

aa/r/r Atkinson, Andelson  
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A Professional Law Corporation

### Incorporating DEIA Practices and Cultural Sensitivity in Investigations

October 19, 2023 – 4:00 - 5:15 pm

**ACHRO/EEOC Fall Training Institute**

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## Agenda

- Title 5 Requirements for Diversity Equity Inclusion and Accessibility
- A review of basic DEIA concepts
  - Cultural Sensitivity in the Workplace
  - Microaggressions
  - Cultural Gaslighting
  - Dog Whistle
  - Implicit Bias
- A review of the Legal Requirements for Investigations – **PROOF with DEIA Concepts Included**

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## TITLE 5 REGULATIONS RE DEIA FOR CALIFORNIA COMMUNITY COLLEGES

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**Title 5 Regulations – Diversity, Equity and Inclusion in the California Community Colleges**

- **5 CCR § 51200** – Statement on Diversity, Equity and Inclusion set forth in Section 51201 be the “official position” of the Board of Governors and the California Community Colleges
- **5 CCR § 51201** – California Community Colleges embrace diversity among students, faculty, staff and the communities served
  - “Embracing diversity” means intentional practice of acceptance, anti-racism, and respect; and
  - Understand that racism, discrimination, and prejudices create and sustain privileges for some while creating and sustaining disadvantages for others.

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**Title 5 Regulations – Diversity, Equity and Inclusion in the California Community Colleges**

- **5 CCR § 51201 (continued)** –
- Acknowledge that institutional racism, discrimination, and biases exist;
- Goal is to eradicate racism, discrimination, and biases;
- Strive to eliminate those barriers to equity;
- Deliberately create a safe, inclusive, and anti-racist environment where individual and group differences are valued and leveraged for growth and understanding;
- Honor that each individual is unique;
- Individual differences contribute to the ability of the colleges to prepare students;

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**Title 5 Regulations – Diversity, Equity and Inclusion in the California Community Colleges**

- **5 CCR § 51201 (continued)** –
- Develop and implement policies and procedures;
- Encourage individual and systematic change;
- Continually reflect on our efforts; and
- Hold ourselves accountable for the results of our efforts in accomplishing our goals.
- In service of these goals, the California Community Colleges are committed to fostering an anti-racist environment that offers equal opportunity for all.

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**Title 5 Regulations – Diversity, Equity and Inclusion in the California Community Colleges**

- **5 CCR § 51201 (continued) –**
- We are invested in cultivating and maintaining a climate where equity, anti-racism, and mutual respect are both intrinsic and explicit by valuing individuals and groups from all backgrounds, demographics, and experiences.
- Individual and group differences can include, but are not limited to the following dimensions: race, ethnicity, national origin or ancestry, citizenship, immigration status, sex, gender, sexual orientation, physical or mental disability, medical condition, genetic information, marital status, registered domestic partner status, age, political beliefs, religion, creed, military or veteran status, socioeconomic status, and any other basis protected by federal, state or local law or ordinance or regulation.

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**Title 5 Regulations – Diversity, Equity and Inclusion in the California Community Colleges**

- **5 CCR § 52510 – Definitions:**
- **“Accessibility”** means a person with a disability is afforded the opportunity to acquire the same information, engage in the same interactions, and enjoy the same services as a person without a disability in an equally effective and equally integrated manner.
- **“Anti-Racism”** and **“anti-racist”** refers to policies and actions that lead to racial equity.
- **“Cultural Competency”** refers to the practice of acquiring and utilizing knowledge of the intersectionality of social identities and the multiple axes of oppression that people from different racial, ethnic, and other minoritized groups face.

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**Title 5 Regulations – Diversity, Equity and Inclusion in the California Community Colleges**

- **5 CCR § 52510 – Definitions (continued):**
- **“DEIA”** is an acronym for the terms “diversity, equity, inclusion and accessibility.”
- **“Diverse”** and **“diversity”** refers to the myriad of ways in which people differ, including the psychological, physical, cognitive and social differences that occur among all individuals, based on race, sex ethnicity, nationality, socioeconomic status, religion, economic class, education, age, gender, sexual orientation, marital status, and mental and physical ability.
- **“Inclusion”** refers to bringing traditionally excluded individuals or groups into processes, activities, and decision and policy making in a way that shares power.

