



CONDUCTING AN INVESTIGATION

JEVS Compliance 2020



WHY CONDUCT AN INVESTIGATION?

- Client complaint
- Staff complaint
- Suspected inappropriate behavior
- Preparation for the disciplinary process



GOALS

- Learn basic investigation techniques
- Understand the possible pitfalls during an investigation



WHAT IS AN INVESTIGATION?

- An investigation is the systematic collection of facts for the purpose of describing and explaining an event or series of events
- Describe:
 - What happened
 - Where it happened
 - Who was involved
- Explains how it happened
- Is not interested in motive (why)



WHAT ARE THE PARTS OF AN INVESTIGATION?

- Allegation
- Investigatory Question
- Facts/Evidence
- Conclusions
- Recommendations



ALLEGATIONS

- The statement or contention that something is being done that is wrong.



PITFALL #1

- Being distracted by the allegation
 - Juicy allegations can taint the investigation
 - May have sympathy for the 'victim'
 - Allegation is just an allegation – not a fact



INVESTIGATORY QUESTION

- Specifies the reason that the investigation is taking place
- Focuses the investigator
- Helps identify the relevant evidence



PITFALL #2

- A poorly developed investigatory question
- The investigatory question directs the investigator
- Too narrow or too broad of a focus
- Whodunnit?
- How many rocks to turn over



JUST THE FACTS/EVIDENCE

- Facts are the witness accounts of what happens
- Facts are pieces of evidence
- Facts are not the truth
 - The truth is determined upon the full review of all facts
- Relevant v Irrelevant Facts



Title IX Investigations

- Investigations must be impartial, fair, and objective
- Equal opportunity for the parties should be given to parties to present fact and expert witnesses and other inculpatory and exculpatory evidence
- Investigators must not rely on sex stereotypes which conducting the investigation.
- Title IX investigators sent the evidence and investigative report to both parties that fairly summarize relevant evidence via electronic format.
- Parties have 10 days to respond to evidence in writing.
- The school must consider the response before finalizing investigative response.
- The final report must be circulated to the parties at least 10 days before determination of responsibility or a hearing happens.



Title IX Investigations

- Respondents (those accused) are presumed not responsible in the investigation phase
- Credibility must not be based on whether information is coming from the complainant, respondent, or witness
- The final investigative report needs to fairly summarize the evidence that the school has gathered about alleged incident.



PITFALL #3

- Jumping to conclusions
 - It is natural to hear the first pieces of evidence and be convinced that they tell the whole story
 - Don't be guided by your assumptions/bias
 - Juicy Distractions
 - Don't assume you know;
 - What, how and why it happened



Youtube Videos

- Classic Video
- The Mentalist



DIRECT vs. CIRCUMSTANTIAL EVIDENCE

- Direct evidence includes an eyewitness's account & some video, all else is circumstantial
- Direct evidence will tell you how something happened
- Circumstantial will tell you something happened



HEARSAY

- Hearsay is not evidence
- Hearsay may direct you to other sources of evidence



DIRECT EVIDENCE, AN EXAMPLE

- A person hears a noise, goes to the room the noise came from and finds a person lying on the ground with a table knocked over near the person
- What did this person witness?
- A person witnesses through their senses: sight, hearing, smell, touch & taste



4 TYPES OF EVIDENCE

- Testimonial – witness accounts
- Documentary – the preservation of testimonial evidence, client charts, letters, assessments
- Physical – items that are collected, blood, copy machines
- Demonstrative – the preservation of physical evidence in document form due to inability to capture, pictures, diagrams, maps



CONCLUSIONS

- Conclusions are made only after all of the evidence is collected and analyzed
 - Confirmed – Evidence exists to support the allegation
 - Not Confirmed – Evidence exists to dismiss the allegation
 - Inconclusive – Sufficient evidence does not exist to conclusively confirm or refute the allegation



CONFIDENTIALITY

- Strive to maintain confidentiality
- The grapevine & deduction
- Request all keep quiet



Pitfall #4

- Conflicts of interest
 - Programmatic
 - Personal



Pitfall #5

- Self-fulfilling prophecy
 - Highlighting evidence
 - Ignoring evidence



EVIDENCE EXPIRATION DATES

- Natural decay, bruises heal
- Innocent human alteration, repair a broken step
- Deliberate human alteration, destroy progress note templates
- Memory, the palest ink is more retentive than the strongest memory
- Collaboration, getting our stories to jive
- Creation, I should have been there but wasn't, what should I say



THE INTERVIEW

- Help the witness remember as much as they can, learn as much as you can
- The witness should not be viewed as a means to confirm what the investigator has heard so far



INTERVIEW GUIDELINES

- Conduct in private
- Use appropriate eye contact, body language, tone & pace
- Introduce self and commitment to confidentiality
- Identify the purpose of the interview
- Present questions without prejudice



REDIRECTION

- Interviews can be lengthy and veer off topic
 - Politely redirect the interview to the topic



WRITTEN STATEMENTS

- Significant content you are afraid might change
- Witness you are afraid you will lose
- When you know you have a conflict between 2 witnesses which is significant to the case



WHOWHATWHYWHENWHEREHOW

- What can you tell me about the incident?
- Slicing the bologna
- Single questions
- What happened next?



RIGHT TO REPRESENTATION (primarily for targets)

- Should not unreasonably delay the interview
- Representation does not mean right to remain silent
- Representatives do not speak for the person, only as a witness and informing of the employee's rights
- Interviewer has the right to include a management person as a witness as well