

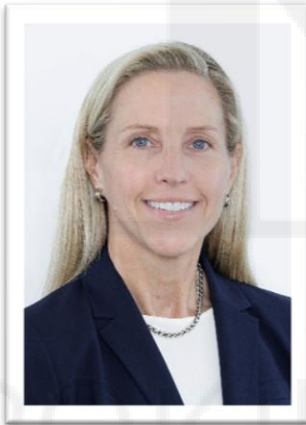
School Investigation Best Practices

presented to
Massachusetts Charter Public School Association

Today's Presenters

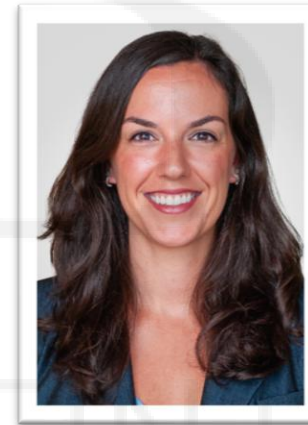
2

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Agenda

- The Importance of a Strong Investigation
- Different Types of Investigations
- Key Elements of a Strong Investigation
- Starting an Investigation
- Investigation Steps
 - Getting Started
 - Evidence Gathering
 - Investigative Reports
- Decision-making
- The Importance of Good Record Keeping
- Questions?

Importance of a Strong Investigation

- What is an investigation?
 - The process of actively gathering and synthesizing information to determine if a school's policies or the law have been violated
- A thorough and comprehensive investigation is important because it
 - Helps to identify systemic issues and gaps to prevent future incidents
 - Ensures any student discipline or corrective action is applied fairly, objectively, and in accordance with school policies and applicable laws
 - Demonstrates to students, staff, and the broader community that the school takes concerns/violations of school policies seriously – helps build trust and protects the school's reputation

Key Elements of a Strong Investigation

A strong investigation is . . .

- **Thorough** – looking at every lead, questioning witnesses, verifying info, considering the broader school climate and culture
- **Reliable** – supported by factual evidence, not gut instincts or assumptions
- **Prompt** – investigations vary in length depending on the scope of allegations, but should be reasonably prompt
- **Impartial** – objective and unbiased
- **Fair** – procedurally fair (due process) and substantively fair (grounded in evidence)
- **Training-informed** – conducted by staff who have training/experience in handling allegations and with the school's policies/procedures
- **Tailored to the Specific Policy and/or Grievance Procedures** – all school policies and procedures differ

Common Types of School Investigations

- **Title IX Investigations** – allegations of discrimination based on sex, including sexual harassment
- **Bullying Investigations** – allegations of bullying and cyberbullying, defined under M.G.L. c. 71, § 37O
- **Discrimination and Harassment (non-Title IX) Investigations** – allegations of discrimination/harassment based on protected characteristics (e.g., race, national origin, disability, housing status)
- **Student Code of Conduct Investigations** – allegations that a student violated the code of conduct (e.g., plagiarism, drug or weapon possession, fights)
- Other types of investigations: employee, board of trustees

Starting an Investigation

7

A report is made to the school of an allegation . . .

The school should . . .

- ☐ Determine what school policy and/or law applies
- ☐ Review the applicable policy and grievance procedures
- ☐ Consider possible conflicts
 - ☐ Investigator and decisionmaker should have no connections with the respondent or complainant
 - ☐ Would it be a good idea to have an outside investigator?
 - ☐ Consider the likelihood of litigation, complex/sensitive topics, concerns about conflicts/appearance of conflict
- ☐ What are the due process requirements/policies?
- ☐ Consider supportive measures/a safety plan

Starting an Investigation (continued)

8

A report is made to the school of an allegation . . .

The school should . . .

- ❑ Keep a file and record of investigation materials
 - ▣ Names of the complainant(s) and respondent(s)
 - ▣ Copies of relevant policies
 - ▣ All notes, evidence, etc. gathered during investigation
 - ▣ Investigation reports
 - ▣ Decisionmaker's decision
- ❑ Establish a timeline for the investigation and communicate it to appropriate parties
- ❑ Inform the school's attorney about the allegation and investigation

Starting an Investigation (continued)

9

A report is made to the school of an allegation . . .

The school should . . .

- Ensure that Notice is given to the Complainant and Respondent in accordance with school policy
- Notify other parties who need to know, such as parents/caregivers; DESE; DCF
- Remind staff that only the Superintendent/Head of School is authorized to make statements to the press/media
 - ▣ Consider whether to hire a public relations specialist

Starting an Investigation (continued)

10

A report is made to the school of an allegation . . .

The school should . . .

- ❑ Inform parties and witnesses that retaliation is prohibited
- ❑ Advise Title IX parties that they have a right to an advisor
- ❑ Create witness list and reach out to schedule witness interviews
- ❑ Create an outline of witness questions
- ❑ Assemble documents to be used for questioning

Retaliation

- ❑ Individual engages in protected activity (files a complaint or cooperates in investigation)
- ❑ “Adverse action” taken around the same time (contemporaneously or within a reasonable amount of time after protected activity)
- ❑ Person/school that engaged in adverse action was aware of protected activity
- ❑ There is evidence of a causal connection, or nexus, between the protected activity and the adverse action taken
- ❑ Retaliation is prohibited!
- ❑ Retaliation is a separate basis for a complaint

