



LEGAL CORNER

By Michael I. Levin, Esq., PA Principals Association General Counsel

Conducting Effective Investigations of Student and Employee Wrongdoing: A Comprehensive Guide for School Principals Part II

Editor's Note: Due to the length of this article, it was split into two parts. Part I was in the last edition of this magazine and addressed such topics as the legal framework for investigations, the role of the principal, relevant laws, sexual harassment, the immediate response to reports, planning the investigation and conducting interviews.



Conducting the Interview, Continued **Audio Recording**

With the advancements of technology, audio recording is easy and reliable. However, if a principal is going to record the interview, all persons must be notified in advance. It may be a crime to secretly record conversations in Pennsylvania. If the principal is going to record an investigative interview, the following procedures must be observed:

Obtain approval from the superintendent or designee.

Because of the legal risks of recording conversations and the often-unclear court rulings under the Wiretap Act, it is strongly recommended that principals do not record investigative interviews unless the superintendent or his/her designee approves the recording. In addition, because a key legal concept in this area is whether the interviewee has a "reasonable expectation of privacy," the younger the child, the less likely they are to understand the notices discussed below. I would recommend not recording interviews of elementary and, perhaps, middle school students without obtaining their parents' prior consent.

Give notice before recording begins.

Do not start recording until you have provided appropriate notice of the fact that the interview is being recorded and the uses for the recording. Notice may be couched as follows:

Before we begin, I want to inform you that this interview will be audio recorded. This is to ensure there is an accurate and complete record of what is said. Please be advised that there should be no expectation that what you say will remain private. It is possible that the recording may be shared with others involved in the investigation, including school administrators, legal counsel, or outside agencies, if necessary, and may be used in connection with disciplinary decisions, reports to authorities or legal proceedings. I am providing this notice so that you are fully aware that your statements are being recorded and that they may be used or disclosed in connection with this matter. Do you understand this notice?

Record the acknowledgment.

After stating the notice above, the principal should begin recording and ask the interviewee again on tape:

Today is [insert date]. My name is [Principal's Name], and I am conducting an investigative interview with [Interviewee's Name] at [School Name]. For the record, I want to repeat what I told you before I started recording. Specifically, I informed you that before we began, I wanted to let you know that this interview will be audio recorded. This is to ensure there is an accurate and complete record of what is said. Please be advised that there should be no expectation that what you say will remain private. It is possible that the recording may be shared with others involved in the investigation, including school administrators, legal counsel or outside agencies, if necessary, and may be used in connection

with disciplinary decisions, reports to authorities or legal proceedings. I am providing this notice so that you are fully aware that your statements are being recorded and that they may be used or disclosed to others in connection with this matter. Do you understand this notice?

Please confirm that I provided you with those instructions.

Please confirm that you understand this interview is being recorded and may be shared with others.

Document the notice and understanding in writing if feasible.

If feasible, you may want to have a written acknowledgment form at the investigative hearing to document further that notice was given. **[Form 7.1]**

Prepare a verbatim transcript.

When the interview is over, a transcript of the recording should be prepared. Both the recording and the transcript must be preserved. The transcript should be signed by the typist and by the principal certifying its accuracy. **[Form 8]**

Video Recording

Less common would be to use video recording, but this technique may be appropriate in cases involving serious misconduct or safety concerns. The same rules that apply to audio recordings apply to video recordings. **[Form 9]**

Signed Witness Statements

It is common, particularly in student matters, for principals to have students write statements about what they saw and/or heard. Such statements may be written in the first person by the witness or dictated to the principal and then reviewed. The witness should review the statement for accuracy, sign and date the statement and initial any corrections or edits. **[Form 10]**

Email Confirmations

If an interviewee provides information or clarification after the interview via email, these communications should be printed or saved as part of the record and stored in the case file.

Interview Attendance Logs

An interview attendance

log set forth in a separate document should be kept, recording who was interviewed, by whom, on what date, location of interview and duration of interview with start and end times. **[Form 11]**

Best Practices for All Documentation

When documenting interviews, maintain objectivity — do not include personal opinions or assumptions. Distinguish clearly between direct quotes and paraphrasing. Secure all records in a confidential location (either digital or physical) that is consistent with school district requirements.

Gathering and Preserving Evidence

Documentary evidence.

When conducting an investigation, principals must ensure that all relevant documentation is gathered, including, but not limited to, emails, text messages, social media posts, reports, disciplinary records and any other written materials related to the situation. Additionally, it is crucial to properly preserve any physical evidence, such as clothing or objects relevant to the investigation.

Video surveillance.

