

Mastering Investigations at the School Site Level

Chino Valley Unified School District



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Agenda

- ✓ District's Template Investigation Report
- ✓ Why Investigate?
- ✓ Legal Requirements for Investigations
- ✓ Review District Complaint Procedures
- ✓ Investigation Steps
 - ✓ Plan the Investigation
 - ✓ Recognize & Record Relevant Evidence
 - ✓ Provide an Opportunity for a Response
 - ✓ Organize the Evidence
 - ✓ Follow-Up



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Reasons to Investigate

Reasons to Investigate



Why Investigate?

- ✓ Statutory and regulatory requirements
- ✓ Employer / education policy requirements
- ✓ Reduce liability
- ✓ Evaluate need for disciplinary action
- ✓ Improve morale
- ✓ Protect staff and students

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Legal Requirements for a Sufficient Investigation

Legal Requirements for Investigations

Prompt and Timely

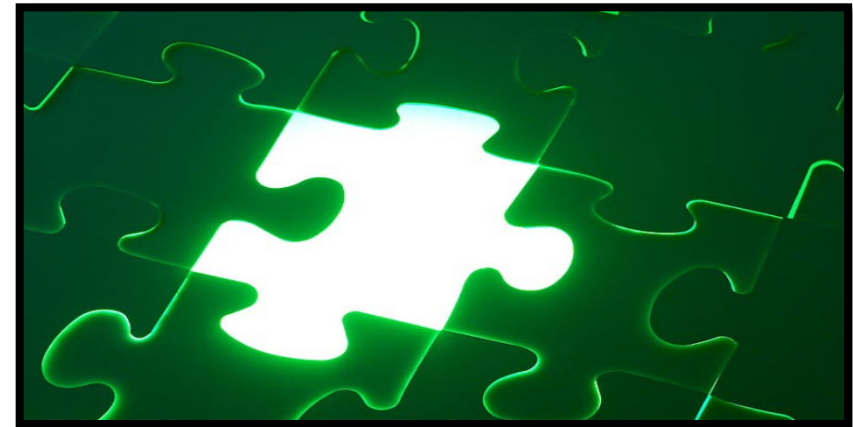
- Liability may hinge on **promptness** of employer's response
 - Complaints must be handled with high **priority**
 - “I’m too busy to investigate” is not an excuse to delay
 - “I relied on the immediate supervisor to investigate” is not an excuse to delay
 - “The witnesses won’t get back to me” is not an excuse to delay



Legal Requirements for Investigations

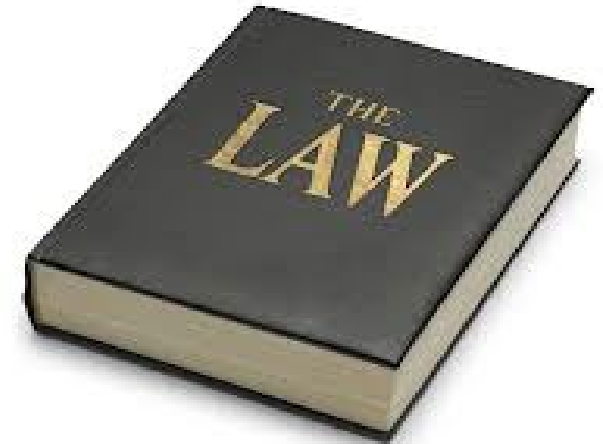
Thorough and Impartial

- Liability may hinge on **thoroughness** of employer's response
 - Investigations must be complete
 - Interview Respondent, Complainant, and all relevant witnesses
 - Respondent has notice and opportunity to respond
 - Adequate interview questions
 - Continued follow-up



Reminder – What Laws or Regulations May Apply

- **EEOC Regulations and Enforcement Guidelines:**
 - “When an employee complains to management about alleged harassment [or discrimination], the employer is obligated to investigate...”
- **FEHA requires an employer to:**
 - “take all reasonable steps necessary to prevent harassment from occurring.”
- State and Federal laws require entities to investigate complaints of harassment, discrimination, or retaliation (e.g., Title IX; Education Code)
- Board Policies or Administrative Regulations regarding sexual harassment, bullying, nondiscrimination in educational or work environment, general complaints, Uniform and Williams Complaints



Reminder – Parallel Investigations

- **Is Law Enforcement Involved?**

- Mandated Reporter duties?
- When alleged conduct would be or might be *criminal*, notify law enforcement
- Unsure? ... Check with HR/District office
- Coordinate with law enforcement
 - Do not interfere with law enforcement investigation
 - Document delay in your investigation if necessary during law enforcement investigation
 - Seek to share evidence if possible
 - Access to police/investigation reports?



