

Interviewing the Accused

Preliminary Comments About the Process

- Follow same initial process as other witness interviews.
- Expect angry or defensive initial response. (Remain calm.)
- Do not make any promise about permitting the alleged wrongdoer to confront the complainant.
- Don't be obligated to reveal the identity of the complainant if the complainant's safety is potentially in jeopardy.
- Don't make any promises about how investigation will be conducted.
- Ask if alleged wrongdoer has concerns about neutrality or impartiality of investigation process or investigator.



INVESTIGATION PROCEDURES

Interviewing the Accused (*continued*)

Questions About Allegations

- Give the alleged wrongdoer wide latitude to provide his/her version of events.
- Ask follow-up questions to clarify areas of confusion.
- Ask if there are prior allegations of similar misconduct.
- Ask if the accused is aware of any applicable policy.
- Ask if the accused believes the alleged misconduct violated the policy.
- Ask how complainant responded to the alleged misconduct.
- Ask if the accused believes the complainant or any witness would not be truthful.
- Assess the credibility of the accused.
- Introduce contradictory or conflicting evidence or statements.
- Ask for relevant materials.

FINALIZING THE INVESTIGATION

A) Analyzing the Information



- Conduct any follow-up interviews as necessary.
- Gather any materials identified by witnesses during the interviews.
- Review notes taken during witness interviews. Promptly address illegibility or inconsistencies in notes

FINALIZING THE INVESTIGATION

(continued)

B) Assessing the Credibility of Competing Facts

- Which facts are admitted? / Which facts are disputed?
- What evidence has been produced to corroborate one version of events (other witnesses, documents, audio or video recordings)?
- What conduct or behavior during the interview supports or undermines credibility (evasive, no eye contact, fidgety, inconsistent explanations)?
- Any prior incidents of misconduct that are relevant?
- Does anyone have a motive to be untruthful?

FINALIZING THE INVESTIGATION

(continued)

C) Preparing the Report

1. Introduction

- *Summarize the claims or allegations that triggered the investigation.*

2. Summary of the Investigation

- *State when interviews started, when interviews were completed, number of witnesses interviewed, and explain the reason for any delay in the investigation, if any.*

3. Summary of Witness Interviews

- *Provide a summary of the information obtained from the complainant, the accused, and each witness. Include information supporting the credibility or reasons why the credibility of a witness is suspect.*

4. Conclusion

- *Summarize the results of the investigation.*

FINALIZING THE INVESTIGATION

(continued)

D) Deciding Whether Corrective Action or Disciplinary Action is Necessary

Investigation Established That a Policy Violation or Wrongdoing Occurred

- Review applicable policies.
- Determine appropriate discipline or corrective action.
- Inform the accused of the disciplinary determination.
- Prepare any appropriate disciplinary notice (place it in employer personnel file).
- Inform the complainant (and witness) that the investigation is complete, a determination was made that a violation occurred, and that appropriate disciplinary action was taken.
- State that parish/school does not tolerate retaliation.

FINALIZING THE INVESTIGATION

(continued)

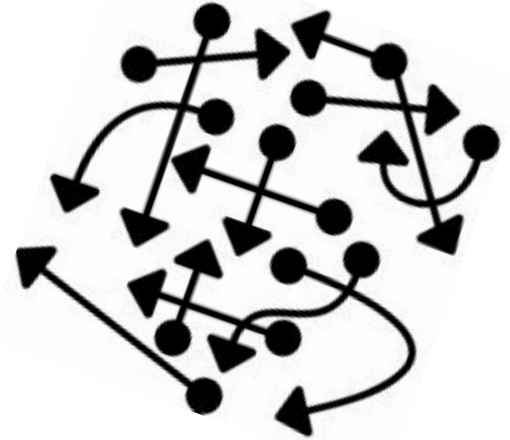
D) Deciding Whether Corrective Action or Disciplinary Action is Necessary *(continued)*

Investigation Did Not Establish That a Policy Violation or Wrongdoing Occurred

- Inform the accused, the complainant, and witnesses (in separate messages) that:
 - The investigation is complete.
 - No wrongdoing was established.
 - Parish/school does not condone retaliation.

INVESTIGATION CONUNDRUMS

- He said - She said
- The old complaint
- The rumor
- Uncooperative complainant
- Uncooperative accused
- Reluctant witness
- Request that interview be tape recorded
- Demand that witness or attorney be present during interview



Questions?

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