edtec CONNECT
Fall 2014 Volume 6

Conducting Effective Internal Investigations

By Todd M. Plate, Esq., Educational Services Consultant, EdTec Inc.

Most organizations will have to deal with an internal investigation at some point. After all, in any growing organization, it's hard to imagine that there won't be an allegation of wrongdoing at some point. Unfortunately, most organizations are not taught how to properly conduct investigations internally for several reasons. First, it is assumed that one will never be needed. Second, it is assumed that if there is an investigation, someone else will take care of it. And finally, most people tend to feel at least a little nervous around the word "Investigation." The term itself conjures up a whole world of time-consuming requirements that could lead us to know way more about a co-worker or student than we would ever want to know. In the following pages, we will alleviate the apprehension of conducting an investigation by providing a process in which individuals feel more comfortable and confident in their ability to handle both the small and larger issues that may arise.

Investigation: Defined

The legal definition of an investigation is: a reasonable and good faith attempt to ascertain the truth and consequences of a particular situation. If you are an administrator and a teacher comes to you stating that another teacher made an insulting comment, it is your job to investigate.

This is common. Most issues are single incident matters and they need to be addressed efficiently and effectively. In this example, the administrator has heard just one side of the story and must now address the issue with the other individual involved. That is an investigation. Plain and simple. It is the administrator's job to take reasonable steps to determine what happened and what, if any, appropriate consequences should result.

The Risks of "It's No Big Deal"

When an issue is investigated, it makes the complainant feel safe and heard, and that creates a strong culture. Take the situation above. What if the administrator's response was to say, "Oh, that's just how Joe is. You shouldn't take it seriously." Unfortunately, across all types of organizations, this minimizing response happens way too often.

The results of a brush off attitude can be deeply harmful: the individual feels that his or her opinions aren't valued, the culture suffers, and the organization opens itself to liability. Conversely, when organizations effectively address the small issues as they arise, individuals are more apt to bring up larger issues because they have faith that they are truly supported and heard. If they don't bring up the large issues when they come up, the results can be devastating.

Call In the Experts?

Who should conduct an investigation depends on the issue at hand. Simple, single incident matters can and usually should be handled in-house. However, there are absolutely times when an investigation should be handled by outside parties.

Any time legal issues are at risk, it is best to bring in someone from the outside. Some examples may include the threat of a lawsuit or some form of illegal activity that has occurred or been alleged (*e.g.* theft, violence, ongoing harassment). In these situations, the complete absence of bias (be it real or perceived) and the ability to rely on an expert far outweigh any costs that the organization may incur by hiring an outside investigator, whether that be an attorney or a qualified consultant.

The Game Plan: How to conduct an internal investigation

Once an organization has decided that they will handle a matter internally, the following breakdown should help properly structure the investigation, and hopefully help to inform the ultimate determination of the investigation.

<u>Organizing and Planning</u>
One of the most important phases is the initial one: organizing and planning the investigation. Here are your initial crucial steps:

Choose Your Investigator
Creating an unbiased investigation is essential and that begins with the individual conducting the investigation. Some things to consider: Does the individual have experience in the type of matter being investigated? Will it be possible for this individual to be completely objective (e.g. are there personal relationships with those involved to take into account)? If these questions cannot be answered positively, then it is time to find a different person to conduct the investigation, or to look outside the organization.

Get Your Documents in Order
Review whatever organizational policies or guidelines apply to the current situation, including:

- Student Handbooks and/or
- Personnel Policies

Review relevant documents that you can obtain to assist you, including:

- Personnel File and/or
- Student File and/or
- Any other relevant documents (*e.g.* emails, notes, pictures, etc.)

Planning the Investigation
Decide who should be interviewed and in what order. Generally, the best order is: (1) Complainant; (2) Accused; and (3) other Witnesses.

However, if other witnesses must be interviewed before the accused – due to scheduling issues, etc. – it is not the end of the world. However, Rule #1 is: Don't start with anyone but the person making the complaint.

