

Serving the Labor Community for Over 90 Years

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Power Hour: Investigating Student Discipline What Leaders Legally Need to Know

*Presented to the
Pennsylvania Principals Association*



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Principles of an Effective Investigation

Best Practices for Principals

Get the Facts



- The purpose of an investigation is to collect the information necessary to determine what occurred and what should be done.
 - What happened?
 - Who was responsible?
 - What motivated the behavior?
 - Was it a violation of school rules?
- The goal of the investigation should always be fact finding. Investigatory techniques should not be used to intimidate or harass students.

Be Proactive



- It's important to respond quickly after the initial report is made.
- The sooner an investigation can proceed, the more likely it is to retrieve accurate information.
- The longer you wait, the more likely memories fade.
- When triaging, consider whether the situation presents an immediate and continuing safety risk.

Be Strategic



- As soon as possible, make a plan to conduct the investigation.
- In making your plan, first determine the scope of the investigation.
- Determine what actions are necessary:
 - Searches
 - Security footage
 - Interviews, with investigators or with counselors
- Set out a timeline for retrieving evidence and conducting interviews.

Preserve Confidentiality



- While the investigation is ongoing, the school should preserve, to the greatest extent possible, confidentiality.
- Confidentiality protects the accused, the accuser, and the school.
- Interviews should be conducted in a closed, private space where they won't be overheard.
- Student disciplinary hearings should be held in private, with the exception of formal hearings that the student requests be public.

Maintain a Thorough Record



- At every stage of the investigation, take notes of what actions you are taking and what information you have gathered.
 - While this helps ensure an accurate record, this documentation may also end up being useful if there are concerns about how the investigation was handled down the road.
- When taking interviews, try to maintain as accurate notes as possible of what is said. Make sure that your interview notes reflect: when it was taken, who was present, as well as the questions and responses.



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Principal's Role & Responsibility

*Understanding Your Job in a
Disciplinary Investigation*

Role of the Principal



- It's important to understand your responsibility at the start of the investigation.
- This will depend on a number of factors, primarily the policies and procedures of your district, but also the nature of the alleged misconduct, including the severity and potential illegality.
 - Unless you have been trained to investigate Title IX complaints, if the allegations are of sexual harassment or misconduct, you should not be the one to conduct any investigation. Instead, the investigation should be conducted by someone with the requisite training.
- Conduct that violates both school rules and laws should follow the procedure for criminal investigation defined by district policy. Generally, the school should conduct its own investigation even if there is a criminal investigation.

Principal's Responsibility



- Principals should be familiar with district's policies, both school rules and investigatory procedures.
- Principals should also be aware of labor laws and student rights that may be impacted by investigations and discipline.
 - For example, if the principal is interviewing an employee who is a union member and believes that the interview could lead to discipline for the employee, they should allow the employee to be accompanied by a representative of their union.

Conducting Interviews



- The investigator should begin by stating the purpose of the conversation.
- The investigator should maintain a neutral tone throughout the interview.
- Use open-ended questions, rather than leading or accusatory questions. Remember, the point is fact finding, not litigating.
- Make an outline of what you need to ask about, but prepare to deviate and pursue follow up threads. If the interview could be scripted ahead of time, there would be no need to conduct it.

Concluding an Investigation



- Once the investigation is completed, a principal should prepare a report that summarizes the major aspects of their findings.
- This report should include:
 - A summary of the situation;
 - Your findings of fact;
 - Names and information about the individuals involved;
 - Any evidence collected;
 - A conclusion about whether any misconduct occurred; and
 - If misconduct occurred, a recommendation for potential appropriate actions or discipline
- Maintain discretion: the investigation and its conclusions should be shared only with people who legitimately need to know. Participants should be directed to maintain confidentiality and not discuss the matter with other except as required by law.

Mandatory Reporting Obligations



- Do NOT forget mandatory reporting obligations when conducting student investigations.
- Principals are mandated reporters and have a duty to report suspected child abuse and neglect.
- During an investigation, you may uncover facts that trigger your obligations as a mandated reporter.
- If you do, make sure you make a report to Childline.
- Do NOT delegate the task to someone else. You must make the report.
- Failure to comply with mandatory reporting obligations is a common disciplinary issue involving principals that puts their job in jeopardy.



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Protecting Students' Rights

*Legal protections for students
during investigations*

Due Process



- In Pennsylvania, students have a statutory right to education.
- Thus, before that right may be denied, students are entitled to due process. This includes in cases of suspension and expulsion.

- 22 Pa. Code § 12.8

Informal Hearing



- In a case of possible suspension, a student is entitled to an informal hearing with the decision maker that gives them the opportunity to explain the circumstances surrounding the event and show why they should not be suspended.
- The suspension should comply with the following requirements:
 - Notification of the reasons for the suspension shall be given in writing to the parents or guardians and to the student.
 - Notice of the time and place of the informal hearing.
 - The student has the right to question any present witnesses.
 - The student has the right to speak and produce witnesses on his own behalf.
 - The informal hearing should be held within the first 5 days of the suspension.

Formal Hearing



- In a case of possible expulsion, a student is entitled to a formal hearing in front of the school board or an authorized committee of the board or a qualified hearing examiner appointed by the board.
- The hearing must comply with the following:
 - The school shall give the student notice of the charges and the time and place of the hearing. This notice shall also include the expulsion policy.
 - The student may elect to be represented by counsel, at their own expense. The notice of the hearing shall inform the student of this right.
 - The student shall be informed of the witnesses testifying against the student, and be provided with their statements and affidavits. The student may request that witnesses appear in person and subjected to cross examination.
 - The student shall have the right to testify and to present their own witnesses.
 - The hearing should be recorded and the record made available to the student.
 - The student shall have the right to appeal the final decision.

Prohibited Investigatory Techniques

- Administrators cannot threaten or coerce a student into cooperating with the investigation.
- Administrators cannot promise a student immunity from repercussions in exchange for the student's testimony
- Lie detector tests and similar devices that measure stress should not be used.
- Searches should not be overly invasive.
 - Particularly, searches of a student's person may not be conducted without a pressing need and clear legal authority.
 - Ensure that any searches fully comply with the school board policies.
- Do not record anyone without their consent, or the consent parents in the case of minors.
 - In Pennsylvania, this can be prosecuted as a crime. If you wish to record an investigatory meeting, you should obtain prior approval from your supervisor or the superintendent, all persons involved must be notified before the recording begins, and you should record an acknowledgement of the recording at the start.
- Administrators cannot take any action that could be perceived as retaliatory against students or employees for engaging in protected activities such as asserting their rights or mandatory reporting.

Students with Disabilities



- When interviewing students with disabilities, administrators need to provide reasonable accommodations in accordance with the Americans with Disabilities Act, Rehabilitation Act, Individuals with Disabilities Education Act, and Pennsylvania Human Relations Act
- In order to determine if accommodations or other supports are needed, administrators should consult the student's IEP or Section 504 plan before the interview.
 - If unsure, talk to the student's case manager, the school's psychologist, or the student's teacher about the best communication, environmental, and behavioral strategies for interviewing the student.



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Any Questions?



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Thank You for Your Time

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