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Investigation Tools & Techniques



North American Association of Educational Negotiators
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Purpose

- When to investigate?
- Conducting an “adequate” investigation
- Protecting the district from legal action



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Keys to an Adequate Investigation Employing the EVIDENCE Model

- Evaluate the complaint/situation
- **V**erify allegations and plan investigation
- **I**nterview witnesses and gather facts/evidence
- **D**ocument, document, document
- **E**xamine evidence and prepare report
- **N**otify those involved
- **C**orrective actions – consider options
- **E**ducate to avoid future problems



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Evaluate Complaint

- Is an investigation appropriate?
- Are any timelines applicable?
- Is this possible criminal conduct?
- Is this a uniform complaint?
- Notify law enforcement or others?
- Are interim measures necessary?




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When is an Investigation Appropriate?

The key is to make this determination early in the process

- Complaints and disciplinary action often include timelines to take action
- Important to identify the specific process triggered and review the applicable timelines




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When is an Investigation Appropriate?

- Other considerations:
 - Severity of alleged misconduct/potential harm
 - Frequency of alleged misconduct
 - Complainant's credibility
 - Identity of the accused
 - Prior misconduct




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Verify and Plan

- Meet with complainant/victim get further detail, witnesses, evidence
- Identify standards for the allegations
- Outline evidence to gather/witnesses:
 - Match up facts to verify with appropriate witness
 - Interview all persons involved. All witnesses?
 - Who can provide what information?
- Be flexible



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Selecting an Investigator

- CBA, BPs/ARs - designated employees?
- Consider gender and personality differences
- Individual vs. Team
- Who?
 - Neutral; Sound judgment; Experience
 - School administrator
 - Independent outside investigator
 - Legal counsel
 - Police



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School Administrator

<ul style="list-style-type: none"> ■ Advantages: <ul style="list-style-type: none"> □ Saves time □ Less expensive □ Familiarity 	<ul style="list-style-type: none"> ■ Disadvantages: <ul style="list-style-type: none"> □ Too timid □ Too aggressive □ Bias
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Outside Investigator

- Advantages:
 - Neutral without preconceived biases
 - No need to maintain working relationship with individuals involved
- Disadvantages:
 - More expensive
 - Require more time and background information



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Legal Counsel

- Advantages:
 - Legal expertise and knowledge
 - Attorney-client privilege and work product may protect disclosure of investigative records
- Disadvantages:
 - More expensive
 - Attorney may not be able to represent district in subsequent matters related to incident



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What to Verify

- Has CBA, BPs/ARs been violated?
- Appropriate investigative policy and/or procedure
- Relevant facts to be determined



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Create Investigative Plan



- Steps:
 - Separate complainant from the accused
 - Consider mandatory vs. optional leave of absence offense vs. administrative
 - **Must** be in writing and non-disciplinary
 - Compile a list all witnesses to interview
 - Match up facts to verify with appropriate witness—who can provide what information?

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Create Investigative Plan



- Prepare interview questions
- Subjects to cover in interview
- Avoid leading and compound questions
- Ask open-ended and non-judgmental questions
- Expand inquiries beyond “four corners” of the complaint

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Create Investigative Plan



- Prepare memo
- Brief, general description of investigation
 - Identify investigative policy and/or procedure (attach copy)
 - Introduce investigator
 - Warn of prohibition against retaliation
 - Instruct but don't promise confidentiality

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Interview, Prep, Review



- Preparation for Interview:
 - Prepare interview question
 - Subjects to cover in interview
 - Avoid leading and compound questions
 - Open-ended and non-judgmental questions
 - Arrange an witness to be present during the interview, if appropriate
 - Review pertinent material



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Review Before Interview



- Written complaint or report, if any
- Previous complaints and/or grievances, if any
- Roster of employees
- Timelines
- Job descriptions
- Organization chart and roster of employees
- Relevant policies and procedures
- Personnel and Site files
- Sources of institutional memory



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Conducting Interviews



- Location and time of interview
- Where will interviewer and subject sit
- Allow interviewee easy access to exit
 - Clear visual of the interviewee
- Comfort (breaks, water, tissues)
- Do not interview witnesses at home or in groups



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Conducting Interviews

- Starting Interviews:
 - Explain process, policies and/or procedures
 - Provide copies of relevant policies and/or procedures
 - Explain investigator's role
 - Explain timing of response
 - Emphasize importance of truth
 - Report perceived retaliation
 - Don't promise confidentiality



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Conducting Interviews

- Starting Interviews(cont'd.):
 - Acknowledge potential disclosure of complaint; assure sensitivity
 - Request confidentiality of interview
 - Establish a rapport
 - Create a safe environment
 - Do not lie
 - Do not make promises you cannot keep
 - Be genuine
 - Interviewing children takes longer



