

Investigations 101: Guidance for Conducting Investigations in K-12 Schools

SPEAKERS

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What We'll Cover Today

- When and what to investigate
- Immediate actions and communications
- Who should investigate and what are the expectations
- Scope of the investigation
- Specific concerns and considerations
- The investigation is complete ... what now?

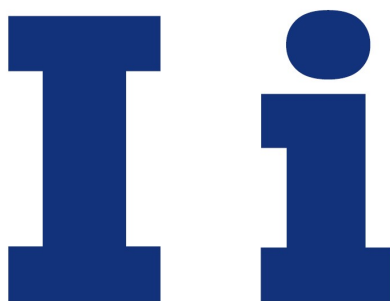
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Investigation, or “investigate”?



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Warrants an Investigation

- Conduct that, if true, would violate school policy
- Conduct that, if true, would violate the law (and, almost surely, also violate school policy as a result)
- Matter that has potential to be high-profile or attract press coverage
- When mandated to do so by external entity/agency

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But What About ...

- Routine student conduct matters?
- Anonymous complaint?
- Complaint made by someone who has already separated from institution?
- Trustee-driven request?
- Donor-driven request?
- “I didn’t think this would be high profile and we investigated internally, but now it’s all over social media – what do I do now?!”

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When may no Investigation be required?

- Even if true, there is no policy violation; and (or)
- There is no ongoing risk to students or staff; and
- Even if the allegations are entirely true, no reports to outside agencies would be required; and
- Nothing learned during the investigation will change the course of a decision that’s already been made; and
- The decision that’s already been made does not turn on the veracity of the allegations.

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Proceed with caution ...



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Immediate Decisions Can Impact the Entire Investigation



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Threshold Considerations

- Insurer notification. Possible coverage for investigation itself
- Parental notification. When/how/who has point
- Who is subject of investigation – Student(s)? Teacher? Employee? Third party?
- Who is the investigation team – internal/external
- Board/Chair/Exec. Cmte notification
- Rise to the level that crisis communications/PR firm should be retained? How to retain them
- Privileged, or not?

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Privileged, or Not?

- Threshold consideration—once start in unprivileged way, tough to put genie back in bottle
- Who is the client?
- What are the pros if privileged?
- What are the cons?
- If “high profile,” does that impact the decision?
- Concern about overkill for routine matters, esp. student matters?

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What's the Intended Work Product?

- Written report, for internal consumption only
- Written report, would produce in litigation willingly
- Written report, intend to release to the public/post on website
- Longer privileged written report, verbal summary for key constituents
- Verbal report only
- What notification will the subject of investigation receive?

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Who's On the Day 1 Team?

- Head of School?
- Board Chair/Committee?
- HR?
- Communications team?
 - Internal?
 - External?
- Other administrators – e.g., Athletics Director, if athletics related?
- Others?

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Who Outside of Institution May Need to Be Advised?

- Teacher Misconduct
 - State licensure agency
- Coaching Misconduct
 - Safe Sport
 - State athletics agency
- Criminal Misconduct
 - Law enforcement
 - Mandatory reporting obligations
- For all: Insurer (if legal claim possible)

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Other “Day 1” Considerations

- Is employee/student on leave? Should they be, if not?
- High-level assessment of legal risks
- Informing key constituents – how much to share?
- Data/IT preservation

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Who Is Conducting the Investigation?

- Internal vs. external
- Lawyer?
 - Someone familiar with institution?
 - Someone completely new?
 - Investigator as witness during potential litigation?
- Size of “team”
- Cost considerations
- Demographic considerations

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Structure of Investigation

- Engagement Letter
- Work product expectations
- Segregate investigative materials from business records
- Plan for possible waiver from Day 1 (?)
- Insurance available?
 - Communications with insurers
 - Does insurance cover crisis communications if necessary?
- If public – what rights/limitations does state law impose?

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Structure of Interviews

- Where? In person or virtual?
- How many interviewers/notetakers?
- Role of parents:
 - Fact-finding, or true interview?
 - Seriousness of allegations
 - Age of student
- Allow counsel if policy is silent? Pros/cons
- Record interviews or not? Pros/cons

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Conducting the Investigation



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Timing

- Check your policies
- What is reasonable timeframe?
- Keeping people informed
- What about breaks?
- What if happens just before the summer?
- What if criminal process begins – do you pause?

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Evidentiary Considerations – “Stuff”

- Phones/personal devices. What can you demand to see?
- Employee email
- Forensic investigation of devices
- Electronic document vendor
- AI/TAR-assisted document review?

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Evidentiary Considerations – People

- Method of notifying witnesses
- If allegations involve years of alleged conduct – how far back do you go? How broad of a witness net do you cast?
- If employee matter: what are you sharing with the employee under investigation, and when?
- Attempting to mitigate retaliation

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Evidentiary Considerations – Young People

- Open-ended vs. leading questions
- Not trying to “win” the interview
- Memory and comprehension issues – common. Not necessarily lying
- Trauma-informed
- Parental involvement/knowledge

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Dealing with the Press

- Proactively announce investigation?
- Talking points for Board/key constituents if they get cold call
- Responding, or not, to public statements from employee/their lawyer
- Mitigating leaks

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SO WHAT IF INVESTIGATION INVOLVES ...

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The Head of School

- Walling off access
- Continuing to function
- Who gets updates?
- Does that impact any privilege/work product/press considerations?

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Well-Known Coach

- In-season, or not. Different impacts. Do you wait if near end of season?
- Do you tell the team? When? What? They may be witnesses
- Retaliation concerns
- Assistants/grad assistants/trainers
- Calls from parents/alums

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Thorny Procedural Issues

- “Counterclaim”/retaliation
- Protecting witness identity
- Subject of investigation takes leave before or mid-investigation
- Subject seeks disability accommodations
- Subject resigns/withdraws
- Subject demands that institution pay for counsel

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Thorny Collateral Issues

- Subject employee active on social media
- Protests (possibly cross-protests)
- Hot-button social issues/interest groups
- Donor pressure

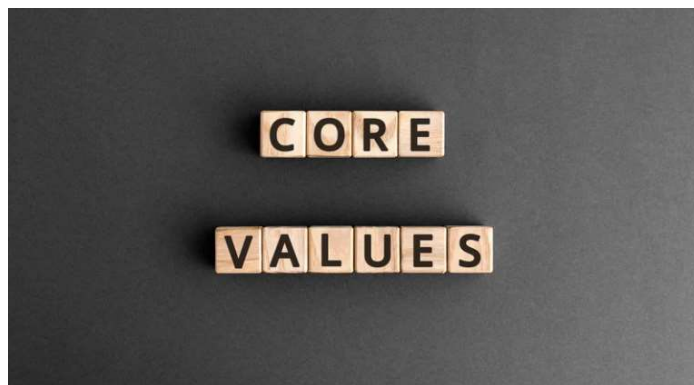
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And always remember your ...



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Questions?



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