

Tips for an Effective Investigation

You receive an allegation of harassment: Now what?

Preliminary issues

- **Is there a particular timeframe within which an investigation must be completed?**
 - OCR has opined that schools have “a responsibility to respond promptly and effectively.”
 - Read the policy!
- **If a school doesn’t know about harassment, then does it have an obligation to end it?**
 - “[I]f the school knows *or reasonably should know* about the harassment, the school is responsible for taking immediate effective action to eliminate the hostile environment and prevent its recurrence.”

You receive an allegation of harassment: Now what?

Preliminary issues, continued

- **The student and parent do not want to file a formal complaint. Is the school's responsibility over?**
 - No. “Regardless of whether the student who was harassed, or his or her parent, decides to file a formal complaint or otherwise request action on the student's behalf (including in cases involving direct observation by a responsible employee), the school must promptly investigate to determine what occurred and then take appropriate steps to resolve the situation.”
- **The police have started investigating. Is the school's responsibility over?**
 - No. “[B]ecause legal standards for criminal investigations are different, police investigations or reports may not be determinative of whether harassment occurred under Title IX and do not relieve the school of its duty to respond promptly and effectively.”
- **After the school resolves the complaint, it has no further obligations, right?**
 - No. It must ensure there is no retaliation and that the harassment is not recurring.

You receive an allegation of harassment: Now what?

- **Does the school need to protect the student's or complainant's confidentiality?**
 - Protect confidentiality to the extent possible.
- “In all cases, a school should discuss confidentiality standards and concerns with the complainant initially. The school should inform the student that a confidentiality request may limit the school's ability to respond. The school also should tell the student that Title IX prohibits retaliation and that, if he or she is afraid of reprisals from the alleged harasser, the school will take steps to prevent retaliation and will take strong responsive actions if retaliation occurs. If the student continues to ask that his or her name not be revealed, the school should take all reasonable steps to investigate and respond to the complaint consistent with the student's request as long as doing so does not prevent the school from responding effectively to the harassment and preventing harassment of other students.” (2001 Guidance)

You receive an allegation of harassment: Now what?

Continued...

“OCR enforces Title IX consistent with the federally protected due process rights of public school students and employees. Thus, for example, if a student, who was the only student harassed, insists that his or her name not be revealed, and the alleged harasser could not respond to the charges of sexual harassment without that information, in evaluating the school's response, OCR would not expect disciplinary action against an alleged harasser.

At the same time, a school should evaluate the confidentiality request in the context of its responsibility to provide a safe and nondiscriminatory environment for all students. The factors that a school may consider in this regard include the seriousness of the alleged harassment, the age of the student harassed, whether there have been other complaints or reports of harassment against the alleged harasser, and the rights of the accused individual to receive information about the accuser and the allegations if a formal proceeding with sanctions may result.”

You receive an allegation of harassment: Now what?

----- Act immediately to end harassment-----

- Acting immediately sends a message that the harassment is not acceptable.
- It may be appropriate to provide “interim measures,” individualized services offered as appropriate to either or both the reporting and responding parties involved in an alleged incident of sexual misconduct, prior to an investigation or while an investigation is pending.
 - For example: Counseling, extensions of time, modifications of class schedules, restrictions on contact, etc.
- Inform complainants about their Title IX rights, any available resources (such as counseling, health, and mental health services), and their right to file a complaint with local law enforcement.

Steps to the Investigation

Investigation Step #1:

- Review applicable statutes, regulations, and school district policies and procedures. Follow all applicable policies and procedures throughout the investigation.

-- As investigator, your first step is to review your district's policies and procedures. Follow those procedures throughout your investigation!

-- Initial letter & policy to families

-- Consent form

Investigation Step # 2:

- Ask the complaining student or staff member for a full narrative of the facts to supplement the information provided on the complaint form.
- The investigator should double-check to ensure that the complainant has provided all relevant information, including:
 - Who, what, when, where;
 - Race, ethnicity, and gender of victim;
 - Students, teachers, and other staff involved;
 - Witnesses to the incident; and
 - The specific nature of the alleged harassment.

Investigation Step #3:

- Review the student/staff files of every individual allegedly involved in the incident.
 - Reviewing the files will provide the investigator with key background facts that can inform his or her questioning of the victim, the alleged harasser, and witnesses.

Investigation Step #4:

- Interview all alleged victims (which may or may not include the complainant).