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**Current Challenges to Diversity, Equity and Inclusion in the California Community Colleges**

- The Institute for Free Speech, filed suit in early July on behalf of Bakersfield College history professor Daymon Johnson, against Bakersfield College, its Interim President, Dean of Instruction, the Kern Community College District Chancellor, and the KCCCD Board of Trustees.
- In August, the Foundation for Individual Rights and Expression (FIRE) initiated a similar suit on behalf of professors, against California Community Colleges Chancellor, the State Board of Governors, State Center Community College District Chancellor Carole Goldsmith, and the District Board of Trustees.

**California Community College Professors Sue Over DEI Rules**

Several California Community College system professors are challenging new rules requiring employees be evaluated on their adoption of diversity, equity and inclusion principles.



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**Current Challenges to Diversity, Equity and Inclusion in the California Community Colleges**

- The lawsuits allege that DEIA rules infringe on First Amendment rights including freedom of speech and academic freedom. The suits commenced shortly after the adoption of revised DEIA regulations requiring employees to “establish proficiency in DEIA-related performance to teach, work, or lead within the California community colleges.” **(5 CCR § 53602.)**
- Plaintiffs seek to permanently enjoin defendants from applying or enforcing Title 5 as amended by the DEIA rules. Both suits are currently pending in the U.S. District Court for the Eastern District of California.
- We will continue to monitor these suits and their potential impact on Title 5 regulations.

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**A REVIEW OF DEIA CONCEPTS – CULTURAL COMPETENCY**

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### "Culture" Defined



"Culture" is the customary beliefs, social norms, and material traits of a racial, religious, or social group; or the set of shared attitudes, values, goals, and practices that characterizes an institution or organization.

Source: <https://www.merriam-webster.com/dictionary/culture>

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### What are "Protected Classes"?

**Federal**

- ✓ Title VII  
42 USC § 2000e et seq.
- ✓ ADEA  
29 USC § 621 et seq.
- ✓ ADA  
42 USC § 12101 et seq.
- ✓ GINA  
42 USC § 2000ff et seq.

- ✓ Race
- ✓ Color
- ✓ Religious Creed
- ✓ Sex
- ✓ National Origin
- ✓ Age
- ✓ Physical/Mental Disability
- ✓ Genetic Information

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### What are "Protected Classes"?

**California FEHA**  
Gov. Code § 12900 et seq.

- ✓ Race
- ✓ Color
- ✓ Religious Creed
- ✓ Sex
- ✓ National Origin/ Ancestry
- ✓ Physical/Mental Disability
- ✓ Medical Condition
- ✓ Genetic Information
- ✓ Marital Status
- ✓ Gender
- ✓ Gender Identity and Expression
- ✓ Age
- ✓ Military and Veterans
- ✓ Pregnancy  
Child Birth Breastfeeding
- ✓ Sexual Orientation
- ✓ Perception & Association

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Cross-Cultural Awareness



- Awareness of cultural differences does not have to divide us. It does not have to paralyze us either for fear of not saying the "right thing."
- In fact, becoming more aware of our cultural differences, as well as exploring our similarities, can help us communicate with each other more effectively.

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Common ways of showing insensitivity to culture



**Not to do list:**

1. Microaggression
2. Gaslighting
3. Dog whistling
4. Implicit Bias

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**MICROAGGRESSIONS**

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### What are Microaggressions?

- Microaggressions are brief and commonplace verbal, behavioral, or environmental indignities that communicate hostile, derogatory, negative or denigrating messages toward stigmatized or culturally marginalized groups.



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### Microaggressions

- “[I]t might be time for [the President] to let us know what Ketanji Brown Jackson’s LSAT score was. How did she do on the LSATs? It would seem like Americans in a democracy have a right to know.”



Anna Mohdawi, 'Tucker Carlson suddenly has questions about Ketanji Brown Jackson's credentials - I have questions about his, Mar 4 2021  
<https://www.theguardian.com/us-news/2021/mar/04/tucker-carlson-ketanji-brown-jackson-let-scores-credentials> (last visited Mar. 22, 2022)



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### How to Examine Microaggressions

Microaggression	Theme	Implicit Bias	Message
“[I]t might be time for [President] Biden to let us know what Ketanji Brown Jackson’s LSAT score was. How did she do on the LSATs? It would seem like Americans in a democracy have a right to know.”	<i>Ascription of Intelligence</i> – Assigning intelligence to a person of color on the basis of their race.	People of color are generally not as intelligent as the dominant ethnicity, or others who have held this role previously.	It is unusual for someone of your race to be intelligent or qualified for such a high position.