Addressing Complaints

Whether an employee, student or third party makes a formal written complaint or an informal verbal complaint, arguably the most critical aspect of responding is the ability to conduct a **prompt, thorough and effective investigation.**

Important Definitions

- Complainant
- Respondent
- Witness
- Direct Evidence
- Circumstantial Evidence
- Corroborating Evidence
- Preponderance of the Evidence

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CVUSD Policies

District Complaint Policies and Procedures

- BP/AR 1312.1 Complaints Concerning District Employees
- BP/AR1312.2 Complaints Concerning Instructional Materials
- BP/AR 1312.3 Uniform Complaint Procedures
- BP/AR 1312.4 Williams Complaint Procedures
- BP/AR 4030 Nondiscrimination In Employment
- AR 4031 Complaints Concerning Discrimination in Employment
- BP/AR 4119.11 Sexual Harassment (Employees)
- AR 4119.12 Title IX Sexual Harassment Complaint (Employees)
- BP 5131.2 Bullying
- BP/AR 5145.7 Sexual Harassment (Students)
- AR 5145.71 Title IX Sexual Harassment Complaint Procedures (Students)

District's Uniform Complaint Procedures

- The District's Uniform Complaint Procedures (UCP) shall be used to investigate and resolve the following complaints (among others):
 1. Accommodations for pregnant and parenting students
 2. Adult Education programs
 3. After School Education and Safety programs
 6. Child Care and Development programs
 7. Compensatory Education
 10. Discrimination, harassment, intimidation, or bullying in District programs and activities, based on the person's actual or perceived characteristics ...
 13. Local Control and Accountability Plan
 16. Student fees
 20. School Safety Plans

District's Uniform Complaint Procedures

- Filing Complaint
 - May be oral or in a formal written complaint
 - The District will assist any complainant who is unable to file a complaint in writing due to a disability or illiteracy.
- Investigation
 - Within 10 business days after receiving the complaint, the District's compliance officer will begin an investigation into the complaint.
- Notice of Findings
 - Unless extended by written agreement with the complainant, the investigation report shall be sent to the complainant within 60 calendar days of the District's receipt of the complaint.

District's Uniform Complaint Procedures

- **The District's investigation report shall include:** (5 CCR 4631)

1. The findings of fact based on the evidence gathered.
2. The conclusion(s) providing a clear determination for each allegation as to whether the District is in compliance with the relevant law.
3. Corrective action(s) whenever the District finds merit in the complaint, including, when required by law, a remedy to all affected students and parents/guardians and, for a student fees complaint, a remedy that complies with Education Code 49013 and 5 CCR 4600.
4. Notice of the complainant's right to appeal the District's investigation report to CDE, except when the District has used the UCP to address a complaint not specified in 5 CCR 4610.
5. Procedures to be followed for initiating an appeal to CDE.



Investigation Steps

Investigation Steps

1. Plan the Investigation & Prepare for Interviews
2. Recognize & Record Relevant Evidence
3. Provide an Opportunity for a Response
4. Organize the Evidence
5. Follow-Up



Plan the Investigation & Prepare for Interviews

Planning the Investigation



Considerations

- ✓ Does the investigation scope require an investigator to have a particular skill set?
- ✓ Who are the witnesses and what is their availability?
- ✓ Who is the appropriate person to contact and schedule witnesses?
- ✓ What is the timeline for the investigation?

Planning the Investigation



Considerations

- ✓ Should the investigation be conducted under the attorney-client privilege?
- ✓ Will the investigator be making factual findings and/or identifying policy violations?
- ✓ What is the agreed-upon standard of proof for the findings?
- ✓ To whom will the investigation findings be directed?
- ✓ What are the investigative standards?
- ✓ What level complaint does this fall under?