Principals must review any available security camera footage that may be relevant to the incident. Principals need to preserve and securely store the relevant footage to ensure it is not lost, altered or deleted, as it may serve as important evidence. **[Form 12]**

Searches and privacy limits.

When conducting searches as part of the investigatory process involving students or employees, principals must ensure that the search is justified at its inception and reasonable in scope and complies in all instances with school district requirements and applicable law. For students, this means there must be reasonable suspicion that the search will uncover evidence of a violation of law or school board policy. Under the Fourth Amendment, students have privacy rights at school, but those rights are balanced against the school's interest in maintaining a safe learning environment. Searches should not be overly invasive unless clearly justified, and care should be taken to prevent unnecessary intrusion.



In some situations, searching a student's locker or backpack may be appropriate. However, more invasive searches, such as those involving a student's person, must not be conducted unless there is clear legal authority and the search fully complies with school board policies.

For employees, their privacy rights under the Fourth Amendment must also be respected. Searches of employees, their workplaces and/or their belongings should comply with applicable laws, school board policy and collective bargaining agreements. A search may be justified if there is reasonable suspicion and the search is limited in scope to what is necessary. Generally, the suspected employee should be approached in a non-confrontational manner, and their permission should be requested before conducting the search. Unless there is a substantial reason not to, the search should be conducted in the presence of the employee and a witness, preferably an administrator, not a co-worker, to maintain confidentiality and avoid creating conflict among staff.

Drug testing of employees is considered a search under the Fourth Amendment. It may be conducted when there is individualized suspicion or where the government's interest in justifying the testing is substantial. However, there is some legal uncertainty about whether random drug testing is allowed. While some courts have suggested that random drug testing is valid, at least one court has indicated that there must be at least a generalized suspicion before drug testing can be imposed. Other courts have essentially required individualized suspicion. In contrast, some courts have ruled that whether drug testing is appropriate should be decided in the context of a governing collective bargaining agreement. In *Metz v. Bethlehem Area Sch. Dist.*, 177 A.3d 384 (Pa. Commw. Ct. 2018), the Commonwealth Court held that school districts do not need a warrant to conduct a drug test on a teacher as long as the test is reasonable under the Fourth Amendment.

Where applicable, procedures should align with established federal guidelines and applicable laws to ensure due process. Chain-of-custody protocols should

be followed to protect the integrity of the test results and preserved for independent testing by or on behalf of the employee.

It is essential not to use the results of drug testing inappropriately. For example, while urinalysis tests can detect the presence of drugs, they typically do not indicate whether a person is currently under the influence of drugs. As a result, some courts have ruled that relying solely on urinalysis test results to impose serious disciplinary action on employees can violate due process rights.

Prohibited techniques.

Lie detector tests and psychological stress evaluators should rarely, if ever, be used by school districts in investigations, as these devices are generally not considered sufficiently reliable, making their effectiveness questionable and their results

inadmissible as evidence. Employers may not require employees to take a lie detector test as a condition of employment or continued employment. Similarly, devices that measure voice stress or tonal inflections may not be used without the consent of the person whose statement is being tested. While employees may voluntarily agree to a test, any consent should

be clearly documented in writing.

Additionally, principals should never threaten or coerce a student or employee into cooperating with an investigation, nor should they promise immunity from consequences in exchange for testimony or participation. Such practices are not only unethical but can also compromise the integrity and legality of the investigative process.

Investigation report.

At the conclusion of the investigation, principals should prepare a summary report that outlines the key components of the process. The report should include a summary of the allegations, names and roles of those involved, a brief summary of each interview and a list and analysis of the evidence collected. It should also state the findings of fact, conclude whether a policy violation occurred, and, if appropriate, include recommendations such as referral for disciplinary action. **[Form 13]**

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Confidentiality and Retaliation Protections

Confidentiality requirements.

Information related to the investigation should be shared only with individuals who have a legitimate need to know. All participants must be instructed to keep the matter confidential and refrain from discussing the investigation with others except as allowed or required otherwise by law.

Retaliation prohibition.

Principals should clearly inform all parties that retaliation is strictly prohibited. Principals must also actively monitor for any signs of retaliation throughout and after the investigation process.

Script.

Before the investigative interview ends, the following kind of information should be provided to the interviewee.

