The Virtues of Adopting an Internal Investigations Protocol

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On college and university campuses, allegations of wrongdoing can arise in a variety of contexts, implicating institutional policies, state and federal compliance, and civil and criminal exposure. Regardless of whether an allegation or complaint appears to be relatively limited in scope, or might be the next media story, an effective internal investigation can facilitate efficient fact gathering and allow for informed decision making. In that context, institutions should assess not just whether to conduct an internal investigation, but how to do so effectively.

Once an allegation has arisen, there may be limited time to develop a strategy from scratch, and often when the allegations are particularly serious, institutions understandably take a defensive posture, and risk losing sight of the need to gather and analyze information in a suitably comprehensive and principled fashion. Without proper consideration of these concerns before the issue arises, and a plan of action in place for when they do, the cure can frequently be worse than the disease. Accordingly, colleges and universities should consider adopting an internal investigation protocol to provide guidance and directives to those who conduct such investigations.

The precise manner in which an investigation will be conducted, and the specific steps taken, will of course vary depending on the events at issue and the individuals involved. For example, accusations regarding a sexual assault of a student will be examined differently than complaints that a senior official misappropriated funds. Despite variations in the type of allegations made and the parties implicated, a well-crafted internal investigation protocol that reflects certain core principles both protects the institution’s interests and reflects its values. These principles should include the following:

1. **Impartiality** - Individuals tasked with conducting an investigation should not have had any involvement in the underlying conduct, nor should they be subordinates of those alleged to have engaged in wrongdoing. (Depending on the situation, adherence to this principle may sometimes require that the investigation be conducted by an outside party). Moreover, those conducting the investigation must keep an open mind and gather facts in a fair and disinterested manner.

2. **Uniformity** - Regardless of the department or division where an investigation is conducted, the basic principles should remain consistent. Inconsistency in investigation practices provides ample, and avoidable, fodder for those ultimately found to have engaged in wrongdoing to claim that the investigation amounted to disparate treatment or, worse, to allege that it was a "sham" designed to reach a preordained result.

3. **Fairness** - Every investigation should incorporate basic principles of due process which afford the subject(s) of the investigation the opportunity to respond to the allegations against them. At the same time, however, the investigation must be conducted discretely to protect the reputations of those involved - particularly if the allegations prove to be unsubstantiated.

4. **Thoroughness** - Recognizing that evidence comes in different forms, investigators should be directed to gather and review all information that has any bearing on the subject of the investigation. As a practical matter, this means that it is generally not sufficient to simply interview fact witnesses and make a judgment call about who is or is not telling the truth.

5. **Meticulousness** - Investigators should be mandated to carefully document the type and substance of the evidence they reviewed and when they reviewed it. This approach proves particularly important when, as often happens, witnesses later recant what they have told investigators when they discover that the truthful information they shared has potentially
adverse consequences for them or others. Creating a thorough, contemporaneous record of the investigation is the best way to protect the institution in this situation.

While each investigation initiated will likely need a tailored investigation plan, incorporating these principles into a comprehensive protocol insures that both the process used, and the information obtained, will be of maximum utility to the institution. In the final analysis, colleges and universities who confront scenarios requiring investigation should understand that, similar to the lesson taught to students, they will be expected not simply to arrive at answer, but also to "show their work." Because an internal investigations protocol serves to ensure that inquiries are conducted in a thorough, unbiased, and honorable fashion, it stands as a valuable tool for protecting the institution's interest.

If you have additional questions about conducting internal investigations or adopting an internal investigations protocol, please do not hesitate to contact the author or any member of Waller.

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