In addition to the standard factual information listed in #2 above, the investigator should consider asking the victim(s) the following questions:

- How did you react to the harassment?
- How has the alleged harassment affected you and your experience at school?
- Are there any other students, teachers, or staff that might have relevant information?
- Do you have any notes, emails, text messages, documentation, or other physical evidence related to the incident?
- How would you like to see this situation resolved?

NOTE: Hold separate interviews with each alleged victim

Provide interviewees -- whether they are the victim, a witness, or the alleged harasser -- with appropriate translation services if the interviewee is an English Language Learner.

Investigation Step #5:

Interview other witnesses

- A full investigation includes interviews with all potential witnesses, even if the first few witnesses interviewed have provided identical information.
- First, the investigator should explain briefly the reasons for the interview and ask whether the witness has any relevant information about the alleged incident.
- Next, the investigator should consider asking the following questions:
 - Describe the alleged harasser general behavior toward the victim.
 - What, if anything, did the victim tell you about the incident?
 - Do you know of anyone else who might have relevant information?
 - Are you aware whether the alleged harasser has ever engaged in similar conduct in the past?
- Be sure that you have captured all potential witnesses by encouraging your interviewees to list any other students or school personnel who could possibly have information about the incident.

Investigation #6:

- Interview the alleged harasser(s).
 - The investigator should inform the alleged harasser of the allegations against him or her.
 - The investigator should ask the alleged harasser about the basic facts surrounding the incident and give the alleged harasser an opportunity to explain the reasons for his or her actions.

NOTE: Hold separate interviews with each alleged harasser.

Investigation Step #7:

- **Review the notes from the interviews.**
 - Follow up on any factual inconsistencies. Re-interview witnesses as necessary.
 - If the alleged harasser says something that directly contradicts what the complainant reported to you, circle back with the complainant to clarify his/her version of the events.

During the Investigation....

It may be appropriate for a school to take interim measures during the investigation of a complaint. Examples:

- Rearrange schedules;
- Provide counseling, medical services, and academic support (tutoring);
- Remove negative grades or evaluations that resulted from the harassment from the student's record, or allow a student to retake a test or class.

Tips for an Effective Investigation

How to Investigate Allegations of Harassment

- Be Strategic. Use your review of the relevant law and policies as a guide to what you need to find out.
- Be consistent! Follow the same investigative processes for each harassment complaint
- Develop a checklist of questions before each interview.
- Interview questions should illicit the facts but be open-ended so as to allow the interviewees to tell their side of the story.

How to Investigate Allegations of Harassment

- Take notes either during the interviews or immediately following the interviews. The notes should state the facts, not the investigator's opinions.
- Provide interviewees - whether they are the victim, a witness or the alleged harasser - with appropriate translation services if the interviewee is an English Language Learner.

How to Investigate Allegations of Harassment

- One of the most difficult aspects of an investigation is determining witness credibility. When confronted with conflicting stories, consider the witnesses:
 - Character;
 - Prior inconsistent statements;
 - Bias or motive;
 - Demeanor;
 - Opportunity or capacity to observe the events; and/or
 - Cooperation with the investigation (or lack thereof).

How to Investigate Allegations of Harassment

- Ask follow-up questions if needed (“Is there anything else you think we should know?”)



After an Investigation

- Provide written notice of the outcome of disciplinary proceedings to both parties concurrently.
 - The content of the notice may vary depending on the underlying allegations and the age of the students.
 - Inform the reporting party's parents (or directly to the student, if the student is 18):
 - Whether the school found that the alleged conduct occurred;
 - Any individual remedies offered to the reporting party or any sanctions imposed on the responding party that directly relate to the reporting party; and
 - Other steps the school has taken to eliminate the hostile environment, if applicable

Preventing harassment from reoccurring

Incident-specific examples:

Taking appropriate disciplinary action per **Your schools district policy:**

- Providing, if necessary, services (community resources) to the victim to address the effects of the harassment;
- Preventing retaliation;
- Considering whether students should be separated;
- Ensuring that victims and their families know how to report subsequent problems with harassment; and
- Conducting follow-up inquiries to confirm that there have not been any new instances of harassment or retaliation.

School-wide examples:

- Providing training or other interventions for the larger school community
- Distributing anti-harassment materials to students and parents

Notice to victims and perpetrators

Must provide written notice of the outcome of disciplinary proceedings to both parties, and inform them of their rights and any available resources (such as counseling, health and mental health services)

- The content of the notice may vary depending on the underlying allegations and the age of the students.
- Inform the reporting party's parents (or the student if 18 or older):
 - Whether the school found that the alleged conduct occurred;
 - Any individual remedies offered to the reporting party or any sanctions imposed on the responding party that directly relate to the reporting party; and
 - Other steps the school has taken to eliminate the hostile environment, if applicable.

