

Conducting Effective Internal Investigations



Module Two: Conducting the Investigation, Interviewing, and Information Gathering

Katherine M. Allen, Associate General Counsel, The Pennsylvania State University

Natasha Baker, Managing Attorney, Novus Law Firm, Inc.

Pamela Heatlie, Director of the Office for Institutional Equity, University of Michigan – Dearborn

1

Module Overview

- Interviews: Logistics, Who to Interview, and How to Interview Effectively
- Participation by Parties and Witnesses
- Amnesty
- Required Disclosures – Garrity Rights
- Conducting the Interview – Tips for Good Questioning
- Post-Interview Considerations
- Interviewing High-Level Employees and Police



National Association of College and University Attorneys

2

Interviews – General Considerations & Logistics

Scheduling

Location/technology

Notes/recording/transcripts?

Accessibility

3

Interviews – Representation & Support

Right to representation/support?
Permissible?

Representative's/support person's role during interview



4

Participation by Parties

- Reasons for not wanting to participate?
 - Discuss prohibition on retaliation
 - Ensure it isn't a barrier within the institution's control (e.g., amnesty)
- Make decision based on available evidence
 - Should you draw an adverse inference from a failure to participate?
 - Can you?

Participation by Witnesses

- Witness refuses to participate, and/or
- One of the parties asks that a particular witness not be contacted
- Ask why
 - Fear of retaliation?
 - Concern about own misconduct?
- Consider how important the information would be, and whether other ways to get it.

Amnesty

“Any individual who reports discrimination or harassment or participates in an investigation will not be subject to disciplinary action by the University for personal use of alcohol or other drugs at or near the time of the incident, provided that such use did not harm or place the health or safety of any other person at risk. The University may offer support, resources, and educational counseling to such individual.”



National Association of College and University Attorneys

7

Purpose of the Interview

- Establish a narrative and timelines of events – get the facts!
- Gather information to answer key questions
- Clarify conflicting information
- Understand how all parties perceived events



8

Purpose of the Interview

In devising questions, consider:

- Do I need to know the information?
- Will an answer to my question help me understand what happened?
- Will getting an answer to this question inform the decision?

Interviews – General Considerations



Who to interview



Order of interviews



Status of the investigation

Who to Interview

- Complainant
- Named respondent/individual making the challenged decision



National Association of College and University Attorneys

11

Who to Interview

- Witnesses
 - Employees (faculty, staff)
 - Students
 - Individuals not associated with university
 - Visitors
 - Contractors
 - First responders
 - Medical personnel



National Association of College and University Attorneys

12

Interviews – General Considerations

- Any required disclosures?
- Details of the incident/circumstances at issue



13

Interviews – General Considerations

- Ask for other sources of relevant evidence – witnesses, documents, etc.
 - Who would have more information about...
 - Is there anything else?
- For complainant, perhaps: What would you like to see as outcome?



14

Interviews – General Considerations

1. Set the TONE
2. Develop rapport – put individual at ease
3. Explain your role – neutral, no conclusion has been reached
4. Offer paper copy of policy and where to find it online



National Association of College and University Attorneys



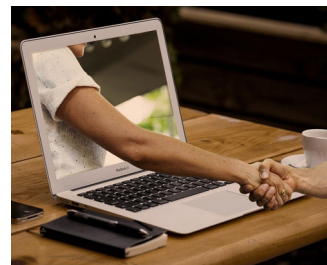
15

Interviews – General Considerations

5. Explain the steps in process
6. Explain prohibition against retaliation
7. Discuss confidentiality/privacy/information security
8. Access to resources and support



National Association of College and University Attorneys



16

Conducting the Interviews

Do:

- Remain impartial and keep an open mind
- Ask relevant questions that are specific to the incident
- Importance of tone



National Association of College and University Attorneys

17

Conducting the Interviews

Don't:

- Make premature conclusions
- Allow personal biases, belief system, stereotypes to guide your questioning
- Badger the witness(es)
- Ask accusatory questions/blame the victim
- React to what the witness is saying



National Association of College and University Attorneys

18

Conducting the Interviews

Tips for Good Questioning

1. Ask open-ended questions
2. Listen more than talk
3. Give time to answer
4. Use appropriate tone
5. Be comfortable with silence
6. Avoid leading questions
7. Identify conflicting information
8. Ask questions that reveal attitude/belief
9. Avoid questions that imply judgment