<u>The Investigation Itself</u>

Interview of Complainant

This may just be a simple matter of someone walking into an office and saying, "Hey, I just saw Joe do _____ (fill in the blank)." The key here is not to allow someone to make that or any other statement and walk away. You must follow up with that, even if that means you need to set up a time somewhere in the near future to talk, and that should be the *very* near future.

The purpose of the interview of the Complainant is twofold: (1) let the Complainant tell the entire story so that he or she is assured of being heard; and (2) frame the scope of the investigation and the subsequent interviews.

The reasonableness of the investigation stems from the totality of the complaint being made. For this reason, it is important that whatever the Complainant tells you is what you investigate. In other words, you are not there to solve all the problems of the organization or even of the individual; you are there to resolve the matter before you.

Always make sure that you ask questions that will give you objective answers. You are not looking for conclusions; you are only looking for facts. As such, when directing the interview always look to the basic questions:

- Who (Who was there?)
- What (What did they do? What did they do next?)
- Where (Where were you standing? Where were they walking?)
- When (When did this take place? Time? Date?)
- Why (Why were you there? Why did you leave?)

Continue asking questions until the individual has exhausted his or her memory. Finish by asking, "Is there anything more that you think I should know?" This allows you to completely close the loop. It also protects the investigation by creating a very specific ending point that tells you exactly what issues you are investigating.

Before you finish the interview, you need to confirm a few things with the individual:

- All interviews are confidential – do not speak with others about what was dicussed.
- Let the individual know that once the investigation is complete, a determination will be made about the outcomes.
- Let the individual know that the organization will not be sharing the outcome with anyone.

Thank the Complainant for his or her time and assure him or her that you will follow through with everything that was discussed.

Interview of Accused

Now that you have the scope of the investigation, all other interviews should be governed solely by that scope. This is important when you discuss the matter with the Accused, as this has the potential to be an uncomfortable interview. By limiting the scope, you are able to help soften the tone of the interview.

Like with any good interview, developing a rapport with the interviewee is essential. However, this is not the time to become best friends. Skip all small talk. They will most likely have a pretty good idea of why they are in the room. Therefore, the best way to establish rapport is to be professional, sincere, and direct.

Explain the process of the investigation and assure them of its confidentiality. Let them know that the organization is only attempting to establish the facts surrounding the incident(s). Also, feel free to ask them if they are aware of any bias or concern that they have with the interviewer.

As stated above, you should prepare an outline in advance that allows you to ask questions surrounding the event(s). You can even prepare general questions in advance, again using Who, What, When, Where, and Why. Using the same strategy you used with the Complainant, your questions should again start broad and become more narrow. For example, if there was an incident that occurred at 11:00 a.m., begin the conversation by asking about the morning in general. When did they arrive? Who did they talk to? What did they talk about? Where did the conversation take place? Anything to gather as much information as possible.

Ask all questions you can think of within the scope and when you have exhausted those questions, again leave the interview with a couple reminders; namely, that this is a confidential investigation that should not be discussed with anyone. You can tell the Accused that once the investigation is complete, you will contact him or her with the outcome of the investigation.

A note on confidentiality: In most single incident occurences, the actual decision / outcome will only directly affect the Accused, and he or she should be the only one that is aware of any consequences stemming from the incident. The Complainant should not be a part of any of the conversations about the outcome. The organization's responsibility is to identify the problem and stop it. That has nothing to do with the Complainant unless the problem continues. If done correctly, a single incident is identified and corrected. If it is multiple issues, and the Complainant doesn't feel comfortable then the Accused may be removed from the situation. Regardless, that is the job of the organization not the Complainant.

All other Interviews
In all other interviews, your questions will revolve only around those areas that the individual personally witnessed. Do not ask for others' opinion of what happened or even if they heard anything from anyone else. You only care about their direct information. Again, this is to protect the objectivity and the scope of the investigation.