After the investigation....

Take steps to stop the harassment from happening again.

- Once a district has determined that harassment has occurred, the district must take appropriate steps to end harassment.
- The nature of those steps will depend on a number of factors, including the ages of the victim(s) and the harasser(s), the nature of harassment, and the pervasiveness of harassment.

Generally, school districts should consider taking some or all of the following steps:

1. Discipline the harasser appropriately.
2. If appropriate, engage in conflict resolution procedures involving the harasser and his or her victim.
3. If necessary, provide services to the victim to address the effects of the harassment.
4. Prevent retaliation.

After the investigation....

Take steps to stop the harassment from happening again. (cont.)

- Provide training or other interventions for harassers and/or the larger school community;
- Inform parents and students about the harassment incident and the school district's response;
- Distribute anti-harassment materials to students and parents;
- Ensure that the victim and his or her family know how to report subsequent problems with harassment.
- Conducting follow-up inquiries to confirm that there have not been any new instances of harassment or instances of retaliation.

Writing an Investigation Report

Investigation Reports

- Importance of Reports
- Report Components
- Tips for Writing Effective Investigation Reports



Investigation Reports

Importance of Reports:

Investigation reports provide evidence of investigations. In particular, reports:

- Detail the processes of the investigation;
- Organize and present the factual information collected; and
- Provide specific factual support for conclusions and remedies.

Investigation Reports

Reports help ensure that all participants in the investigation – including the victim, alleged harasser, and other witnesses – receive a fair process by:

- *Encouraging thorough investigations;*
- *Giving district officials an opportunity to analyze the information collected to determine whether facts support the allegations; and*
- *Providing rationale for district decisions.*

Investigation Reports

Report Components:

1. Origin of Complaint
2. Scope of Investigation
3. Facts
4. Conclusions
5. Recommendations/Actions Taken

Note: Each of the components above should be a separate section in the report.



Investigation Reports

Origin of Complaint:

- Describe each allegation in detail.
 - State each as succinctly and clearly as possible.
- *Monica claims that, during a seventh period class on October 19, 2019, Jim made the following sexually suggestive comments to her: “[insert comments].” Monica claims that she asked him to stop but that he continued to repeat the statements.*

Investigation Reports

- For each allegation, cite the statutory or regulatory claim and grounds upon which the allegation is based.
- *Title IX prohibits sexual harassment in any public school. In addition, Policy 99.101 of the Main Street Middle School Student Handbook prohibits a student from making statements to another student of a sexually suggestive nature. Policy 99.102 requires . . .*

Investigation Reports

- Describe actions the school has taken prior to your involvement.
- *Prior to the investigation, Assistant Principal Susan Harris met with Monica and questioned her about the alleged incident. In addition, Ms. Harris instructed Jim that he was not to have any conversations with Monica until further notice.*

Investigation Reports

Scope of Investigation:

- Explain how you conducted the investigation
 - I began the investigation by reviewing the relevant statute, policies, etc. that address the conduct that allegedly took place.
 - Next, I interviewed the complainant, Monica.
 - Based upon information provided by Monica, I reviewed the relevant student files, then interviewed students who Monica and others said might have information about or related to the allegations. These students included...
 - I also interviewed, Ms. Smith
 - Based upon the relevant policies, documents and interviews, I presented recommendations to Principal Harris.

Investigation Reports

- Identify the documents you reviewed, including:
 - *written complaints,*
 - *emails,*
 - *interview notes,*
 - *school policies and regulations,*
 - *incident reports,*
 - *online photos and posts, and*
 - *other documentary or physical evidence.*

Investigation Reports

- Attach key documents to the end of the report.
 - *I reviewed the following written materials:*
 1. *Complaint*
 2. *Text provided by Monica*
 3. *Student files of _____, _____, and _____.*
 4. *Facebook page of Jim.*

Investigation Reports

- Identify the witnesses you interviewed
- *The following witnesses were interviewed during the investigation:*
 1. *Monica*
 2. *Jim*
 3. *Student witnesses identified in investigation, Including...*
 4. *Principal Harris*

Investigation Reports

Facts:

- Should rely upon clear, accurate, factual evidence.



