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TRAININGS AND DEDICATED STAFF ARE CRUCIAL TO SCHOOL INVESTIGATIONS

A Massachusetts education attorney's tips for investigating discrimination and harassment

By [Trevor Kupfer](#) on February 3, 2020

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Until relatively recently, the bulk of [Judy A. Levenson](#)'s work has been representing schools and school districts in litigation. The Brookline attorney still does, but she's increasingly seeing a need elsewhere: providing training and independent, external investigations.

"K-12 schools are getting more and more complaints of harassment, discrimination and bullying, and it's more of a challenge for them to try to keep up with it. So we've been trying to train the administrators, teachers, social workers—the people on the frontlines about what the basic legal requirements and red flags are, and then how deal with it," she says. "For the most part, trainings about how to conduct investigations has been minimal."



Levenson's trainings are twofold: "both institutionally, as educators of students, but also as employers, since they can have issues with student-on-student abuse or discrimination as well as with staff."

When a complaint first comes in

"From an educator or assistant principal's perspective, when a complaint comes in, the first concern should be student safety and trying to address the situation immediately, which often means trying to



saying, ‘Nobody filed a written complaint with us.’ The law does not require a complaint to be in writing in order to trigger a school's responsibility to investigate. I think most of our schools now are becoming better educated about that.”

Even if the complaint is addressed properly, sometimes the steps and outcome aren’t written down. “That is a problem under the law. So even though they did things, they weren't documenting it. And honestly, it’s a huge amount on their plate and there’s no lack of good intentions. They’re just overwhelmed. So part of what we've worked on is trying to simplify intake forms and devise measures, on a computer or otherwise, to make it as simple and efficient as possible to document the information.”

Having a dedicated staff member

Obviously, this area is rife with ambiguities. A lot of complaints that come in may not be discrimination or bullying—say, “so-and-so hit me with a ball in kickball and keeps doing it.” Levenson advises revising your forms and ways of thinking about each complaint as not a black-and-white bullying or discrimination issue, but to consider the possible overlap of bullying, harassment and discrimination.

“Look at the complaint and see if it’s based on a protected class (e.g. race, gender, sexual orientation), if there's been any history by the target or the perpetrator, and basically look at it more broadly and coordinate with the district's civil rights coordinator,” she says.

The problem, particularly with small schools and districts, is that not everyone has a dedicated staff member for these purposes. Sometimes the legally required duty is combined with those of the guidance counselor, social worker, or business manager.

“It’s not that educators or administrators aren't ultimately capable of conducting investigations. Number one, they're often not trained. Everybody needs to be trained in the district's policies and the policies have to be up to date. But, in particular, the people who do the anti-bullying work and the civil rights coordinators really need to be trained on the policies and the laws. And number two, they often don't really have the time unless somebody's job is dedicated to doing that work,” says Levenson.

Now many colleges have dedicated Title IX coordinators and people to assist in investigations. That’s rarely the case in K-12, Levenson says. “So some of those folks find themselves thrown into positions of having to do investigations or, at least, sort through facts and have to make some determinations about whether policies have been violated or not.” If a violation has occurred, they often must recommend an effective remedy.

It’s easy to get confused

The [overlap between bullying, harassment, and their respective laws](#) is confusing, Levenson says. Meanwhile, the best tactics for investigations aren’t always common sense.



These are classic reasons why Levenson's work is shifting to a more proactive approach. "We're trying to see what the schools want most, and many of them seem to indicate that they would appreciate training on how to do an investigation and the steps in doing that, which are not necessarily intuitive."

When to go out-of-house

While having the knowledge to tackle these issues yourself is important, so too is knowing when to ask for help. "If it's a potentially bigger type of claim or issue that might ultimately be litigated or end up in an administrative appeal, a lot of districts that don't have the in-house capability will decide to hire an external independent investigator," Levenson says.

"Also, if you have a claim about an educator having perpetrated some sort of abuse or harassment on a student, it becomes a difficult workplace issue to have somebody within the school environment investigating, because it might be a peer," she adds.

In any case, Levenson says she has seen a trend among her clients: "My districts that do the best are the ones where the superintendent and the assistant send a very clear message that investigating complaints is important, and they have to take it seriously, and they send their people to trainings periodically, and they [consult with their attorneys](#) regularly. Some of my districts have learned the hard way that it's really worth the upfront effort to avoid years of endless litigation and depositions."

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