1. Plan the Investigation & Prepare for Interviews

- Promptly Review the Complaint and Policies
- Consider Interim Measures
- Prepare Interview Environment

Promptly Review the Complaint

Investigator:

- Who is an appropriate investigator?

Guidelines:

- What complaint policies, regulations, and/or procedures apply to the complaint?

Agreements:

- Are collective bargaining agreements relevant?

Promptly Review the Complaint

Identify/Review Laws:

- What laws and/or policies apply to this complaint? Do I understand those laws?

Paid Administrative Leave:

- Are there issues that warrant paid administrative leave for the Respondent pending the investigation?

Prepare Questions:

- What subjects need to be covered in the interview?

Hypothetical #1

An athlete's parent complained to you about the lack of training and unprofessionalism of coaches at your site. The parent said students are being injured but it is possible that injuries are not being reported. The parent also complained that the coach was communicating with a student on social media.

Promptly Review the Complaint

Review **Hypothetical #1**

- Who is the **Complainant? Respondent?**
- Who are potential **witnesses?**
- What general claims or conclusions are asserted?
 - For example, what policies or laws are implicated?
- What questions should you ask about?

Hypothetical #2

You are assigned to investigate a student's complaint about feeling uncomfortable with the way a teacher is looking at her during class. The complaint has already been dismissed out of Title IX.

Promptly Review the Complaint

Review **Hypothetical #2**

- Who is the **Complainant? Respondent?**
- Who are potential **witnesses?**
- What general claims or conclusions are asserted?
 - For example, what policies or laws are implicated?
- What questions should you ask about?

Interim Protections

Individualized Services Pending An Investigation

- The school or employer may make **temporary changes** to academic, transportation or working situations of the parties if requested and reasonably available
- Especially helpful or needed with allegations of **bullying, intimidation, threats or harassment**
- All steps must **balance interests and rights**:
 - Avoid depriving any student of an education
 - Do not consider disciplinary action until investigation is complete

Interim Protections

Measures Must Be:

- ✓ Individualized
- ✓ Immediate
- ✓ Clearly Communicated
- ✓ Adaptable
- ✓ Consistent with Swift Resolution

Possible Interim Protections

- Change schedule (class and/or work)
- Extension of deadlines
- No-contact directives
- Increased supervision or campus escort
- Change in parking spots or travel routes
- Counseling

Plan it Out

- Prepare Questions and Topics to Cover in Interview
 - Introductory statements and admonitions
 - General description of investigation
 - Direction to tell the truth
 - Admonish against retaliation
 - Specific and appropriate confidentiality warnings
 - Warning: Do not make knee-jerk statements that would indicate bias! (Ex: I'm sorry this happened to you...)
- Prepare Questions seeking:
 - Who are potential **witnesses**?
 - What **laws** may apply to this complaint?
 - What are the **specific factual allegations**?

Choose an Appropriate Environment for Interviews

- Where should the interviews be held?
- Location
- Interview Room
 - Private
 - No distractions
 - Easy access to exit
 - Clear visual of interviewee
 - Be stocked up & ready for emotions
 - Water, tissues, paper, pen/pencil

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Recognize & Record Relevant Evidence

2. Recognize & Record Relevant Evidence

- Tips for Getting the Most Relevant Evidence Out of an Interview
- Interview the Complainant
- Interview the Witnesses

Interviewing the Complainant & Witnesses

- Who is present during the interview?
- Introductory Comments and **Instructions**
 - Your role, tell truth, no tampering, no retaliation
- Gather the facts from the Complainant
 - Ask **Who, What, Where, When, Why and How** questions for each allegation.
- **Reluctant** Complainant or Witnesses?

Interview Techniques

Questioning Witnesses

- Eliciting Relevant Information:
 - How long did the witness observe the incident?
 - What was the distance between the witness and the respondent or complainant?
 - Were there any obstructions blocking the witness's view?
 - Had the witness seen the complainant or respondent before? When and where? Do they know who the complainant and respondent are?
 - Is there any special reason that the witness is able remember the incident?
 - How much time has passed since the witness observed the incident?
 - Are there any errors or discrepancies between the witnesses' accounts of the incident?
 - How much detail can the witness recall? Some people can only process so much information at one time due to capacity issues.