Before we conclude, I want to address two important issues: confidentiality and retaliation. First, this interview is part of a school investigation. You are expected to keep what is discussed here confidential unless law permits or requires otherwise. This means you should not talk about this interview or its subject matter with anyone else, unless you are seeking legal advice, speaking with a parent or guardian if you are a student or as specified by law. Staying confidential helps protect the integrity of the process and everyone's privacy. Second, I want to be very clear that retaliation is strictly forbidden. No one is allowed to intimidate, threaten, harass or take any negative action against someone because they reported a concern, participated in the investigation or were involved in this process. This includes negative treatment, social exclusion, threats or other forms of retaliation. While we don't expect anyone to retaliate against you, if you believe you are being retaliated against or if someone asks you to retaliate against another person, you should report it right away. The school takes this seriously and will respond appropriately. Do you understand what I've just said about confidentiality and retaliation?

Communicating results.

Principals must consider whether they should provide a summary of the investigation findings to either the complainant or the respondent, subject to school board policy and confidentiality requirements. In student discipline cases, parents may have a right to be informed.

Tips and Common Pitfalls to Avoid

Tips for effective investigations.

Principals should act promptly when handling investigations, as delays can compromise the integrity of evidence. It is essential to remain impartial, follow

all school district policies and legal requirements and treat all allegations seriously. Using a checklist can help ensure that no steps are overlooked. **[Form 14]**

Pitfalls to avoid.

Common mistakes in investigations include failing to document key steps and disregarding minor complaints that may indicate a pattern. Making prejudicial comments or discussing the case with staff who are not involved can compromise the process. Ensuring all evidence is carefully preserved and properly managed is essential to maintaining the credibility and integrity of the investigation process.

Coordination with Law Enforcement or Other Agencies

Mandatory reporting.

If there is reasonable cause to suspect that a child is a victim of child abuse, principals must promptly report the suspected abuse through the Pennsylvania Department of Human Services' Child Welfare Portal or by calling ChildLine. Additionally, if the suspected conduct falls under an incident reportable under the Safe Schools Act, the superintendent or designee must notify local law enforcement in accordance with applicable law.

Parallel investigations.

When law enforcement is involved, principals should coordinate with them but not delay necessary administrative actions. Additionally, principals should avoid interfering with police investigations.

Conclusion

Effective investigations are essential to maintaining school safety, integrity and legal compliance. Principals must approach investigations with professionalism, impartiality and a commitment to due process. By following the steps outlined in this article and adhering to school district procedures and applicable law, principals can ensure that investigations are conducted fairly and produce reliable outcomes.

Please **scan the QR code below** to access the **investigation forms** referenced in the article. Refer to the disclaimer and instructions regarding the use of these forms on the following page. ■



Disclaimer and Instructions Regarding Use of Investigation Forms

Disclaimer:

The forms and materials provided in this article are for **informational and educational purposes only**. They are intended to serve as general templates to assist school entities and their administrators in documenting and conducting employee or student investigations. **They do not constitute legal advice** and may not reflect the requirements of all applicable federal, state or local laws, regulations or board policies. Users of these forms are solely responsible for ensuring that they are adapted to fit the facts, circumstances and legal requirements of their particular situation.

Administrative Approval:

Before initiating or using any form or investigative step outlined herein, **principals and other building-level administrators must seek prior review and approval** from the appropriate central office administrator, such as the Superintendent, Assistant Superintendent, Human Resources Director or other designated official. Investigations often involve sensitive legal, contractual and personnel considerations that require oversight and coordination at the district level.

Instructions for Use:

1. **Review Board Policies and Procedures:** Confirm that the investigative steps align with the school entity's adopted policies, collective bargaining agreements and administrative regulations.
2. **Secure Authorization:** Obtain approval or direction from the appropriate central office administrator **before** beginning interviews, collecting documents or issuing notices.

Adapt as Needed:

Modify forms to ensure compliance with applicable laws (e.g., Title IX, Section 504/ADA, state mandatory reporting laws) and to reflect the unique facts of the matter.

1. **Maintain Confidentiality:** All documents and information generated during an investigation should be treated as confidential and shared only with individuals who have a legitimate need to know.
2. **Seek Legal Counsel When Appropriate:** Complex matters, such as those involving potential termination, litigation risk, discrimination claims or law enforcement involvement, may require consultation with the school entity's solicitor or legal counsel.

Important: Failure to follow appropriate chain-of-command or procedural requirements may result in the investigation being compromised or subject to challenge.

PA Principals Association is Offering New EdCamp Across PA

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Cost:

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Presenters:

Primary Facilitator/Act 45 Coursework Coordinator: Dr. Beth Haldeman

Co-Facilitators may include PA Principals Association Staff and Board Members.

PLEASE NOTE: EdCamp can be offered virtually. If you wish to hold it in your district, this is an option. In addition, this new EdCamp would be perfect for a Saturday, after school hours, a day off school or summer inservice.

For program requirements or to schedule an EdCamp in your district, please contact Dr. Beth Haldeman at haldeman@papincipals.org