



National Association of College and University Attorneys
Presents:

**Sharpening Your Skills: Best Practices for
Conducting Internal Investigations**

Webinar

March 6, 2025

12:00 PM – 2:00 PM Eastern
11:00 AM – 1:00 PM Central
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9:00 AM – 11:00 AM Pacific

Presenters:

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Associate Vice President of Equal Opportunity, Affirmative Action, and
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Sharpening Your Skills: Best Practices for Conducting Internal Investigations



Catherine Guttman-McCabe is a Partner at Potomac Law Group with more than twenty years of experience in employment and education law. Her unique practice focuses on educational institutions, including colleges and universities, public and independent schools, associations, courseware developers, and service providers. In addition to employment matters, she provides advice and counseling related to federal and state education regulations, accreditation, distance education, governance, faculty tenure, student discipline, equal educational opportunity, campus security, privacy, student financial assistance, and consumer protection. She has a deep understanding of

Title IX of the Education Amendments of 1972, the Americans with Disabilities Act, Section 504 of the Rehabilitation Act of 1973, the Family Educational Rights and Privacy Act, the Jeanne Clery Act, the Higher Education Act, and other federal, state and local statutes concerning education.

Ms. Guttman-McCabe regularly advises organizations on personnel policies and practices, employee handbooks, compensation, worker classification, leave issues, background checks, performance management, employment agreements, equal employment opportunity, internal investigations, termination of employment, dispute resolution, and training. She helps clients comply with Title VII of the Civil Rights Act of 1964, the Age Discrimination in Employment Act, the Americans with Disabilities Act, the Family and Medical Leave Act, the Fair Labor Standards Act, the Fair Credit Reporting Act, and other federal, state and local statutes concerning employment.

In addition to providing advice and counseling, Ms. Guttman-McCabe conducts internal investigations, compliance reviews, and training. She represents clients before administrative agencies, such as the Equal Employment Opportunity Commission, the District of Columbia Office of Human Rights, and the Office for Civil Rights of the Department of Education. She has authored public comments for state and federal agency rulemaking proceedings and represented clients in federal audits and reviews of educational institutions.



Peter Land is a Partner at Husch Blackwell. He concentrates his practice on serving private and public sector higher education institutions and academic medical centers in a wide array of litigation and counseling matters.

He advocates on behalf of educational institutions in court and agency proceedings, mediations and arbitrations. He also counsels on employment and student disputes, drafts policies and provides training and guidance to key personnel and students.

Clients rely on Pete's extensive experience conducting sensitive internal investigations. He prepares confidential, privileged reports and assists decision-makers in addressing investigative findings in a variety of contexts, including board-mandated, sexual misconduct, athletic department, and scientific misconduct and non-compliance investigations.

Pete litigates employment discrimination and harassment cases, faculty terminations and tenure disputes, Title IX sexual assault claims, institutional governance issues, First Amendment disputes, student matters, school and program closings, noncompete agreement and trade secret disputes, and defamation and privacy issues. He has also counseled institutions on False Claims Act issues relating to scientific misconduct, accommodation and leave requests pursuant to the ADA and FMLA, privacy issues and compliance with FERPA, academic program closures and institutional affiliations, reductions in force, compliance with Title IX student discipline and gender equity standards, accreditation issues and investigations by the DOE's Office for Civil Rights, the EEOC, and state and municipal administrative agencies.

Before joining the firm, Pete was co-chair of the Higher Education Practice Group at a mid-sized Chicago law firm and a partner in Babbitt, Land & Warner LLP, which focused on higher education legal services. He frequently presents at conferences, seminars and webinars on significant legal issues affecting higher education.