Interview Techniques

Interviewing Problem Witnesses

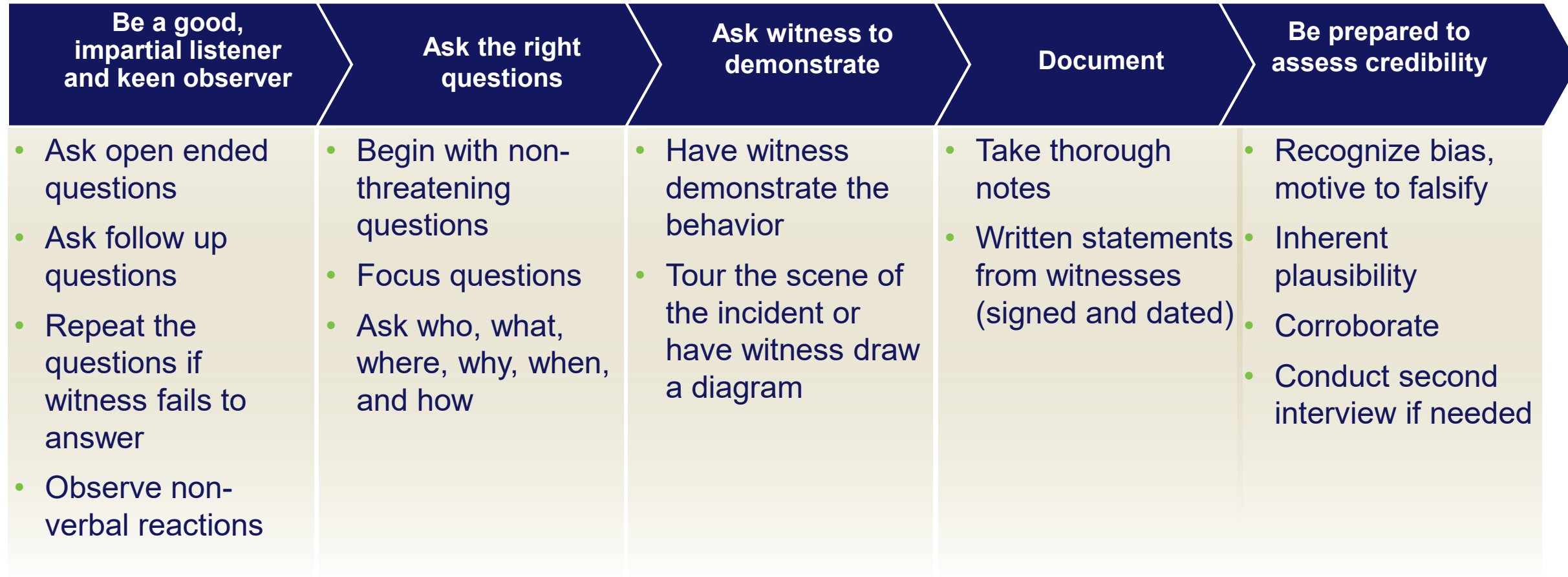
- Check your attitude: your attitude will impact how the witness responds to you.
- Treat the witness with dignity and respect/show empathy.
- Use more specific and probing questions rather than open-ended questions if the witness is reluctant to provide testimony.
- Be patient.
- Break down the witness's testimony into manageable topics, and as witness gets comfortable, expand testimony with open-ended questions.
- Ask what their hesitation or reservations are, and try to address those concerns.
- Consider re-explaining the ground rules or re-directing the witness if they are getting too off-topic.
- Does the witness have any personal characteristics that need to be considered? Age, maturity, mental condition, intellectual or psychological impairment, language?