Secondary example: <https://youtu.be/CkCvEgukWBo>



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### How to Examine Microaggressions

Microaggression	Theme	Implicit Bias	Message
"Where are you really from."	<i>Alien in Own Land</i> Assumes that some Americans, like Asian or Latino, are foreign-born.	People of this ethnicity are not one of "us."	You are not a real American.
"Why do you have to be so loud/ animated? Just calm down."	Pathologizing cultural values/communication styles.	People with your communication style are disruptive, or unacceptable.	Assimilate to dominant culture.

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### How Do You Handle Microaggressions

- It is important to create safe, non-judgmental spaces within an organization to discuss this.
- It is also important not to criticize the microaggressor so that the focus remains on how that statement has made the other person feel rather than apportioning blame.
- If you are the microaggressor, use empathy and do not get defensive. Acknowledge and recognize your unconscious biases, reflect on them and the pain your words might have caused.

How Microaggressions Can Affect Wellbeing in the Workplace by Dr. Pragna Agrawal, March 25, 2015, Forbes Magazine  
<https://www.forbes.com/sites/pragnaagrawal/2015/03/25/how-microaggressions-can-affect-wellbeing-in-the-workplace/#59b650173c>

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### CULTURAL GASLIGHTING & DOG WHISTLE

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### Cultural Gaslighting

- Whenever we ridicule, deny, or silence another group on the basis that we inherently have the greater power, we are engaging in "gaslighting" behavior.

**Gaslighting**

"Gaslighting is the systematic attempt by one person to erode another person's reality, by telling them that what they are experiencing isn't so — and, the gradual giving up on the part of the other person," as defined by Dr. Robin Stern, author of *The Gaslight Effect*.

Source: Why We Need to Consider Gaslighting at the Social Level. Clara Jack, June 15, 2020. <https://www.psychologytoday.com/us/blog/women-40/2020/06/why-we-need-to-consider-gaslighting-the-social-level>

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### What is a "Dog Whistle"?

- An expression or statement that has a secondary meaning intended to be understood only by a particular group.



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### Dog Whistling is Culturally Insensitive and Can Elevate to Discrimination and Harassment

- U.S. Courts have acknowledged that "code words" can be evidence of racial discrimination and harassment.
- In Ash v. Tyson Foods, Inc., two African-American petitioners were not selected for promotion and alleged discrimination based on race. As evidence, a petitioner alleged that their plant manager called them "boy" such as, "Boy, you better get going" and "Hey, boy."
- The Court of Appeals reasoned that use of the word "boy," "when modified by a racial classification like "black" or "white," is evidence of discriminatory intent, but alone, was not evidence of discrimination. Ash v. Tyson Foods, Inc., 129 F. App'x 529, 533 (11th Cir. 2005), vacated and remanded, 546 U.S. 454, 126 S. Ct. 1195, 163 L. Ed. 2d 1053 (2006).

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**Dog Whistling is Culturally Insensitive and Can Elevate to Discrimination and Harassment, (cont'd.)**

What do you think the Supreme Court said?

- The Court said that although it is true the disputed word will not always be evidence of racial animus, it does not follow that the term, standing alone, is always benign. The speaker's meaning may depend on various factors including context, inflection, tone of voice, local custom, and historical usage. [Ash v. Tyson Foods, Inc.](#), 546 U.S. 454, 456 (2006).
- The case was remanded to the 11th Circuit. It stated there was no evidence about factors related to use of the word "boy" in the first trial. In the second trial, factors such as tone, face expression, timing, local custom and historical usage were introduced. The court considered the evidence cumulatively to determine if it was enough for a jury to have found that Tyson discriminated against a petitioner based on race. It found there was enough evidence for a reasonable jury to have found pretext, but the facts were not overwhelmingly in favor of one party, and the verdict could have gone either way. [Ash v. Tyson Foods, Inc.](#), 664 F.3d 883, 897-898 (11th Cir. 2011).

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**IMPLICIT BIAS**

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**Implicit Bias**

- Implicit bias is the basis in judgment and/or behavior that results from subtle cognitive processes that often operate unconsciously and without intentional control.
- Implicit bias is any unconsciously-held set of associations about a social group.
- Implicit biases are the product of learned associations and social conditioning.



