

Pro Tips for K-12 Investigations*

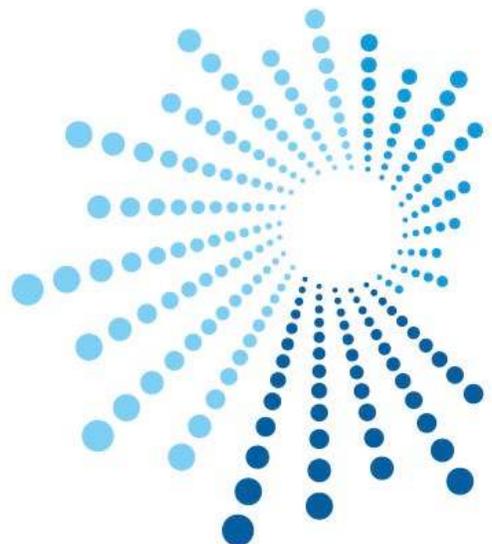
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Introduction to K-12 Investigations

Every state requires K-12 employees to report criminal sexual abuse to authorities, but Title IX requires schools to do their own investigation, regardless of any police action. New guidelines have specified that sexual harassment or assault complaints can be delivered to any district employee by complainants, friends, bystanders, or parents. The complaint can be written or verbal and can be reported over the phone, or by email. If the conduct occurred on campus or as part of a school activity, the school must document the allegations and notify both parties and their parents of the allegations and start a timely investigation to determine if the conduct was unwelcome conduct that a "reasonable person" would consider "so severe, pervasive, and objectively offensive that it effectively denies a person equal access" to an education.

Historically, K-12 schools relied on over-burdened administrators or local Law Enforcement Agencies to investigate these types of complaints. While deans and vice principals are accustomed to their school populations, they are not trained investigators. Law Enforcement Officers are trained to investigate crime and are not often acculturated to the world of six to eighteen-year-olds. More schools have started to turn to independent investigators, like myself to conduct their investigations.

From my almost thirty years as a licensed private investigator, I would like to offer some tips for anyone who is tasked with completing a K-12 investigation. Any investigation involving children requires special attention.



Pro Tips for Consideration

Be mindful that children are not just small adults. The understanding and maturity levels of students vary considerably, even within the same grade and age level. If you have not had the opportunity to be around children, it will be helpful to research the stage of cognitive development¹ of your subject before diving in. For example, kindergartners and first graders in the pre-operational stage tend to be egocentric and struggle to see things from another person's perspective. It is not until about 2nd, 3rd or 4th grade when children start to show more inductive logic skills and begin to think about how others may think and feel. Starting about 5th or 6th grade children start to use deductive reasoning and ponder concepts such as justice.

Indications of sexual maturity or immaturity in your subjects are also something to note as you are conducting your interviews. With the average age of puberty ranging for every student, no assumptions should be made about their maturity before meeting each unique student.

Preparing for the Investigation

As you are preparing for your investigation you should be provided with the notice of the allegations. Depending on the facts of your case, you can ask your point person, usually the District's Title IX Coordinator or an administrator, for some background on potential witnesses and determine what records you will need from the district. Attendance records or other conduct records may be relevant and necessary to confirm details or timing.

When scheduling interviews with K-12 students you should be familiar with your state's education code and the district's policy. Most districts require that the parents of the Complainant and the Respondent are not only notified but invited to attend the interview of their child. This can require some careful coordination. When parents attend the interview, it is wise to meet with them for a few minutes beforehand to explain the policy investigation process, address their concerns, and establish the interview guidelines. For example, once the interview is started, they must not interrupt the interview or answer for their child. Granting a parent or guardian an opportunity toward the end of the interview to take a break and remind their child of anything they think their child might have neglected to mention, may help everyone concerned feel more empowered by the interview.

If a Respondent's or Complainant's parent allow their child to attend the interview alone, it is wise to include another investigator or administrator as a witness.

When scheduling interviews with prospective witnesses, districts vary about whether or not the parents of those witnesses need to be informed. For example, in serious cases,

¹ Jean Piaget's 4 stages of Cognitive Development

their policy may dictate that all parents are notified about the nature of the investigation and invite the parents of witnesses to attend the interview of their child. However, when interviewing older high school students or witnesses of less serious conduct, the District may not have the same requirements. Ensure you are familiar with state and local requirements.

Conducting the Interview

The interview should be conducted in a private, safe space with accommodations to make your interviewee as comfortable as possible. Unless a parent knowingly selects an interview time that interferes with their child's lunch, or a test, be careful not to do that. Some schools allow a guidance counselor to sit in as a support person for an interviewee. There are no circumstances that would allow more than one witness to be in an interview room at the same time.

When interviewing children, the questions should be straight forward and age-appropriate. They should be given ample time to provide explanations when needed. All information should be carefully reviewed with the student to ensure that they have communicated their messages accurately. Remember that you are there to learn from them. Don't be afraid to ask silly questions. You will most certainly learn some new vocabulary.

Privacy and Record Keeping

Student Conduct is protected by FERPA, the Family Educational Rights and Privacy Act. FERPA prohibits the release of "personally identifiable" information regarding their students without written consent from their guardian. When documenting your interviews with minors, do not identify them by their full names. You can ask the district's Title IX Coordinator or a school administrator to help you determine the identity of potential witnesses and how they would like you to document the identities of their students to keep everyone straight. Some prefer initials or first names. When there are a lot of witnesses to navigate, a private witness key is useful. Discretion should also be used on any outward label for your case. Using a case number, as opposed to party names, is one more way to protect the privacy of the parties.

The investigator will be required to provide written documentation of all their interviews and make a conclusion about whether or not the conduct in question actually occurred as it was alleged. The school will be required to share the outcome of the investigation with both parties, enact consequences in the event of a policy violation, and maintain the investigation records for seven years.

Conclusion

Conducting sound investigations always requires training, preparation, and attention to detail. K-12 investigations also require familiarity and sensitivity to the age set and a knowledge of the unique expectations of the K-12 environment. I hope these tips will get you on your way to an efficient and fair K-12 investigation.

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*These tips are intended as helpful recommendations and not as legal advice.