Interview Techniques

Interviewing Children

- Consider Mandated Reporter Duties
- Determine if you need a specialist (licensed therapist/psychologist)
- Parent/guardian or representative present
 - Ask parent/guardian not to discuss topics with child before interview to avoid tainted testimony, and to possibly take notes if child talks about incident at home without prompting
- Check for understanding:
 - Does the child know what it means to tell the truth?
 - Does the child understand the importance of the interview?
- Use appropriate vocabulary and demeanor
 - Age/intellectual ability
- Accurately record all discussions
- Minimize trauma experienced by the child during the interview
- Consider the timing and length of the interview/attention span of child

Get the Most Out of the Interviews



Tips for Getting the Most Relevant Evidence Out of an Interview

- Have Confidence
 - Evaluate the information and make a good faith decision as to what occurred
- Be a Good Listener
- Be a Keen Observer
 - Establish a baseline
- Ask Open-Ended, Non-leading Questions
- Ask for a Demonstration or Diagram
- Take Thorough Notes (include demeanor changes)

Documenting What You Learn

- ✓ When to start
- ✓ What to document (objective vs. subjective impressions)
- ✓ Notes vs. recordings vs. statements
- ✓ Review notes for accuracy and make sure there are no inconsistencies
- ✓ Take notes contemporaneously with, or soon after, each interview so as to be reliable
- ✓ Clearly identify when notes were drafted and who drafted them, as well as anyone else present
- ✓ Make notes legible or, if not, transcribe them



Credibility Determinations

- Recognize your bias
- Recognize the potential for confirmation bias
- Observe witness demeanor and conduct:
 - Establish a baseline
 - Note observations regarding witness demeanor and conduct

Investigator Bias and Credibility Assessments

- **Implicit Bias**: Term to describe when we have attitudes towards people or associate stereotypes with them without our conscious knowledge
 - Harvard Implicit Association Test
 - <https://implicit.harvard.edu/implicit/takeatest.html>
- **Confirmation Bias**: Unconscious tendency to bolster a hypothesis by seeking consistent evidence while minimizing inconsistent evidence

Investigator Bias and Credibility Assessments

- Examples of Other Biases

- Bias towards the investigator's employer
- Bias against delivering bad news
- Bias against workplace complainers or whiners
- Bias towards quick case closure
- Bias towards majority rule
- Bias towards people with whom the investigator sympathizes
- Bias towards people with power

Credibility Determinations

Evidence Code Section 780

- Any matter that has any tendency in reason to prove or disprove the truthfulness of testimony, including, but not limited to, any of the following:
 - (a) The demeanor while testifying and the manner in which he/she testifies
 - (b) The capacity to perceive, to recollect, or to communicate
 - (c) The extent of the opportunity to perceive
 - (d) The character for honesty or veracity or their opposites
 - (e) The existence or nonexistence of a bias, interest, or other motive
 - (f) Prior consistent statements
 - (g) Prior statements inconsistent with any part of his testimony at the hearing
 - (h) The existence or nonexistence of any fact testified to by him
 - (i) The attitude toward the action or toward the giving of testimony
 - (j) The admission of untruthfulness

Credibility Factors

- Inherent Plausibility
- Direct Corroboration/Actual Knowledge/Opportunity to Observe
- Indirect Corroboration
- Inconsistency/Lack of Corroboration
- Material Omission
- Bias/Interest/Motive to Falsify
- Past Record

Credibility Factors—Inherent Plausibility

• Inherent Plausibility

- **Definition:** Whether what the witness has described makes sense, given the surrounding circumstances
 - Is the testimony believable on its face?
 - Does the testimony make sense?
 - Is there a lack of recall for dates, details, other witnesses?
 - Use common sense
 - Consider witness's world view/cultural differences
- **Example:**
 - Complainant states that supervisor grabbed her breast while supervisor was driving, and complainant was in backseat behind front-seat passenger

Credibility Factors—Ability to Perceive

- **Ability to Accurately Perceive, Recollect, or Communicate**

- **Definition**: Witness' ability to notice & understand something, remember it, and express observations

- **Examples**:

- Intoxicated witness
- Failure to wear corrective lenses
- Recent traumatic event
- Communication not in witness' native language
- Delayed time