Investigation Reports

- Describe facts relevant to the analysis, conclusions and recommendation, including:
 - **Who, what, where, when, why, how;**
 - **Specific actions / incidents that occurred;**
 - **Dates;**
 - **Locations of incidents;**
 - **Specific quotations of words used (evidence of motivation, but not statements about motivation);**
 - **Ages of students;**
 - **Specific actions the district has already taken to investigate (but not conclusions the district has drawn);**
 - **Impact of incident on complainant, others, and school;**
 - **Students' prior relationships and interactions;**
 - **Students' prior incidents; and**
 - **Position of actors (e.g. student, principal).**

Investigation Reports

- Present the facts in a logical sequence.
 - Often, it is best to use the chronological order of events.
 - But, sometimes, you may want to organize the facts according to complaint or subject matter.



Investigation Reports

- If some fact is disputed, use the relevant documents and testimony – as well as the strategies described in Section II – to include sufficient factual material to resolve the dispute.

- *Although Jim denies making any improper statements to Monica, Jim has lied to school officials on two occasions in the past, and the text provided by Monica supports allegations that Jim made comments of a sexually suggestive nature.*

Investigation Reports

- Be objective; do not use subjective characterizations.
 - *Prior to the incident at issue, Jim had twice received in-school suspensions for making sexually suggestive remarks to female students.*

NOT:

- *Jim is a crude and unlikeable student who constantly gets into trouble.*

Investigation Reports

- Cite to specific evidence for support.
- *For example, cite to emails or other relevant documents.*
 - *Bullet your evidence → no novel required*

Investigation Reports

Conclusion:

- Analyze the facts presented, restating the critical facts and resolving factual disputes.
- *The comments allegedly made are sexual in nature. If the comments were made, they violate district policy and the student handbook.*

Investigation Reports

- Include reasons for accepting or rejecting the allegations.
 - *I credit Monica's version of events because.....*
 - *While Jim initially denied the allegations, he later conceded that he "might" have made the comments but stated that he was "joking."*
 - *Other reasons*

Investigation Reports

- **Draw conclusions**

- Use the facts!

- All conclusions must be logical and reasonable reflections of the facts.

- The purpose is to determine **if** the alleged acts occurred and **why** the alleged acts occurred (i.e. motivations).

Investigation Reports

Recommendations:

- Recommend a resolution of the complaint.
 - Describe actions required to make the complainant whole.
 - Describe actions/safety plans required to eliminate the discriminatory practice.
- *District policy states that there is “zero tolerance” for sexually suggestive remarks by, or directed to, students. Consistent enforcement of the policy requires prompt and decisive discipline, both to correct Jim’s behavior and to reiterate to others that such conduct is not tolerated.*

Investigation Reports

- Recommend interventions, such as:
 - Remedial relief for identified victims;
 - Prospective relief for the school (e.g. changes in policies, training for staff); and/or
 - Progressive discipline for the harasser (which depends on severity, intent, whether a repeat offender, etc.).

Investigation Reports

- Possible Recommendations:
 - I recommend the following:
 - Jim should be instructed to apologize to Monica in a meeting supervised by the principal.
 - Jim should be suspended from school for a period of two (2) days.
 - Jim should be cautioned not to retaliate in any manner against Monica.
 - The school should conduct a school assembly to review the school's anti-harassment policies.
- *What do you think about the recommendations?*

10 Tips for Writing an Effective Investigation Report

Investigation Reports

- Be impartial:
 - Do not use biased language
 - Beware of language that downplays, has certain connotations, etc.
 - If available, use the specific language of the actors.
- Do not mischaracterize facts.
- Be thorough.
 - Do not leave out facts that appear damaging to the school district. This undermines both the credibility of the report and your credibility as an investigator.
 - Sometimes, you might need to explain that the district made a mistake.
- Be Specific.
 - Do not be vague. If you do not know a particular fact, find it out.
 - When possible, do not allow witnesses to be vague.

Investigation Reports

- Confirm that the investigation was done appropriately.
 - Interview appropriate witnesses.
 - Substantiate claims, investigate credibility, and do not accept statements at face value.
 - Use supporting documents and corroborating evidence.
 - Follow up on all leads.
- Be prompt.
 - Follow you district's policy with regard to deadlines
- Comply with legal requirements.
 - Comply with state and federal privacy laws.
 - Comply with union contacts.

Investigation Reports

- Give yourself enough time!
 - **Allow an appropriate amount of time to conduct a thorough investigation and write an effective report.**
- Write effectively.
 - **Use short sentences, active voice, and words that convey full and appropriate meaning.**
 - **Proofread.**
- Attach key documents to the end of the report.