Olabisi "Bisi" Okubadejo currently serves as Associate Vice President of Equal Opportunity, Affirmative Action, and Compliance at Georgetown University. Prior to transitioning to Georgetown, Bisi was Of Counsel at Ballard Spahr LLP, where her practice focused on civil rights and employment issues in higher education, particularly on matters arising from alleged discrimination on the basis of race, disability, religion, age, and sex, including sexual harassment and sexual violence. She has experience both as an attorney in private practice and as a supervisory attorney with the U.S. Department of Education's Office for Civil Rights

(OCR). Ms. Okubadejo has advised colleges and universities on their compliance with federal laws, including Title IX, the ADA, Section 504, the Clery Act, Title VI of the Civil Rights Act, the Age Discrimination Act, FERPA, and Title VII. She has experience working with educational institutions and business entities on digital accessibility issues, including compliance with government settlement agreements and ensuring the accessibility of websites and course materials. Ms. Okubadejo's experience includes providing interactive training on civil rights issues to coordinators, administrators, hearing panels/judicial boards, campus safety departments, and students. She also has significant experience conducting and overseeing internal investigations and program reviews of higher education institutions and other employers, and auditing policies and procedures.

Materials

- I. Investigations Checklist (attached)
- II. Hypothetical from Slides (attached)
- III. Monica Khetarpal, Erin Parker, and Scott Warner, “[Navigating Faculty Misconduct Investigations](#)” (NACUA Annual Conference, June 2024)
- IV. Jim Keller, Allison Newhart, and Carolyn Pellegrini, “[Conducting a High-Profile Workplace Investigation](#)” (NACUA Employment Law Winter Workshop, February 2024)
- V. Kendall Isaac, Mary Jeka, Timothy Lynch, and Karen Petrulakis, “[Principles, Practices and Strategic Approaches in High Stakes Internal Investigations](#)” (NACUA Annual Conference, June 2023)
- VI. Alexandra Mitropoulos and Kylie Stryffeler, “[Investigation Insights: Tips, Tricks, and Techniques in Institutional Investigations](#)” (NACUA Annual Conference, June 2023)

INVESTIGATIONS CHECKLIST
NACUA Internal Investigations Webinar
March 2025

I. Pre-investigation considerations

Whether to Investigate

- Is an investigation legally required?
- Is an investigation required by a policy?
- Must an investigation occur to address the reported conduct (e.g., is an investigation necessary to issue discipline or ascertain appropriate corrective action)?
- Would an investigation help the institution understand the scope and nature of an important problem or significant risk?
- Would an investigation help build trust or underscore the institution's commitment to its mission?

Other Pre-Investigation Considerations

- Should there be an initial, privileged inquiry if permissible under applicable policies?
- Should the whole investigation be conducted under privilege?
- Which office will take the lead on the investigation?
- Is there a trained internal investigator who is free from conflicts of interests?
- Is an external investigator needed due to a conflict of interest, high-profile nature of the matter, complexity of issues, scope of matters raised, or for other reasons?
- Is interim action, such as administrative leave or suspension, required to protect the campus community, complainant(s), or for another reason?
- Have supportive measures or accommodations been offered?
- Is there a need to make the Communications office aware of the matter?
- Is litigation anticipated?

II. Investigation

- What is the scope of the investigation?
- What notices are required under applicable policies?
- What is the anticipated timeline for investigation?
- Will interviews be recorded?
- How will review of interview summaries or transcripts of interviews be handled for parties and witnesses?

- Will parties be permitted to have advisors? Will witnesses? What is the advisor's role?
- How will cross-complaints be addressed?
- How will new allegations received during the investigation be addressed?
- Who is the audience for the report?
- Will the parties have an opportunity to review a draft report?
- Who will receive written notice of the outcome? What form will this take?
- Will any portions of the investigative outcome be provided orally, rather than in writing?

III. Post-investigation considerations

- Is there an opportunity to appeal the outcome of the investigation? How are parties notified of this?
- Are there any external reporting obligations once the investigation concludes?
- What, if anything, can be shared with campus constituents following the investigation?