Credibility Factors—Existence or Non-Existence of Corroboration

- **Existence or Non-Existence of Corroboration**

- **Definition:** whether there is other evidence that verifies the witness's testimony (e.g., testimony by eyewitnesses, people who saw the person soon after the alleged incident, or people who discussed the incident with him at around the time that it occurred; or written documentation)
- **Examples:**
 - Witness who claims to have not been at work on a particular day is corroborated by his timecard
 - Witness states has no disciplinary history. Personnel file reveals multiple disciplinary action

Credibility Factors—Corroboration

- Consider the cause of the inconsistencies in the witnesses' testimony:
 - Genuine mistake originating from memory failure
 - Cross-contamination of witness
 - Fabrication of testimony
 - Exaggerating testimony
 - Vulnerability of witness to suggestion, seeking to please
- Verification by an independent source
- Chronology
- Timeliness of complaint
- Consistency of story (accounting for potential impact of trauma)
- Memory

Credibility Factors—Past Record

- **Past Record**

- Considering whether there exists:

- Previous complaints
- History of similar events
- History of false complaints
- History of untruthfulness
- Pattern and practice
- Negative inference

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Provide an Opportunity
for a Response

3. Provide an Opportunity for a Response

- Prepare for Interview with Respondent
 - Emphasize importance of full and fair opportunity to respond
- Who Is Present During The Interview?
- Introductory Comments
- Gather The Facts From The Respondent
- Follow Up On Anything New Raised By Respondent

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Organize the Evidence

4. Organize the Evidence

- Review All The Evidence Gathered
- Weigh The Evidence For Each Allegation
- Make A Factual Finding For Each Factual Allegation
- Review All The Factual Findings To Determine If A Violation Of A Violation Of Policy Or Other Misconduct
- Prepare a Letter of Findings and Possibly an Investigation Report

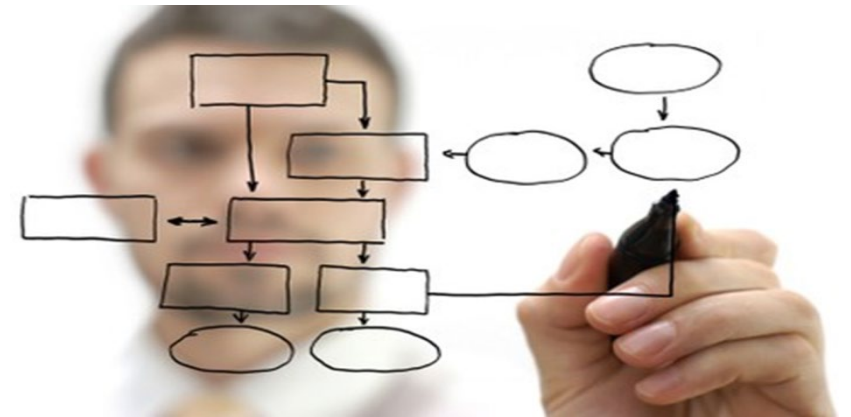
Weigh the Evidence for Each Allegation

- Use the “preponderance of evidence” standard
- Evidence that **is not** disputed weighs to one side
- If evidence **is** disputed, determine which is most persuasive (and be prepared to explain why it was more persuasive or credible)
- Analyze the facts to determine relevance
- Only relevant facts should be considered



Make a Factual Finding for Each Allegation

- Factual Findings Are Conclusions About What Happened **Based on the Preponderance of the Evidence**
 - What does “preponderance” mean?
 - Does each allegation have a finding?
 - Look at each allegation separately before reaching a conclusion about the entire complaint.