Investigation Steps: Evidence Gathering

- ❑ School should be clear about the scope of the investigation
 - ❑ Investigators should only ask questions that relate to the relevant policy at issue
 - ❑ Consider whether a second staff person should be present
- ❑ Identify witnesses
 - ❑ Interview witnesses separately, may need to interview witnesses multiple times
 - ❑ Witnesses can include students, teachers, administrators, other staff, volunteers, etc.
- ❑ Identify which witnesses and what questions will obtain the information needed

Investigation Steps: Evidence Gathering

- ❑ Identify all significant and relevant dates
- ❑ Identify documents, photos, texts, emails, etc. – ask parties to provide copies
 - ❑ **IMPORTANT: Notify law enforcement if nudity is involved (e.g., “sexting”); do not open or download images.**
- ❑ Identify the relevant issues that must be decided – these issues go directly to whether a violation of a policy or law occurred
- ❑ Identify corroborating evidence
- ❑ Keep in mind any timelines!
 - ❑ If investigation is taking longer than anticipated, keep the parties informed.

Investigation Steps: Witness Interviews

- Prepare an interview outline
- Consider the order of witness interviews
- Interviews:
 - Introduce yourself; explain role
 - Explain that you will be taking notes
 - Ask the witness not to discuss interview with other witnesses*
 - Discuss confidentiality and limits
 - Remind of prohibition against retaliation

*In Title IX investigations, you may not instruct the parties not to discuss the matter.

- Use “Funnel Technique”: Questions should start broadly with open-ended questions (What do you recall about last Thursday’s game? Who was there?) and get narrower (What did A. say to you?)
- At conclusion of interview:
 - Ask if there is anything else the witness would like to share or any other witnesses that may have relevant information
 - Ask the witness to reach out if they recall something they forgot to mention

A good investigation report:

- Explains the scope of investigation and identifies the applicable laws, regulations, or school policies being investigated
- Clearly describes the evidence (documents/evidence reviewed, witnesses interviewed, dates of interviews, etc.)

Investigation Steps: Investigation Reports

- Evaluates the evidence in light of the allegations
 - Assess credibility of witnesses and evidence (e.g., Are the witness's statements believable on their face? Do they make sense? Are a witness's statements consistent with other evidence? Does the witness have motivation to be untruthful?)
- Makes detailed findings of fact
 - Use only relevant evidence (evidence that proves or disproves a fact)
 - Use only credible evidence (more likely than not verifiable, truthful, unbiased, and/or impartial)
 - Some evidence may be excluded by law (e.g., rape shield/Title IX) or limitations on what can be asked

Investigation Steps: Investigation Reports

- The Investigation Report should not make legal conclusions – e.g., should not state that the conduct did/did not constitute a violation of the school policy—that is the role of the decisionmaker.

Typical Contents of the Investigation Report

19

- ▣ Parties' names
- ▣ All relevant and significant dates (alleged incident; notice dates)
- ▣ Scope of investigation (relevant school policies; laws)
- ▣ Investigation timeline
- ▣ Standard of evidence (e.g., preponderance of the evidence)
- ▣ Summary of the allegations
- ▣ Summary of relevant evidence (attach details in an appendix, if needed) Including agreed-to/uncontested facts
- ▣ Credibility assessment (use caution, provide basis for credibility determinations)
- ▣ Discussion and Analysis of evidence
- ▣ Summary of the findings/facts
- ▣ Conclusion
- ▣ Signature of the investigator and date of the report
- ▣ Appendices – evidence, witness list, timeline

20 Investigation Steps: Redacting and Sharing the Report

- ❑ Investigation reports are typically part of the student record
- ❑ Only include relevant information (keep out irrelevant personal info)
- ❑ Create a full, complete version of the report that includes personally identifiable information – this goes to the decisionmaker and saved with the complete investigation file
- ❑ Create a redacted version that removes all names and personally identifiable information – this goes to the parties and any advisors
 - ❑ Create an answer key that separately explains all identifiers
 - ❑ For redacted versions, use “Complainant,” “Respondent,” “Witness A”
 - ❑ Title IX – cannot redact complainant/respondent when sending to the other party
- ❑ Use a secure file-sharing platform (e.g., OneDrive link)

Investigation Steps: Decision-making

- ❑ Investigators will send their investigative report to the designated decisionmaker under the applicable school policy.
- ❑ The decisionmaker may rely on the investigation report but must engage in their own independent and objective analysis of the allegations taking into consideration the findings of the investigator.
- ❑ Decisionmaker will apply the relevant evidentiary standard (e.g., preponderance of the evidence) and decide whether there was a violation of the school policy.
- ❑ Parties will be notified in writing of:
 - ❑ The outcome of the investigation (findings, rationale for findings, and if any sanctions/discipline will be imposed)
 - ❑ A reminder to the parties that retaliation is prohibited and violates the school's policies
- ❑ Decisionmaker will notify any relevant school officials who have a legitimate reason to know of the decision.

The Importance of Good Record-Keeping

22

- ❑ Demonstrates that the school followed its own policies and procedure, and relevant state and federal laws, with fidelity
- ❑ Helps mitigate litigation and financial risks – need to remember there could be separate a complaint to DESE's PRS, US DOE's OCR, or a lawsuit
- ❑ Protects student and staff rights and safety
- ❑ Allows the school to analyze trends, consider the broader school climate and culture, and prevent future incidents
- ❑ Remember! Certain investigation records must be retained for a specific amount of time (e.g., Title IX = 7 years)

Questions?

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