HYPOTHETICAL FROM SLIDES

Part I (Slide 3)

- You are on your way to work after a relaxing weekend and receive an email from the dean of the business school who tells you that a group of students sent her a petition regarding a mandatory case study that was used in a Marketing course. The case study focused on factors that influence levels of engagement with a clothing company's Instagram posts.
- Students who signed the petition took issue with the sample, fictional Instagram posts that were used – one post included a video that showed non-consensual touching that was sexual in nature. Another post included a video where a model jokingly referred to another model using slang that some consider a racial slur.
- The case study represents 50% of the students' grade in the course. The students are asking for grades on the case study to be nullified and for the termination of the faculty member who wrote and administered the exam. The dean would like to know what action she can take today and would like to relieve the faculty member of teaching duties while she learns more about the situation.

Part II (Slide 4)

- Next, you receive an email from the faculty member, who has received a copy of the petition and was told by the students that if posted grades are not changed by close of business on Tuesday, the petition will be published on social media and shared with local and national media outlets.
- The faculty member defends their right to place students in challenging situations akin to real world challenges they may face, would like to know what the university will do to protect their reputation and the academic freedom of faculty, and whether student conduct charges will be brought against students if they publish the petition, which names the faculty member.
- The faculty member copied the head of the faculty senate on the email to you and has requested a response today.

Part III (Slide 30)

- "The students publish the petition on X/Twitter and Instagram. They include the videos, which results in inquiries from the student press and national media outlets."

Part IV (Slide 31)

"Students, faculty, and staff become interested in the faculty member's academic background."

"The dean receives an anonymous complaint alleging that the faculty member falsified participant names/information and fabricated data for the nonexistent participants in connection with a federally sponsored research grant."



Sharpening Your Skills: Best Practices for Conducting Internal Investigations

March 6, 2025

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- **Attorneys from all other states:** Please complete and return this form no later than Wednesday, March 12th to the CLE Credit Submission Portal (www.nacua.org/submitCLE). Please also remember to sign the attendance record.

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Note: Restrictions vary state by state and not all states will accredit this webinar.

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Amanda McLean
Meetings and Events Coordinator



Sharpening Your Skills: Best Practices for Conducting Internal Investigations

March 6, 2025

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Date / Time	Session Title	Verification Code 1	Verification Code 2
2/10/2025 12:00 PM ET	Sharpening Your Skills: Best Practices for Conducting Internal Investigations		

Webinar

Sharpening Your Skills: Best Practices for Conducting Internal Investigations

Thursday, March 6, 2025

Catherine Guttman-McCabe, Partner, Potomac Law Group

Peter Land, Partner, Husch Blackwell LLP

Olabisi Okubadejo, Associate Vice President for Equal Opportunity, Affirmative Action, and Compliance, Georgetown University

Agenda

- Hypothetical and Role Analysis
- Pre-Investigation Considerations
- Audience Q&A
- Conducting Investigations
- Post-Investigation Strategies
- Audience Q&A and Closing Remarks

Hypothetical – Part I

- You are on your way to work after a relaxing weekend and receive an email from the dean of the business school who tells you that a group of students sent her a petition regarding a mandatory case study that was used in a Marketing course. The case study focused on factors that influence levels of engagement with a clothing company's Instagram posts.
- Students who signed the petition took issue with the sample, fictional Instagram posts that were used – one post included a video that showed non-consensual touching that was sexual in nature. Another post included a video where a model jokingly referred to another model using slang that some consider a racial slur.
- The case study represents 50% of the students' grade in the course. The students are asking for grades on the case study to be nullified and for the termination of the faculty member who wrote and administered the exam. The dean would like to know what action she can take today and would like to relieve the faculty member of teaching duties while she learns more about the situation.

Hypothetical – Part II

- Next, you receive an email from the faculty member, who has received a copy of the petition and was told by the students that if posted grades are not changed by close of business on Tuesday, the petition will be published on social media and shared with local and national media outlets.
- The faculty member defends their right to place students in challenging situations akin to real world challenges they may face, would like to know what the university will do to protect their reputation and the academic freedom of faculty, and whether student conduct charges will be brought against students if they publish the petition, which names the faculty member.
- The faculty member copied the head of the faculty senate on the email to you and has requested a response today.