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Conducting Interviews

- Verify facts and probe for details
- Ask open-ended questions and listen
- Avoid leading or compound questions
- Ask follow-up questions
- Ask questions repeatedly if not answered
- Be thorough - get story from start to finish
- Ask for demonstrations & examples
- Ask judgment free questions
- Avoid pronouns



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Conducting Interviews

- Getting the Facts:
 - Listen
 - Do not react
 - Watch body language
 - No judgment- positive or negative
 - Do not insinuate blame or suggest that the complainant deserved it
 - Be sensitive, but don't empathize
 - Do not share opinions or conclusions
 - Never apologize
 - Confirm significant points



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Conducting Interviews

- Getting the Facts (cont'd.):
 - Assess interviewee's demeanor (cooperative, nervous, angry, forthcoming) & credibility
 - Seek written statement
 - Ask for supportive documentation
- Notes should capture:
 - Gist of questions
 - Content of responses
 - Exact words and important quotes
 - Credibility/demeanor notations
- Date, location, individuals present



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Interviewing the Accused

- Stress seriousness
- Role specific warnings
- Duty to investigate even if complainant withdraws complaint



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Follow-up Interviews

- Resolve ambiguities or disputed evidence
- Allow accused or suspected employee the opportunity to respond to new allegations
- To question the complainant's motive when credibility has been put in dispute
- Create new investigative plan


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Document, Document, Document!

- Good documentation throughout the entire process is key!
- It will:
 - Support personnel decisions
 - Evidence corrective discipline
 - Ensure consistent and fair discipline


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Documentation

- Remember:
 - Tape record interviews?
 - Keep working file with all relevant documentation.
 - Take detailed and thorough notes.
 - Document how evidence was acquired.
 - Review notes and fill in gaps.
 - Promptly draft interview summaries!
 - Send confirming memorandum of interview.
 - Maintain separate investigation file.


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Examine evidence and Prepare Report

- Review: complaint, notes, evidence
- Reconcile gaps, inconsistencies, ambiguities
 - Make a new list of witnesses to interview
 - New list of facts and questions
 - Re-interview complainant and/or accused?



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After the Interviews

- Weigh the evidence for each factual allegation "Preponderance."
- Explain persuasiveness of evidence
- Determine witness credibility
- Determine whether violation of policy (or law)



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Determining Witness Credibility

- Consider the following when evaluating witness credibility:
 - Plausibility
 - Source of information
 - Detail of witness account
 - Corroboration and conflicting testimony
 - Contradictions
 - Demeanor
 - Omissions
 - Prior incidents
 - Motive



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Investigative Report

- Date complaint received
- Name of investigator
 - Knowledge and experience
- Name, title and role of witnesses interviewed
- Dates and location of each interview
- Names of individuals present at each interview


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Investigative Report

- Describe complaint investigated
- Notes to include:
 - Warned every interviewee about retaliation and confidentiality
 - All documents and evidence reviewed
 - Policies and/or procedures followed


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Investigative Report

- Keep audience in mind
 - Third-party--Jury, employee, public
- Organize logically - chronological/topical
- Separate out and describe each allegation
- Recite the relevant evidence for each allegation
- Make a factual finding regarding each allegation (sustained/denied/inconclusive)


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Investigative Report

- Facts vs. Opinions vs. Conclusions
 - Conclusions/opinions without facts = useless
- Explain discounted evidence
- State conclusions in terms of objective fact rather than legal conclusion


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Investigative Report

- Recommendations for corrective action at conclusion of report?
 - Required by policies and/or procedures
- Do **not** include a final disciplinary decision
- Attach documentation/evidence
- Sign and date the report


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Notify & Correct

- Take corrective action—as appropriate
 - Meet and counsel accused to:
 - Stop the misconduct
 - Prevent recurrence
- Provide written closure/summary to complainant (review with counsel)


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Corrective Action (if needed)

- Verbal Reprimand
- Written Reprimand
- Notice of Unprofessional Conduct
(Teachers, Ed. Code, § 44938.)
- Notice of Unsatisfactory Performance
(Teachers, Ed. Code, § 44938.)
- Demotion
- Involuntary Transfer
- Suspension
- Dismissal



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Corrective Action Considerations

- Employee's status
- Certificated vs. Classified
- Probationary vs. Permanent
- CBA (e.g., progressive discipline policy)
- Seriousness and frequency of offense
- Treatment of others for similar offenses
- Grounds for discipline
(CBA, BPs/ARs, Educ. Code, § 44932).
- Morrison factors



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Corrective Action Reminder

- Follow all applicable contract language, rules, regulations and laws regarding notice, due process rights, personnel file inspections, etc.
- Consult with legal counsel regarding applicable contract language, rules, regulations and laws



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Educate

- Distributing BPs/ARs to employees, students, parents, and community members
- Amending student and employee handbooks and mandated parental notifications
- Staff training



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