Source: National Center for State Courts, Casey, Warren, Cheesman, and ER (2012)

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**Implicit Bias and Stereotypes**

**Implicit biases can result in the attribution of particular qualities to all individuals from that group, also known as stereotyping.**

These characteristics tend to be oversimplifications of the groups involved, and while some people truly do embody the traits of their stereotype, they are not necessarily representative of all people within that group.

Source: Kate Bergdorf, Implicit Bias: What It Means and How It Affects Behavior, ThoughtCo., (Nov. 4, 2020, 1:08 PM), <https://www.thoughtco.com/implicit-bias-definition-examples/1105211/>

Source: India Karmali, What is a Stereotype?, ThoughtCo., (Nov. 4, 2020, 3:37 PM), <https://www.thoughtco.com/what-is-a-stereotype/1105211/>

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**Implicit Bias: Stereotype Threat**

**Implicit bias can also result in a “stereotype threat.”**

This occurs when an individual internalizes negative stereotypes about a group to which they belong. Fear of validating a negative stereotype is the most common reason for code-switching.



Source: Kate Bergdorf, Implicit Bias: What It Means and How It Affects Behavior, ThoughtCo., (Nov. 4, 2020, 5:14 PM), <https://www.thoughtco.com/implicit-bias-definition-examples/1105211/>

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**Implicit Bias v. Discrimination**

**Implicit bias can result in discrimination.**

<p><u>Implicit Bias</u></p> <ul style="list-style-type: none"> <li>The set of unconsciously held associations about groups</li> </ul>	<p><u>Discrimination</u></p> <ul style="list-style-type: none"> <li>The behavior you exhibit toward someone based on a set of unconsciously held associations about groups. (Ex. In the legal context this can be hiring, firing, demotion, hostility, sabotage, etc.)</li> </ul>
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Source: Richard A. Morgan, Implicit Bias Isn't Discrimination: But It Leads to It, (Nov. 5, 11:47 AM), <https://www.atkinsonandalsonloya.com/newsroom/2020/11/05/implicit-bias-isnt-discrimination-but-it-leads-to-it/>

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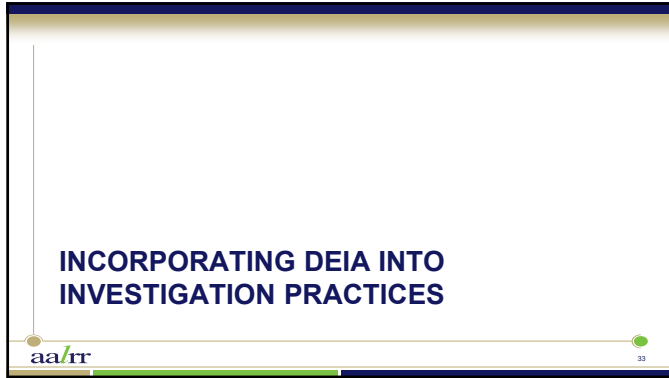
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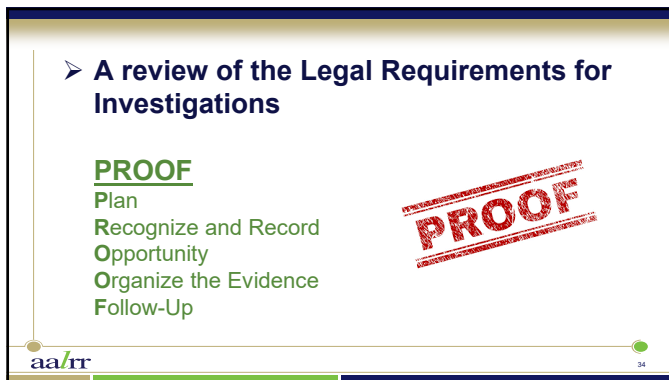
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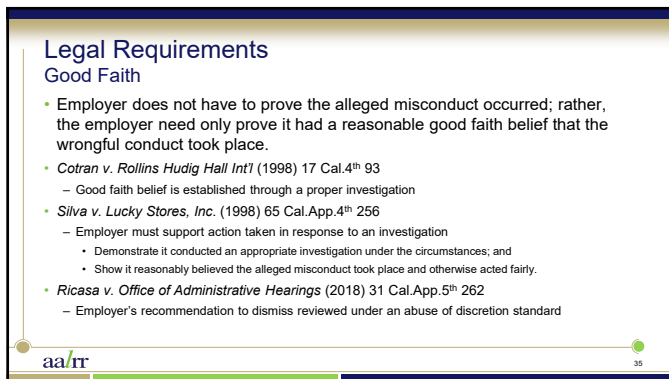
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### Legal Requirements for Investigations

