

LEGAL

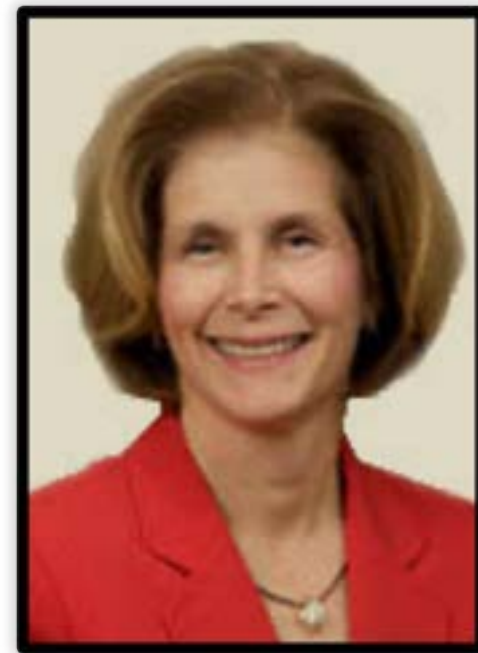
ANSI/ASIS INV.1-2015 Investigation Standards



Welcome.

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Condemnation without investigation is the height of
ignorance.

—

Albert Einstein



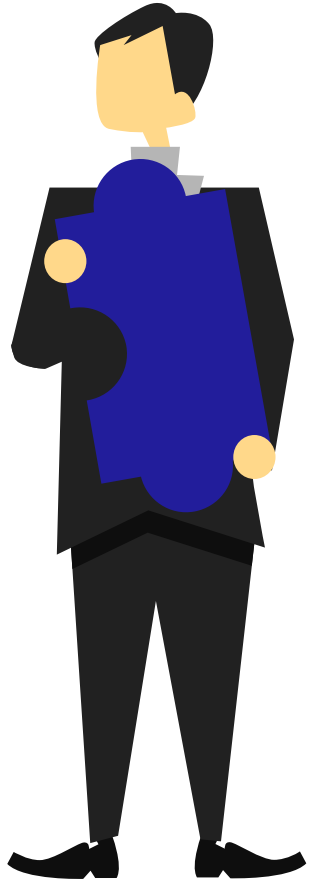
What a lawsuit will focus on if allegation of improper investigation:

- Does the institution have a policy/procedure in place to govern investigations?
- Was there a written disclosure of allegation?
- Was there disclosure of objective purpose of investigation?
- Were the investigator(s) identified?
 - Documentation of education, training, previous experience
- Were both parties provided the same opportunity to tell their story to the investigator, provide documentation, review record, present their story to the hearing panel, cross-examine witnesses, and appeal?

Investigation Defined

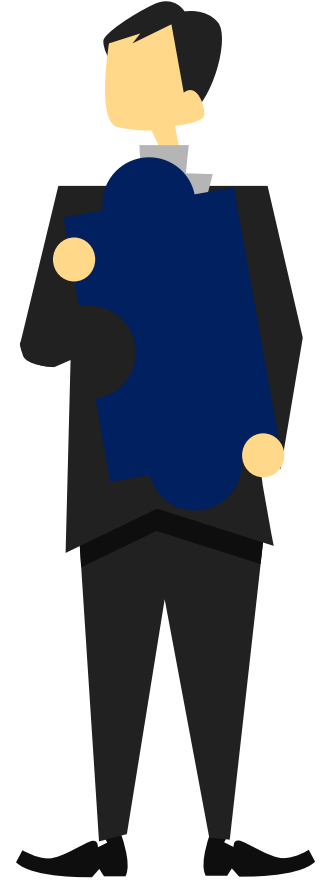


“An investigation is a fact-finding process of logically, methodically, and lawfully gathering and documenting information for the specific purpose of objectively developing a reasonable conclusion based on the facts learned through the process”.



