Discipline

Practical Tips for Investigating Student Misconduct & How to Pivot When the Student has an IEP

Ellen Owens Smith
Friday, Eldredge & Clark, LLP
400 West Capitol Avenue, Suite 2000
Little Rock, Arkansas  72201-3522
(501) 370-1578 Direct
(501) 244-5379 Facsimile
esmith@fridayfirm.com
Ellen Owens Smith

400 West Capitol Avenue, Suite 2000
Little Rock, Arkansas  72201-3522
(501) 370-1578  Direct
(501) 244-5379  Facsimile
esmith@fridayfirm.com
Choose the Right Investigator

• Fair and independent?
• Objective with no stake in the outcome of the investigation?
• Impartial?
Choose the Right Investigator

- A strong interviewer?
- Able to communicate well with all types of students?
- Able to testify competently and hold up in front of the Board in the witness chair?
Choose the Right Investigator

• Able to fairly investigate allegations against prominent individuals, such as a well-known student athlete or beloved faculty member?
• Able to discuss difficult topics without awkwardness?
The Plan
Develop a Plan

- Fully determine and understand the scope of the allegations.
- Prepare a preliminary timeline of the events according to the complaint or allegation.
Develop a Plan

- Determine what statements or other evidence is necessary to corroborate the accusation.
- Determine what statements or other evidence might rebut the accusation.
Develop a Plan

• Prepare an initial witness list.
• Determine the order to interview witnesses.
• Prepare an initial list of other evidence to collect (video surveillance, etc.).
Develop a Plan

- Gather and review potentially applicable policies.
- Gather and review prior disciplinary records.
Interview of the Accuser
Conducting the Interview

- What happened?
- When did it happen?
- Where did it happen?
- Was anyone else present? If so, who and for how long?
Conducting the Interview

- Have you spoken to anyone else at all? If so, to whom and when?
- Have you provided a written statement to anyone? If so, do you have a copy?
- Have you posted anything about this online, including on social media or in blogs or comments?
- Have you created or kept any notes, diary entries, or other written records that have anything to do with the allegation?
Conducting the Interview

- Do you know of any other students who may have a similar complaint or concern?
- How do you know the accused individual?
- Have you had any interactions with the accused, apart from those being discussed today?
Conducting the Interview

If applicable, why have you delayed reporting?
All Interviews
Conducting the Interview

- Get a list of all potential witnesses.
- Obtain any documentation in the witness’s possession as well as suggestions of other helpful documents, such as social media posts, emails, voice messages and text messages.
Conducting the Interview

- Obtain a written statement that is signed and dated.
- Do not simply accept written statements in lieu of an interview.
Conducting the Interview

- Focus the interviews on facts, not opinions.
- Focus the interviews on conduct, not character.
Conducting the Interview

- Ask open-ended questions.
- Allow full responses.
- Avoid leading questions.
- Avoid compound questions.
Conducting the Interview

- Avoid editorializing, commenting, or interrupting.
- Ask the witness to define and provide specific examples of terminology (e.g., “hit,” “slap,” etc.).
- Ask for definition of slang or unfamiliar words.
Conducting the Interview

- Don’t use slang, yourself.
- If applicable, ask the accused what motive the accuser—and any witnesses who support the accuser’s story—may have had to make the allegation (i.e., if accused denies the conduct).
Conducting the Interview

- Establish a timeline and have the witness confirm it.
- Ask “what else” multiple times to ensure you have everything.
- Ask if there is anything you’ve missed that the witness wants to share.
Conducting the Interview

- Take notes – or even better, have someone in the room with you who can take notes.
- Ask the witness to come back with anything later remembered.
- Emphasize confidentiality.
Locker & Similar Searches
The Fourth Amendment to the U.S. Constitution guarantees "the right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures."

The standard for a search is less in a public school environment.