#### Reasonable, Appropriate, and Effective

- Factors indicative of a reasonable, appropriate, and effective investigation:
  - Investigation conducted in accordance with written policy.
  - Investigation performed by well trained, objective investigator – knowledgeable in DEI and Cultural Sensitivity if relevant for the investigation.
  - Investigation conducted as soon as possible after the allegations are known and conducted in a confidential manner.
  - Investigation allows all parties an opportunity to be fully and fairly heard.
  - Investigation results are documented.

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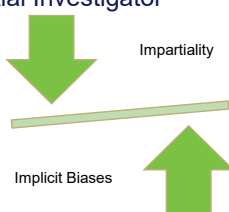
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### Legal Requirements for Investigations

#### Objective and Impartial Investigator

- An impartial investigator should be aware that their own implicit biases might impact an investigation.
- Implicit biases may impact our:
  - Understanding of information gathered
  - Opinion of the parties involved
  - Ability to conclude based solely on the factual evidence gathered



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### Legal Requirements for Investigations

#### Timely

- Liability may hinge on promptness of employer's response
- Complaints must be handled with high priority
  - "I'm too busy to investigate" is not an excuse to delay
  - "I relied on the immediate supervisor to investigate" is not an excuse to delay
  - "The witnesses won't get back to me" is not an excuse to delay



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**PROOF**

Elements of Proof

- **P** – **Plan** the Investigation and **Prepare** for Interviews
- **R** – **Recognize** and **Record** Relevant Evidence
- **O** – **Opportunity** for Response
- **O** – **Organize** the Evidence
- **F** – **Follow-Up**



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**PROOF**

- Use PROOF to check implicit biases and insensitivity to culture!
  - Prevent a rushed decision, such a decision may increase the potential of implicit biases. Lean on the “**P**” in Proof, that is – adequately **Plan** and **Prepare**.
  - Be inclusive and nonjudgmental in your communication. Refrain from engaging in microaggressions, prejudice, or criticism that might undermine the investigation. **Recognize** and **Record** evidence by asking open ended questions, allow all parties to be heard, and assure there is a full and fair **Opportunity** for response.
  - Ensure findings rationally follow from the evidence gathered. Any “jump” to a conclusion may be influenced by implicit biases. **Organize** the evidence to reduce potential for inconsistencies or gaps in reasoning.

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**PROOF**

Element 1: Plan the Investigation and Prepare for Interviews

- Who Should Validate the Facts?
  - In-House v. External Investigator
    - Severity or complexity of the issues
    - Level in the organization of the person being investigated
    - Potential for **perceived bias** of in-house investigator
    - Experience of in-house investigator
    - Employer’s resources
    - Likelihood of litigation
  - **Need for confidentiality** – If the investigation is going to be used : conduct, must waive attorney-client privilege in report
  - Level of **DEI training** is another factor when there is a need for a culturally competent investigation.



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**PROOF**

Element 1: Plan the Investigation and Prepare for Interviews

Selecting the Appropriate Internal Investigator

- Position in the Organization
- Impartial and Unbiased
- Trained and Experienced
- Potential as Witness
- Relationship with Other Departments
- Appropriate Demeanor

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**PROOF**

Element 1: Plan the Investigation and Prepare for Interviews

- Preparing for the Investigation
  - Preliminary Considerations:
    - Agreements: Are collective bargaining agreements relevant?
    - Separation: Consider the need for separation of complainant from the accused.
    - Paid Administrative Leave: Do the issues warrant paid administrative leave for the respondent pending investigation?

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**PROOF**

Element 1: Plan the Investigation and Prepare for Interviews

Before the interviews... develop an investigation plan:

- What is the alleged problem? Clarify the scope of the investigation.
- Timeline?
- Identify complaint policies, regulations, and/or procedures applicable to the complaint or problem.
- Identify witnesses to be interviewed.

