

FRANCZEK RADELET

ATTORNEYS & COUNSELORS

Internal Investigations

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When to Investigate

- Observation of misconduct
- Complaints (whether Formal or Informal)
- Law requires grievance/complaint processing procedures
- Rumors/Outside Information
- Anonymous Tips

Who Should Investigate?

- Internal Investigation only
- Police investigation
 - Illegal conduct
 - Sexual or physical abuse
 - Theft
 - Fraud
 - Use of school resources without permission

Investigation Process

- Planning the Investigation
- Conducting Investigatory Interviews
 - Interviewing the Complainant
 - Interviewing Accused/Other Witnesses
- Consider Other Methods to Gather Needed Information
 - Review of email
 - Review of security tape
- Documenting the Investigation
- Completing the Investigation and Conclusions

Managing Inquiries About the Investigation

- From the Complainant
- From the Accused
- From Union Representatives
- From the Media

Planning the Investigation

- Gather written information first
 - Emails
 - Security Tapes
 - Document the facts you collect
- Create list of witnesses
- Create interview questions
- Don't jump to conclusions

General Principles for Conducting Interviews

- Explain purpose of the interview
- Stress importance of learning all the facts surrounding the allegations
- Inform employee answers should be truthful and complete—failure could result in discipline
- Discuss confidentiality
- Explain that outcome may be confidential
- Ensure employee has necessary representation

Interview Techniques

- Listen carefully—follow up on hints or contradictions
- Avoid discussing theories or assessment of evidence
- Do not begin with hostile or embarrassing questions
- Move through events chronologically
- Pin employee down to the facts; what did the employee see, hear, do, smell, feel or say

Interview Techniques

- Distinguish between personal knowledge and hearsay
- Ask open ended questions
- Do not render explicit or implicit judgments- watch body language
- Review notes at conclusion of interview to confirm accuracy
- Ask if the employee has anything else to add before concluding

Interview Questions

For each block of time ask:

- What occurred?
- When did it occur?
- Where did it occur?
- How did it occur?
- Who was involved?
- Who witnessed occurrence?
- Who else may have information?
- Who did or said what?

Interview Questions

- Why did event occur?
- Could it have been avoided?
- How could it have been avoided?
- Was this an isolated event or part of a pattern?
- With whom did you discuss the event?
- Are there any notes, recordings, photos, physical evidence or other documentation of the event?

Dealing With Difficult Witnesses

- Explain interview is opportunity to relate employee's version of events and clear up misinformation
- Inform that refusal to cooperate may result in discipline
- Seek Union assistance
- *Garrity* Warning?

Documentation

- Memorialize every interview in writing
- Include document's author and title
- Identify name of witness interviewed, date and time of interview
- Indicate the location of interview (in person or by phone) and all persons present

Documentation

- Include a clear and concise summary of information received
- Use quotation marks to note word-for-word witness statements only
- Record any specific dates, times, places provided by witness
- Write the full name and title of any person referenced during interview

Post-Interview Procedures

- Is written report necessary?
- Investigation results shared with those who “need to know”—not necessarily all administrators
- Determine appropriate action—discipline, remediation, referral to EAP, FFD evaluation, training....

Recommendations and Conclusions

- If a full investigation report is prepared:
 - document issues, scope of investigation, findings, and recommendations
- For whom??
 - Internal decision-makers
 - Accused?
 - Complainant?
 - External reviewers (courts, agencies)

Investigation Report

- Conclusions:
 - Be specific, but succinct about the factual findings
 - Deliberately and carefully make judgments
 - Credibility evaluations
 - MAKE THEM!
 - Explicitly identify them when applicable

Report: Common Mistakes

- Euphemisms/passive voice
 - Don't shy away from stating what investigation found
 - Important for interview notes too
- Excessive use of adverbs, adjectives – keep it factual
- Conclusory language
 - “Show your work”

Documenting the Investigation

- Incredibly important
 - Direct communication to agency, judge or jury
 - Follow process and document decision-making
 - Be objective – no unfiltered “inner thoughts”
- Specific steps
 - Interview notes (e-mails setting up interviews)
 - Documents collected (e-mail, texts, social media posts)
 - Timelines/logs
 - Report

Documenting the Investigation

- If no full investigation report is prepared, prepare short memorandum for file with conclusion
- If disciplinary action is taken – make sure solves the problem
- Document any disciplinary action
- Inform Complainant and Accused
Investigation is Completed