Probable cause is not needed.
Searches

The standard for student searches is reasonable suspicion.
Searches

Reasonable suspicion is satisfied when two conditions exist:

- there are reasonable grounds for suspecting that the search will reveal evidence that the student has violated or is violating the law or school rules, and
- the measures used to conduct the search are reasonably related to the objectives of the search and that the search is not excessively intrusive in light of the student's age and sex and the nature of the offense.
After the Interviews
After the Interviews

- Compare the allegations with the findings of the investigation.
- Identify corroborating evidence that supports the accusations.
- Identify contrary evidence.
After the Interviews

- Identify witness statements that later proved to be untrue.
- Determine whether the timeline and story differ from the accusation.
- Identify anyone who does not appear to have been particularly forthcoming or who was particularly evasive in his or her answers.
Finalizing the Investigation
Finalizing the Investigation

- Summarize the interviews and other evidence gathered.
- Assess the credibility of the accuser, the accused, and any witnesses, including the bases for the investigator’s judgments.
- List the factual conclusions reached by the investigator.
- Avoid assumptions or speculation.
Finalizing the Investigation

- Reference applicable policy.
- Make a recommendation.
- Explain the rationale for the recommendation.
Discipline if IEP in Place
Short Term Discipline

- An IEP student who has not been exempted from the District’s discipline rules is subject to the rules.
- An IEP should identify any needed exceptions to the discipline rules.
- Generally speaking, an IEP student can be cumulatively suspended for up to 10 school days.
Long Term Discipline

• 10 days, total, whether consecutive or not.
• Constitutes a change in placement.
• Must conduct a manifestation determination.
Manifestation Determination

- Conducted by the group that created the IEP within 10 days of the change of placement.
- The purpose is to determine whether the student is being disciplined for behavior that's related to his disability.
Manifestation Determination

- If it's determined that the student's misbehavior isn't substantially related to his/her disability, the student may be disciplined that same as a non-disabled student.

- If the misbehavior is directly related to his disability, the student can't be disciplined by the school for his behavior.

- However, the IEP group still can determine that a change in placement is needed for the student and can modify the IEP.
Unilateral Change of Placement

Students can be placed in alternative educational settings for up to 45 days without permission if they:

- Carry dangerous weapons to school or to a school function;
- Possess, use, sell or attempt to sell illegal drugs while at school or at a school function; or
- Have inflicted serious bodily injury upon another while at school or at a school

Other dangerous threats or behavior not enough.
Example Scenario
Scenario

- Allegation: Student possessed a knife and threatened a fellow student when leaving school for the day/week (it was Friday).
- Police report filed that night.
- It’s Monday, and you’ve learned about the event – what next?
Scenario

• Video Surveillance pulled.
• It shows accused leaving building and walking in a general direction.
• It does not show a threatening move.
• It does not show an encounter with the victim.
Scenario

- Accused searched. No knife found.
- Accused questioned. Denied knife and threat.
Scenario

Victim statement:
Friend and I walked out of the south of the building at around 3:58. Accused walked at me with a pocket knife at her side, she made eye contact with me and kept walking towards me. Then she made eye contact with friend and turned around and walked away. She snapchatted me a couple of days before the incident and said, “the next time I see your face, it isn’t gonna be pretty.” This all happened because of a boy.
Scenario

Witness statement:
We were walking outside of school right after the bell rang and I saw the accused standing in the grass next to the sidewalk. Victim and I were walking. I saw the accused walk towards us out of the corner of my eye. So I naturally turned to look at her and then I saw that she was pulling out the blade of a pocket knife. I then nudged victim to tell her that the accused was coming toward us with a knife. By the time victim turned to see the accused, the accused had turned around hiding the knife.
Scenario

Witness statement:
I saw the accused with a knife at her side in not pull it on anyone just saw it at her side and that’s all.
Scenario

Accused statement:
Walked out of the last period. Went downstairs, outside and talked to XXXX. He walked me to my bus. I got on the bus, etc. There was this girl yelling something, I put my hand out (my phone was in my hand) and I told her to shut up. Nothing else happened after that. I just waited silently for my stop.
Scenario

- Are you interested why the snapchat wasn’t reported by the victim?
- Did you notice anything conflicting about the statements?
- Anything wrong with the victim’s statement?
- Is there enough corroboration?
Scenario

• Do we need further evidence?
• If so, what?
• Was there enough to expel?
Scenario

- Accused expelled.
- Know why?
Scenario

Investigator had heard of a similar incident at home – away from school.
QUESTIONS?
THANK YOU!!
Ellen Owens Smith

400 West Capitol Avenue, Suite 2000
Little Rock, Arkansas  72201-3522
(501) 370-1578  Direct
(501) 244-5379  Facsimile
esmith@fridayfirm.com