Taking Notes
Throughout all interviews, the interviewer should take notes. A helpful way to take notes for internal investigations is to divide the paper in half, with the notes regarding what the interviewee is saying written on the left side of the paper. Reserve the right side of the paper to write down anything that the interviewer witnesses in the interview that is not a statement. For example, if after asking a question, the interviewee starts to get upset, you should note this on the right side.

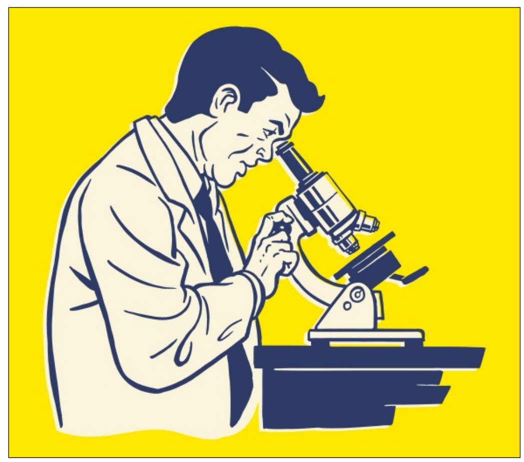
In doing this, you are able to garner a complete picture of the interviewee, including their body language and emotional state. However, don't include your own opinions; only include your actual observations. For example, if the interviewee gets upset, state that they are raising their voice, rising out of their chair, etc. Do not state that they are "mad." Mad is a conclusion; it is an opinion. Only objective behaviors should be included.

Making a Determination

Remember that the standard is a reasonable and good faith attempt to garner the truth. Once you have completed all the interviews and compiled all the notes, you must go back and review them to make a determination. Ultimately, you will be asked to judge the credibility of the individuals to a certain degree.

Documentation of Investigation

Prepare a report based on your interviews. The report, just like the interviews, should only include facts, not opinions. That being said, you will probably need to make certain judgments based on those facts. This report may be a few paragraphs if it is a simple matter, or it may be much longer. Be prepared to spend time making this a thorough document.



The Outline of the Report should look something like this:

- Introduction
  - Overview of the scope of the issue
- Executive Summary
  - Who were the people interviewed and what documents were reviewed?
  - What is the outcome of the investigation?
- Summary of Interviews
  - Specifically discuss each interview, both the statements made and the notes you made about the body language and other actions of the interviewees
- Recommendations
  - What are your recommendations for the individuals involved?

Appeals Process

As a final note, it is always a good idea to allow the Accused the opportunity to appeal the determination. Establish an appeals process for the organization. One way to do this is, if the Accused, or in a few cases the Complainant, does not agree with the outcome of the investigation, then he or she should have an outlet to have the investigation reviewed. The best example is to have the Board of Directors review the report and give feedback if one of the parties to the investigation asks for a review. This is by no means an invitation to reinvestigate the matter. This is a time for the Board to ascertain whether the investigation was thorough and objective. If it was, then the determination is upheld.

Conclusion

All investigations should be conducted as reasonable and good faith attempts to ascertain the truth. The world is not a black and white place, and if you ask 10 people how they remember a given situation, you will likely get 10 different answers. The key responsibility for your Investigator(s) is to do an honest and complete job with as much objectivity as possible. When the organization is acting in an ethical manner, then they have done everything they can to make sure that the individuals associated with their organization feel protected and heard. Whether this is the culture that already exists within your organization, or if you are striving to get there, you should be commended. An employee's feelings of real support and trust in the workplace are no small matter, and something every organization should be actively nurturing.

If your organization would benefit from additional support on this topic, please reach out to askus@edtec.com. We offer a range of training options that can be tailored to suit your organization's needs. Most Internal Investigations trainings can be offered as half-day trainings, and we also offer full-day trainings that cover additional areas, such as Professionalism and Culture, and what happens when that is largely disregarded (namely more incidents and investigations). If you would be interested in discussing your options further, we would be honored to help!