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**PROOF**

Element 1: Plan the Investigation and Prepare for Interviews

Reviewing the Complaint:

- Who is the Complainant?
- Who is the Respondent?
- Who are the potential witnesses?
- What General Claims or Conclusions are asserted?
  - In legal terms, what laws are implicated?
- What Specific Allegations should you ask questions about?

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**PROOF**

Element 1: Plan the Investigation and Prepare for Interviews

- Preparing for the Investigation
  - Identify applicable laws and policies
    - Do I understand them?
    - What are the elements to establish a violation?
  - Notify witnesses
  - Prepare questions or an issues outline, in addition to form questions
    - What specific subjects should I cover?
    - What witness-specific questions should I include?

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**PROOF**

Element 1: Plan the Investigation and Prepare for Interviews

- Planning for the Interviews
  - Typical Order:
    - Complainant
    - Witnesses
    - Respondent
  - What People Need To Be Told:
    - Neutrality
    - Confidentiality
    - Signing of Statements
    - Retaliation
  - Open-Ended Questions:
    - *What, when, where, who*

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**PROOF**

Element 1: Plan the Investigation and Prepare for Interviews

- The Interview Environment
  - Location
    - What is accessible for your witnesses?
    - Ensure that the witness is comfortable in their location.
  - Interview Room
    - Private
    - No distractions
    - Easy access to exit
    - Clear view of witnesses
    - Prepare for emotions

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**PROOF**

Element 2: Recognize & Record Relevant Evidence

- Interview Complainant
  - Formal interview with Complainant
  - Who may be present during the interview
    - The complainant may need a support person (if this is permitted under relevant policy)
  - Introductory comments / admonitions
    - Make sure the party is aware they may take breaks
    - Assure no retaliation
  - Gather the facts from the Complainant
    - Ask *Who, What, Where, When, Why, and How* for each allegation
  - Reluctant Complainant

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**PROOF**

Element 2: Recognize & Record Relevant Evidence

- Witness Interviews
  - Determine the order of interviews
  - Who can be present?
  - Introductory comments / witness admonitions
    - No retaliation
  - Gathering the facts from the witness
  - Dealing with a reluctant witness

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**PROOF**

Element 3: Opportunity for Response

- Interview Respondent
  - Preparation is key!
    - Respondent must have a full and fair opportunity to respond
  - Introductory comments/admonitions
  - Assertion of Fifth Amendment right to silence
  - Gather the facts from the respondent
    - Ask Who, What, When, Where, Why, and How questions for each allegation
    - Get confirmation, admission, or denial for each allegation
    - Collect and understand all details or defenses presented



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**PROOF**

Element 3: Opportunity for Response



What if the Respondent refuses to answer the questions?

Does the Respondent have the right to a representative?



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**PROOF**

Element 3: Opportunity for Response

Be a good impartial listener and keen observer	Ask the right questions	Ask witnesses to demonstrate	Document	Be prepared to assess credibility
<ul style="list-style-type: none"> <li>• Ask open ended questions</li> <li>• Ask follow up questions</li> <li>• Repeat the questions if witness fails to answer</li> <li>• Observe non-verbal reactions</li> <li>• Refrain from prejudgment and criticism, foster a nonjudgmental environment.</li> </ul>	<ul style="list-style-type: none"> <li>• Begin with non-threatening questions</li> <li>• Focus questions</li> <li>• Ask who, what, where, why, when, and how</li> </ul>	<ul style="list-style-type: none"> <li>• Have witness demonstrate the behavior</li> <li>• Tour the scene of the incident or have witness draw a diagram</li> </ul>	<ul style="list-style-type: none"> <li>• Take thorough notes</li> <li>• Written statements from witnesses (signed and dated)</li> </ul>	<ul style="list-style-type: none"> <li>• Recognize bias, motive to falsify</li> <li>• Inherent plausibility</li> <li>• Corroborate</li> <li>• Conduct second interview if needed</li> </ul>

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**PROOF**

Element 4: Organize the Evidence

- Documenting What You Learn:
  - When to start
  - What to document (objective vs. subjective impressions)
  - Notes v. recording v. statements
  - Review notes for accuracy and make sure there are no inconsistencies
  - Take notes contemporaneously with, or soon after, each interview to be reliable
  - Clearly identify when notes were drafted and who drafted them, as well as anyone else present
  - Make notes legible or, if not, transcribe them