Investigation Framework

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- “Effective,
 - Ethical,
 - Lawful,
 - Useful in meeting the intended objective(s),
 - Minimally disruptive to the organization and its operations,
 - Able to provide feedback on procedure/policy deviations,
 - Value added, providing the highest return on investment without compromising the investigation.”
-



Plan-Do-Check-Act Model (Total Quality Management)

“Plan

- Define and analyze an issue and the context

Do

- Devise a solution; develop detailed action plan; implement plan

Check

- Confirm outcomes against plan; identify deviations and issues

Act

- Standardize solution; review and define next issues.”

Investigation Guiding Principles

Impartiality

Trust and ethics

Competence and due professional care

Honest and accurate reporting

Independence and objectivity

Fact-based approach



Investigation Guiding Principles

Relevance

Thoroughness

Timeliness

Responsibility and authority

Confidentiality

Continual improvement



Information Types



Testimonial

Interviews with stakeholders, Complainant, Respondent, witnesses, and subject matter experts



Documentary

Could include Facebook posts, residence hall check-in logs, etc.



Physical

Anything derived from physical objects, e.g., computers, phones, equipment, institution-owned vehicle, etc.



Information Types



Direct evidence

Information based on personal knowledge or observation



Circumstantial or indirect evidence

Information that is associated with the fact being investigated and that the fact to be proved may be inferred from the existence of indirect evidence



Forensic evidence

Information obtained through scientific methods that are based on scientific theories established and accepted in the science community



Information Types



Hearsay evidence

Information provided by a person who does NOT have direct knowledge of the fact asserted; information is known only from being told by someone else or from a secondary source



Admissibility of evidence

Information which the adjudicator finds is useful in establishing the facts of an event that are considered relevant and material



Materiality of evidence

Information that relates the specific issues necessary for proving or disproving a fact/case is considered material





Establishing Investigation Scope

Scope should define which “processes, functions, activities, physical Scope should define which “processes, functions, activities, physical boundaries (facilities and locations), and shareholders to include”.

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Establishing Investigation Roles

Roles and responsibilities should be clearly defined

Must have access to legal counsel and HR



Establishing Investigation Legal Requirements

Investigators must be in compliance with the law

Investigators must comply with institutional policy

Investigators must be trained (which is required under Title IX, Clery, VAWA)



Investigator Competency Defined

“Competency – the ability to apply pertinent knowledge and skills to achieve results is necessary for persons conducting investigations. Competence is the demonstrated sum of personal attributes, general investigation knowledge, techniques, and skills, business and risk management knowledge, and industry sector specific knowledge and skills.”



Investigator Competency Skills

- “Interpersonal and communications skills,
- Knowledge of applicable laws in the areas being investigated,
- Knowledge of applicable institutional policies/procedures as well higher education industry standards in the areas being investigated,
- Ability to analyze and weigh evidence and information,
- Understanding of the systematic approach to investigations,
- Technical knowledge of investigative techniques.”



Prior to Investigation Commencing

- Set objectives,
- Identify stakeholders,
- Address assumptions,
- Define scope and statement of work,
- Gather applicable policies,
- Commit resources,
- Identify the investigation team, and
- Review documentation control policies and practices.