Review all Factual Findings to Determine if a Violation of Law or Policy Occurred

- Violation of Law or Policy
 - Look at the totality of the circumstances
 - Look at all the sustained allegations
 - Review the policy to determine if the sustained allegations constitute a violation
 - Consider contacting legal counsel regarding any legal conclusions

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Follow-Up

5. Follow-Up

- Communicate the Results of the Investigation to the Complainant and the Respondent
- Consider Communication to Witnesses
- Determine if Corrective Plan is Needed
- Implement the Corrective Plan
- Follow-up with the Complainant and Respondent

Communicate the Results

- Communicate the results of the investigation
 - Include the allegations, findings, and overall conclusion
 - Do not include the evidence
 - Remind about confidentiality, retaliation, and reporting responsibilities
 - Explain appeal rights, if any
- Maintain the investigation documents in a separate, confidential investigation file
- However, if disciplinary action is taken, the letter regarding the results may be attached to any disciplinary document and placed in the personnel file according to Education Code and the CBA

Determine an Effective Remedy

- **Elements of an Effective Remedy**

- **Remedy should end the misconduct by the Respondent**
- Remedy may include educating other staff or students
- Consider taking action to improve Complainant's environment
 - Potential liability for actions that can be perceived as retaliation (e.g., transferring the complainant vs. respondent)
- Document actions taken to remedy situation
- Conduct "follow-up" with the parties to determine if the remedy has been effective

Disciplinary Action Against Respondent

- Employee Discipline
- Student Discipline
- Follow Progressive Intervention Principles

Create a Corrective Plan

Elements of an Effective Corrective Plan

- **Eliminate** the bullying, harassment, or discrimination
- **Prevent** its recurrence
- **Remedy** the effects
- **Address** the culture and climate

Application



Hypothetical

Sally, a 10th grader, says Mr. G is rude to girls in class. He calls them “hoochies” and mocks them to make the class laugh. She thinks he’s perverted and says things like she is lucky to be cute so she can become an exotic dancer. He says he will visit them all in jail and say “hi” through the glass. Her friend, Stevie B., recently recorded Mr. G during health class. In the recording, Mr. G refers to students as “hoochies”, “losers”, and “cute exotic dancers”, and comments on suggestive style of dress and that they will likely end up in jail.

Identify Issues

- What is the nature of the complaint?
 - Teacher makes “**rude**” unprofessional comments
 - More closely: Can the teacher’s comments also be sexually harassing (Refers to students as “hoochies”, “losers”, “cute exotic dancers”, comments on suggestive style of dress and that they will end up in jail.)
 - What is “sexual harassment”?
 - What is “unprofessional conduct”?
 - Is there any other cause for discipline?
 - Education Code 44932, 44938 (Certificated)
 - BP / AR 4218 (Classified)

Prepare for Mr. G's Investigation

- Witnesses
 - Sally
 - Stevie B.
 - Other students
 - Mr. G
- Documents
 - Personnel file
 - Job description, standards
 - Students' files
- Other Evidence
 - Secure audio recordings
 - Chain of custody
- Relevant Laws/Policies
 - Discrimination (sex harassment)
 - Causes for discipline

Prepare for Mr. G's Investigation

- Documents
 - Personnel file
 - Prior complaints
 - Prior discipline
 - Job description
 - Standards
 - Verification of trainings
 - Receipt of rules/policies
 - Students' files
 - Prior complaints
 - Discipline

Prepare for Mr. G's Investigation

- Witnesses

- Sally

- Specific examples: When? What? Who else knows?
- Any other friends experience the same

- Stevie B.

- How did he and why record Mr. G? Did he share? With who? Why?
- Other experiences with Mr. G? Who? When? What?

- Other students/witnesses

- Specifics

- Mr. G

- Employment background
- Knowledge of:
 - Harassment / Discrimination
 - Professional communications
- Did he do/say “_____” to complainant? (“Witnesses”)
- Does he know students “Sally, Stevie, - -”
 - Identify bias
 - Mitigating factors

Common Investigator Mistakes

Investigators often dedicate insufficient time and effort in critical areas such as:

Planning:

- People
- Places
- Policies

Searching for physical evidence, including electronic communications

Assessing witness credibility

Common Investigator Mistakes

Other common mistakes made by workplace investigators:

Failing to reach a conclusion or support the conclusion with evidence

Failing to conduct a timely investigation

Failing to interview all pertinent witnesses or conduct complete interviews

REMINDER!

Whether a complainant makes a formal written complaint or an informal verbal complaint, OR if you witness conduct that violates federal or state laws and/or district policies, arguably the most critical aspect of responding is the ability to conduct a **prompt**, **thorough**, and **effective** investigation.

Question & Answer
Session

Thank You

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