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**PROOF**

Element 4: Organize the Evidence

- Review all of the evidence gathered
- Organize evidence by witness and by allegation
- Review all of the relevant documents
- Review all of the applicable policies
- If anything was missed... ask additional questions
- If something is unclear or confusing... ask clarifying questions



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**PROOF – Element 4: Organize the Evidence**

- Weigh the Evidence for Each Allegation
  - Use the "preponderance of the evidence standard"
  - Evidence that is not disputed weighs to one side
  - If evidence is disputed, determine which is most persuasive
  - Analyze the facts to determine relevance
  - Only relevant facts should be considered



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**PROOF**

Element 4: Organize the Evidence

- Make a Factual Finding for Each Allegation
  - Obtain confirmation, admission, denial, and/or explanation for each and every allegation
  - A factual finding is a determination about what happened based on a preponderance of the evidence (more likely than not)
  - Address each allegation separately
    - Each allegation should have a finding of fact
    - Look at each allegation separately before reaching a conclusion about the complaint as a whole



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**PROOF**

Element 4: Organize the Evidence

- Determine if Conduct Violated Law / Policy / Directive
  - Consider the totality of the circumstances and review all sustained allegations
  - Review the law / policy / directive to determine if the sustained allegations constitute a violation
  - Consider contacting legal counsel and avoid making adverse legal conclusions
- Document the Findings and Conclusions
  - Findings and conclusions should be documented
  - Depending on the nature of the complaint:
    - Create an investigation report, or
    - Write a simple memo that describes the investigative process, the allegations investigated, what was learned, and the factual findings and conclusions

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**PROOF**

Element 4: Organize the Evidence

<ul style="list-style-type: none"><li>• Sample Full Investigation Report:<ul style="list-style-type: none"><li>– Introduction</li><li>– Allegations</li><li>– Methodology / persons interviewed / physical evidence</li><li>– Summary of evidence considered / credibility determinations</li><li>– Factual Findings / Analysis</li><li>– Conclusion</li><li>– Recommendations</li></ul></li></ul>	<ul style="list-style-type: none"><li>• Sample Executive Summary:<ul style="list-style-type: none"><li>– Brief Introduction</li><li>– Brief Methodology / persons interviewed / physical evidence</li><li>– Factual Findings / Analysis</li><li>– Conclusion</li><li>– Recommendations</li></ul></li></ul>
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**PROOF**

Element 5: Follow-up

- Elements of an Effective Remedy for Sustained Complaints:
  - If the complaint has merit, determine how to implement an effective remedy
  - Remedy should end the misconduct by the Respondent
  - Consider taking action to improve Complainant's environment
  - Conduct "follow-up" with the parties to determine if the remedy has been effective
  - Remedy may include educating other employees
  - Document actions taken to remedy situation
- Possible Remedies:
  - Reinstatement / training / discipline / create policies or procedures
  - Notice of Unprofessional conduct
  - Written reprimand
  - Dismissal

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**PROOF**

Element 5: Follow-up

- Post-Investigation Communications
  - If no litigation has been initiated, inform the Complainant and Respondent of the "findings"
    - A brief description of the allegations
    - A general description of the investigative process undertaken
    - The conclusions reached as a result of the investigation
  - The level of formality in reporting back the findings will depend on the nature of the complaint or issue
  - Because you cannot know which investigations will later be the subject of litigation, conduct all investigations bearing in mind the potential for litigation
  - In litigation, the training, experience and expertise of the investigator will be questioned

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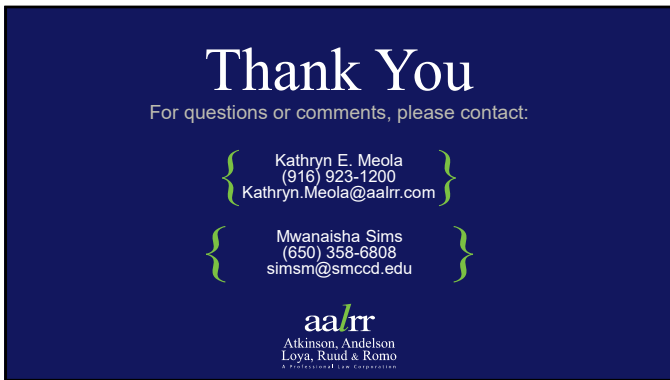
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