Investigator's Information Collection Role

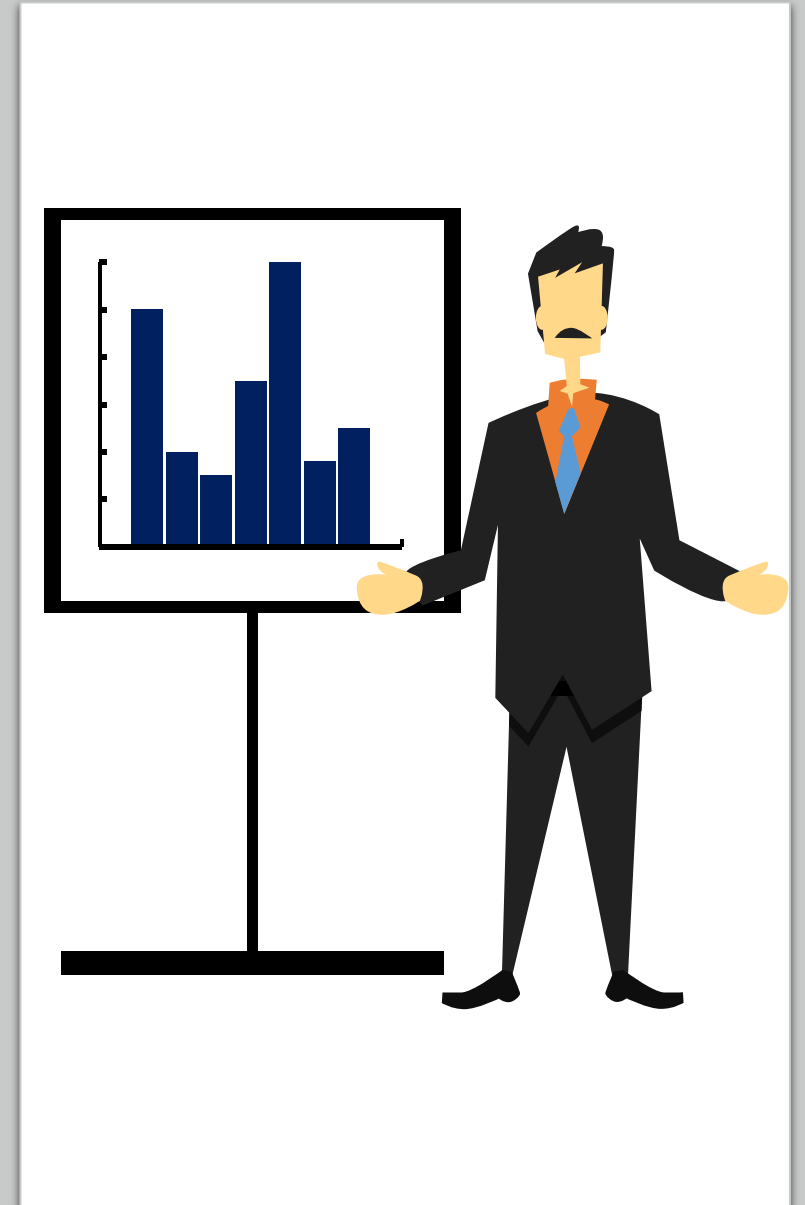
“The investigation team’s responsibility is to collect, analyze, and document information which is relevant, credible, and supportable. It is the investigator’s role to assess the information and determine by a preponderance of the evidence whether it is sufficient to draw conclusions. The investigation team should have a well-developed data collection strategy and sampling plan to ensure the gathering of comprehensive information. Avoid collecting information unless specifically require to achieve the objectives of the investigation”.

Preparing Investigation Conclusions

Consider conducting investigation conclusion during closed meeting

During meeting:

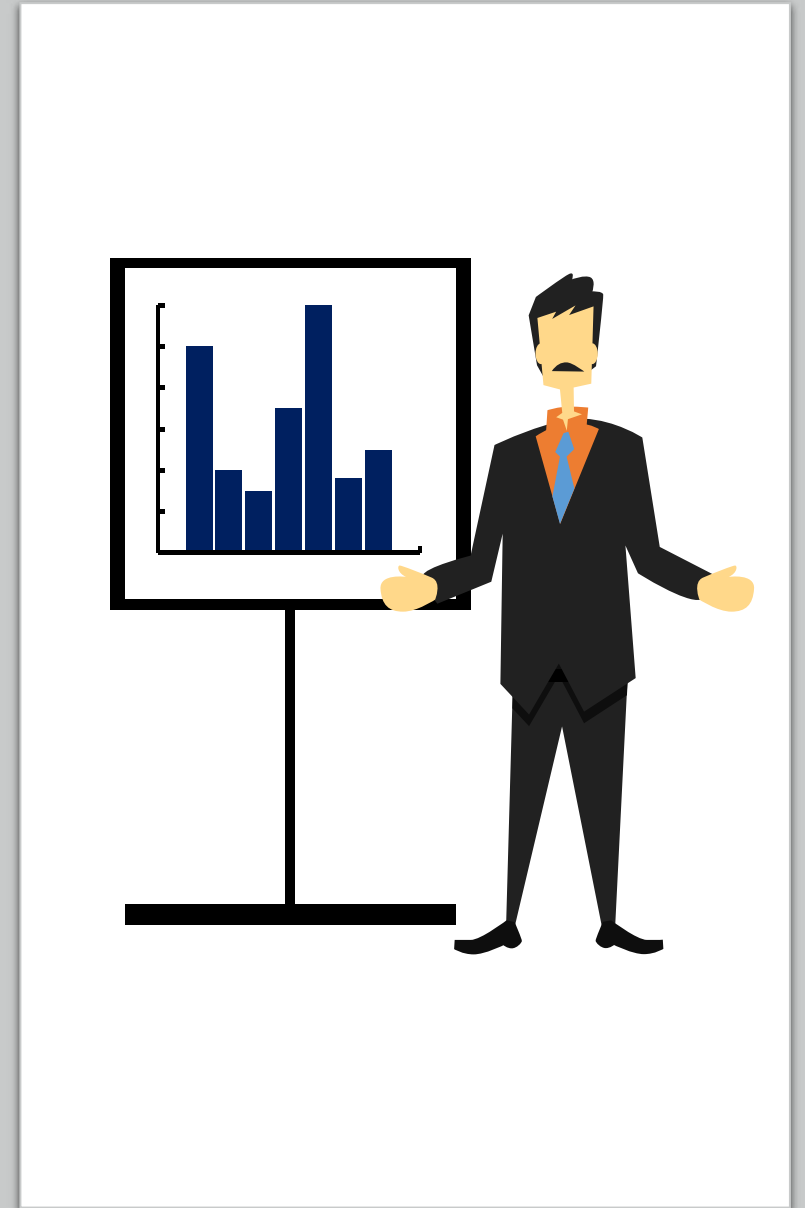
- Review the evidence and information gathered during the investigation;
- Compare the findings against the investigation objectives;
- Prepare recommendations (where applicable);
- Discuss follow-up to the investigation, if applicable.



Evaluating Investigation Outcomes

Integrity of the investigation will be challenged by the following questions:

- Investigator impartiality
- Investigator or institutional conflict of interest
- Improper handling of sensitive information
- Nonconformity with process
- Investigator competence





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Resources

<https://www.asisonline.org/publications--resources/standards--guidelines/>

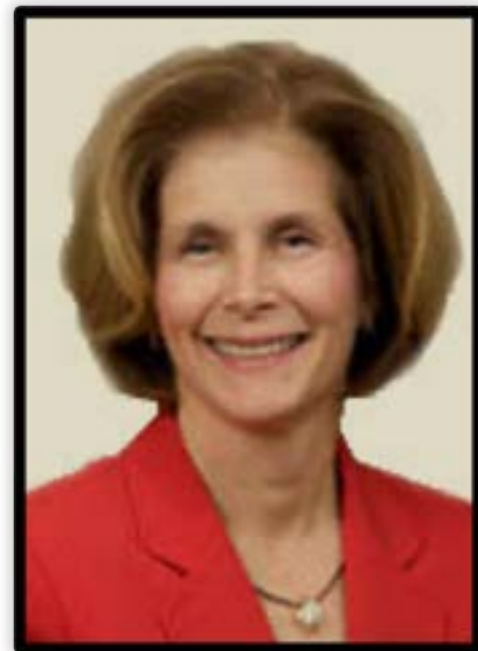




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