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