National Association of College and University Attorneys

19

Conducting the Interviews

Types of Questions

- **“What”** questions ask for facts and details
- **“How”** questions ask about the process, sequence of events, or focus on emotions
- Closed **“Who/When/Where”** questions ask for the specifics of the situation



National Association of College and University Attorneys

20

Conducting the Interviews

Types of Questions

- Avoid “**Why**” questions
- Avoid **multiple choice** questions
- Avoid asking for **conclusions**



Conducting the Interviews

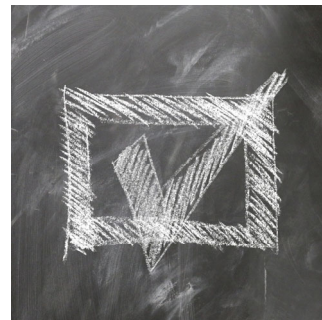
~~Leading Questions~~

- Were you upset with Ms. Harmani’s work schedule?
- Did Ms. Harmani’s FMLA leave interfere with the work of the department?
- Were you worried after your conversation with your manager about the grant?

Conducting the Interviews

Useful Phrases

- **Would you be willing to** tell me more about...?
- **How** did you feel about...?
- **What** did you do after...? **What** happened then?
- **What** did you mean when you said...?
- **What** was your reaction to...?
- **How** did you become involved in...?
- **What** is your understanding of...?



National Association of College and University Attorneys

23

Concluding the Interview

Thank	Thank the party/witness
Remind	Remind them of institution's prohibition against retaliation
Inform	Inform parties of next steps
Discuss	Discuss confidentiality/privacy again

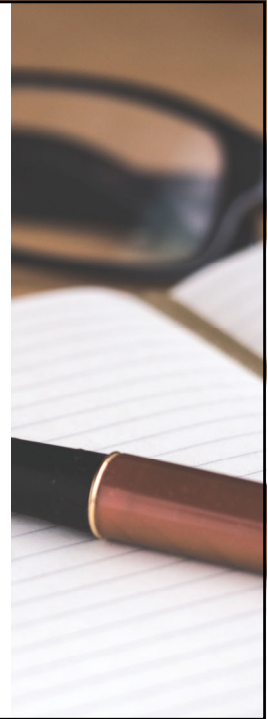


National Association of College and University Attorneys

24

Post-Interview

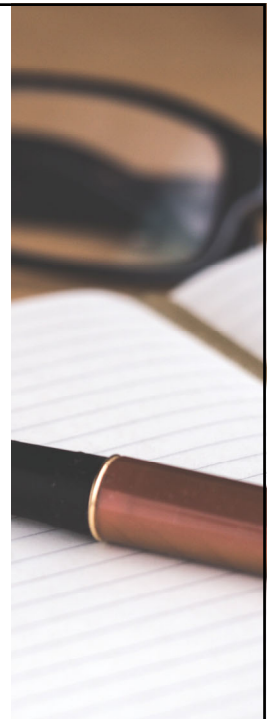
- Review interview notes/recording/transcript.
- What do you know to be true? Are there undisputed facts?
- What do you not know?



25

Post-Interview

- How can you find this information out? Another witness? More evidence?
- Circle back to give each party a chance to respond to new information.



26

Thoroughness/Efficiency

- How many witnesses to interview?
- When to stop?



Interviewing High-Level Management Employees



LEGAL
REPRESENTATION



NEUTRALITY



INFLUENCE



Interviewing Police

- As a witness in a non-criminal matter
- When investigating alleged misconduct by law enforcement

Gather Other Information



Prepare Timeline



- Use interviews and documentation to develop timeline.
 - Will help to determine relevant follow-up questions for parties and witnesses
 - Will help factfinder/decision-maker understand what happened



31

QUESTIONS?

32

Note

- The content of this presentation is to provide news and information on legal issues and all content is provided for informational purposes only and should not be considered legal advice.
- The transmission of information in this presentation does not establish an attorney-client relationship with the recipient. The recipient should not act on the information contained in this presentation without first consulting retained legal counsel.
- If you desire legal advice for a particular situation, you should consult an attorney.