



**F3 Law**

# Safeguarding Your District: The EVIDENCE Model for In-House Investigations

Failure to perform a proper investigation can cost an employer more than monetary damages. It can trigger bad press, community and organizational discontent and lead to compromised confidence in district leadership and management.

## F3 attorneys suggest following the EVIDENCE model to assist districts with internal investigations:

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| <b>E</b> | Evaluate when disciplinary action must be considered based on:<br>Legal requirements, board policy, potential liabilities, and collective bargaining agreement(s)   |
| <b>V</b> | Verify and carefully consider:<br>The availability and quality of evidence, clarity of witness information, and potential to withstand challenges and threats of legal action   |
| <b>I</b> | Interview considerations:<br>Order of witnesses, typically advisable to start with complainant, move on to most knowledgeable person, always interview witnesses separately, avoid group interviews, separate witnesses as they wait to be interviewed, take copious notes, check policies on taping interviews, and representation |
| <b>D</b> | Document with vigilant attention to detail, including:<br>Thorough notes, issue confirming memorandum of interview, check policies on audio/videotaping interviews, prepare timely drafts of interview reports – while still fresh, and maintain separate investigation files   |
| <b>E</b> | Examine and report after interviews:<br>Review complaint, notes and evidence, reconcile with gaps, ambiguities, create new/additional list of interviewees, questions and facts, and determine whether to re-interview the complainant and/or accused   |
| <b>N</b> | Notify and correct as appropriate to stop the misconduct and reoccurrences  |
| <b>C</b> | Corrective actions might include:<br>Verbal reprimand, written reprimand, demotion, involuntary transfer, suspension, and dismissal   |
| <b>E</b> | Educate. To help your organization learn and grow from mistakes, consider:<br>New policies, need to distribute/reinforce the policies, need to amend employee handbooks, and need for new and current employee trainings  |

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| <b>E</b> | Evaluate the complaint/situation              |
| <b>V</b> | Verify allegations and plan investigation     |
| <b>I</b> | Interview witnesses and gather facts/evidence |
| <b>D</b> | Document, document, document                  |
| <b>E</b> | Examine evidence and prepare report           |
| <b>N</b> | Notify those involved                         |
| <b>C</b> | Consider corrective actions                   |
| <b>E</b> | Educate to avoid future problems              |

## Practical Pointers

When conducting an internal investigation, consider:

- Who is the appropriate investigator under the circumstances?
- Whether, and how, to take written statements, electronically record interviews and otherwise gather relevant information.
- Tips and techniques for interviewing the complainant, accused and other witnesses.
- Remember to separate witnesses as they wait to be interviewed and during interviews.
- How and when to formally present an accused employee with the allegations subject to investigation.
- To what extent, if any, an investigator can promise confidentiality and/or can protect against retaliation.
- What disciplinary and other corrective actions should be considered in various scenarios.
- The latest case-law controlling important subsidiary issues like: refusal by employees to answer inquiries; rights against self-incrimination; and difficult search and seizure scenarios
- prepared for media and community inquiries.
- Provide to your Governing Body and senior staff members appropriate language regarding investigation, so they can manage properly any inquiries or criticism.

Consider your obligation as a mandated reporter in any investigation. If any of the involved parties are under 18 years old, additional privacy concerns/notifications should be considered, and in cases involving physical/sexual/emotional abuse, local law enforcement and/or Child Protective Services ought to be notified.

## TIP – Timely Investigative Plan

List all witnesses to be interviewed:

- Those identified in complaint
- Those with personal knowledge
- The list may change, be flexible

Match up facts with appropriate witness(es).

Prepare questions:

- Consider subjects that must be covered
- Avoid leading questions
- Do not make judgmental or evaluative comments during interview