



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 school and district leadership.

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

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| E | EVALUATE when disciplinary action must be considered based on:
Legal requirements, board policy, potential liabilities, and collective bargaining agreement(s) |
| V | VERIFY and carefully consider:
The availability and quality of evidence, clarity of witness information, and potential to withstand challenges and threats of legal action. Know the facts. |
| I | INTERVIEW considerations:
Order of witnesses - typically best 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 |
| D | DOCUMENT with vigilant attention to detail, including:
Take 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 |
| E | EXAMINE and report after interviews:
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 |
| N | NOTIFY and correct as appropriate to stop the misconduct and reoccurrences |
| C | CORRECTIVE actions might include:
Verbal reprimand, written reprimand, demotion, involuntary transfer, suspension, and dismissal |
| E | EDUCATE . To help your organization learn and grow from mistakes, consider:
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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| E | Evaluate the complaint/situation |
| V | Verify allegations and plan investigation |
| I | Interview witnesses and gather facts/evidence |
| D | Document , document, document |
| E | Examine evidence and prepare report |
| N | Notify those involved |
| C | Consider corrective actions |
| E | Educate to avoid future problems |

Practical Pointers

When conducting an internal investigation, consider:

- Whether immediate steps are needed to protect students, staff, evidence, or the integrity of the investigation.
- Carefully consider the reported facts and determine what additional information is needed.
- Immediately assess mandated-reporting obligations if a minor is involved. If there is reasonable cause to suspect child abuse or neglect, the required report must be made to DFS before initiating or continuing an internal investigation.
- Whether law enforcement, juvenile authorities, parent/guardian notification, and additional student-privacy protections are also required. Do not delay, screen, discourage, or interfere with a mandated report.
- Determine who is the most appropriate investigator under the circumstances.
- Which witnesses should be interviewed, what documents should be reviewed, and what evidence should be preserved.
- Whether, and how, to take written statements, record interviews, or gather electronic information.
- How to best interview the complainant, accused employee, and witnesses in a fair, neutral, and non-leading manner.
- Separating witnesses before and during interviews.
- When and how to present the accused employee with the allegations.
- What confidentiality can, and cannot, be promised.
- How to protect complainants, witnesses, and participants from retaliation.
- Whether employee rights, representation issues, criminal implications, or refusal-to-answer concerns require additional legal review.
- What findings are supported by the evidence before deciding whether discipline or corrective action is appropriate.
- How to handle inquiries and what communication should be provided to the board, staff, media, or community, if any.

Continually 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 DFS should be notified.

TIP – Timely Investigative Plan

List all witnesses to be interviewed:

- Those identified in complaint
- Those with personal knowledge
- The list may change as facts become known, be flexible

Match up facts with appropriate witness(es).

- Start with complainant, then witnesses.
- Assess best time to confront and interview accused party.

Prepare questions:

- Consider subjects that must be covered
- Avoid leading questions. Let the witness tell the story. Follow up with “What happened next?”
- Do not make judgmental or evaluative comments during interview.