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Overseeing an Outside Investigation

by Don Austin

Before the Investigation Begins

1. **Who:** Select an investigator who has training or experience in the kind of investigation you are contemplating.
2. **Initial discussion with the investigator:**
 - a. **Scope:** Specify what the scope of the investigation is in writing. If counsel is involved in the situation, this is something that should be determined with counsel ahead of time before talking with the investigator. If the investigator through the course of the investigation finds more that needs investigation, s/he should phone you to discuss whether that additional matter is part of the investigation. Any expansion of the scope of the investigation should be in writing.
 - b. **Type of Investigation:** Identify the **controlling board policies** and procedures, providing the correct versions of them to the investigator.¹
 - i. Note that some investigations involve more than one board policy. For instance, Professional Boundary investigations fall under the umbrella of BP 5253 but BP 3207 applies. If the investigation involves current students, 3207P would be the appropriate procedure to follow.
 - c. Identify any **CBA requirements** that must be met and make sure the investigator has these.
 - d. Discuss with the investigator whether s/he is to reach and provide **factual conclusions**, which might include making **credibility determinations**, or whether the investigator is merely reporting in detail what each person interviewed has shared.
 - e. **Timeline:** Obtain a tentative timeline for when any interviews will take place.

¹ See chart below for index of WSSDA board policies commonly requiring investigations.

- f. **Witnesses:** Review the investigator's list of whom s/he will be interviewing and assist with suggestions for additional witnesses.
 - g. **Sexual misconduct and professional boundaries investigations:** When the investigation involves alleged sexual misconduct or violation of professional boundaries with students, make sure the investigator uses the **Professional Boundary Checklist** and knows how to use it in an investigation. (See checklist below.)
3. **Facilitate providing all documentation the investigator** should have before s/he begins to interview people. Keep a record of everything provided. (A folder in Outlook for the investigation would suffice.)

During the Investigation

- 4. Facilitate witness being available for interviews and getting parent permission to interview students.
- 5. Be alert that the employee(s) being investigated abide by any directives relating to the investigation, including non-retaliation.

After Investigation Interviews Are Completed

- 6. **Phone call before putting anything in writing:** Before the investigator puts anything in writing, have the person phone and discuss what they have found and determined. You should not attempt to change the investigator's mind, but make sure they have looked everywhere they need to look and that the tentative conclusions will translate into well supported conclusions in the final investigation report.
- 7. **Upon receipt of investigation report:**
 - a. Follow the pertinent board policy and Title IX, where applicable, concerning communicating findings to the complainant and the person who was the subject of the investigation.
 - b. Maintain sexual misconduct and professional boundaries investigations permanently due to Washington's open-ended statute of limitations for sexual abuse of minors. (RCW 4.16.340.²)

² A lawsuit may be brought within three years of *discovering* that the abuse occurred and *that a particular injury or condition was caused by the act*. Full realization might not happen for decades.

Appendix

WSSDA Model Board Policies and Procedures Requiring Investigations

1. BP 3205 & 3205P: Sexual Harassment (Title IX³)
2. BP 3207 & 3207P: Harassment, Intimidation, and Bullying
3. BP 3210 & 3210P: Nondiscrimination (student)
4. BP 3211 & 3211P: Transgender
5. BP 4220 & 4220P: Citizen Complaints
6. BP 5010 & 5010P: Nondiscrimination (employees)
7. BP 5011 & 5011P: Sexual Harassment (Title VII, employees)
8. BP 5253 & 5253P: Professional Boundaries⁴
9. BP 5270 & 5270P: Staff Complaints
10. BP 5271 & 5271P: Whistleblowers

Professional Boundaries Checklist

Taking an Undue Interest in a Particular Student:

1. Having a "special" friend or a "special relationship" with a particular student.
2. Favoring certain students by giving them special privileges.
3. Favoring certain students, inviting them to come to the classroom at non-class times.
4. Getting a particular student out of class to visit the teacher during the teacher's prep period.
5. Engaging in peer-like behavior with students including rough-housing.

Using Poor Judgment in Relation to a Particular Student:

6. Allowing a particular student to get away with inappropriate behavior.
7. Being alone with the student behind closed doors at school.

³ As of 2022, BP 3205 has been criticized by DOJ as a Title IX policy.

⁴ BP 5352 investigations are also BP 3207 investigations following 3207P.

8. Giving gifts or money to a particular student.
9. Being overly “touchy” with a certain students.
10. Touching students for no educational or health reason.
11. Giving students rides in the educator’s personal vehicle, especially alone.
12. Frequent electronic communication or phone contacts with a particular student.

Becoming Involved in the Student’s Private Life:

13. Talking to the student about the educator’s personal problems.
14. Talking to the student about the student’s personal problems to the extent that the adult becomes a confidant of the student when it is not the adult’s job role to do so.
15. Initiating or extending contact with students beyond the school day in a private or non-group setting.
16. Taking a particular student on personal outings, away from protective adults.
17. Using e-mail, text-messaging, instant messaging, or social networking, etc. to discuss personal topics or interests with students.

Not Respecting Normal Boundaries:

18. Invading the student's physical privacy (e.g., walking in on the student in the bathroom).
19. Inviting students to the educator’s home.
20. Visiting the student’s home.
21. Asking the student to keep certain things secret from his/her parents.

Sexually Related Conduct:

22. Engaging in sex talk with students (sexual innuendo, sexual banter, or sexual jokes).
23. Talking with a student about sexual topics that are not related to specific curriculum.
24. Showing pornography to the student.
25. Asking for or sending nude pictures (sexting).
26. Hugging, kissing, or other affectionate physical contact with a student.