Pre-Investigation Considerations

How Issues to Investigate are Uncovered

- Direct report, oral reference, or formal complaint(s)
- Anonymous complaint
- Discovery of deficiency/anomaly
- Periodic review/audit
- Media report
- Government investigation
- Lawsuit

Varying Concerns to Investigate

- What type of issue?
 - Violation of law
 - Violation of policy
 - Ethical or mission-based problem
- Who should be involved in assessing nature of multi-pronged mix of concerns?

Why Investigate?

- Legal compliance
 - Investigation required by law
 - Avoid or reduce liability exposure
 - Understand enough to determine if need to report outside the institution
- Institutional culture
 - Policies only meaningful if enforced
 - Build trust among constituencies
- Big "I" or little "i"?
 - "Intake" review to understand whether/how to conduct full review
 - Full investigation clearly needed, devote time and resources

DISCUSSION – Marketing Case Study

- Do student and faculty member concerns about case study and public statements about the situation raise legal or policy issues, or both?
- What institutional culture issues are in play here, and can any be addressed in real time before investigations have been completed?
- Is more information needed about any issue to determine whether to investigate?

Jurisdictional Issues

- Complexities of multi-pronged concerns that implicate multiple policies
 - Title IX
 - EEO policies
 - Faculty Handbook
 - Student Code of Conduct
 - Grade appeals
 - Academic Freedom
 - Research Misconduct
- Coordinating among people in different offices who enforce the various policies

Jurisdictional Issues

- Procedures, procedures, procedures
 - Often different policies invoke their own unique procedures
 - How to resolve discrepancies or conflicting provisions between different sets of applicable procedures?
- External or concurrent investigations or proceedings, and coordinating internal steps
 - Criminal investigations
 - Government investigation
 - Agency proceeding (e.g., OCR charge from one of the students)

DISCUSSION – Marketing Case Study

- Which institutional officials should be involved with assessing what policies are implicated by students and faculty member's concerns, and who should lead that group?
- If the academic freedom policy includes a process for a faculty member to initiate Faculty Senate review at the next regularly-scheduled meeting that is 45 days away, can the EEO office's investigation of students' discrimination concerns proceed or conclude before then?

Attorney-Client Privilege Issues

- Preserving confidentiality for the institution
 - Entire investigation attorney-client privileged?
 - If not, can portions of communications be privileged?
 - Any need to use results for post-investigation discipline?
- Assess and deliberate at the outset
 - Document any privileged investigation carefully
- More challenging to do when multiple processes in play at the same time

Attorney-Client Privilege Issues

- Potential future waiver
 - Can privilege be waived after ascertaining extent of issue?
 - What is the scope of such a waiver?
- "Control group" for privileged communications
 - Who is in that group?
 - What information do they receive?
 - How do they receive it?

DISCUSSION – Marketing Case Study

- Can any portion of investigation(s) here be set up as attorney-client privileged, and is that a good idea?
- What communication streams could be set up to have any attorney-client privilege protection?

Confidentiality/Communication Strategies

- Are issues "secret" or already "public" problem?
 - Potentially huge impact on how to structure investigation
 - Can influence timing, scope, and who needs to help manage process
- Privacy issues for parties to any investigation
 - Usually cannot promise complete protections
 - But should take any measures possible without compromising fact-gathering efforts
- Minimizing disruption within campus constituencies during pendency of any investigation
- Media planning or management – may deserve attention/care

DISCUSSION – Marketing Case Study

- Can or should the institution comment publicly on any of this, and would doing so violate any privacy rights or policy provisions?
- Should the students and/or faculty member be directed or encouraged not to publicly share information about the issues during pendency of investigation?
- If student press publishes any incorrect information about the faculty member, could the institution be liable? Does that warrant oversight of student press on this issue?



Conducting Investigations

What is the Purpose and Scope of the Investigation?

- Be clear about purpose and scope – Is it one investigation or two?
- What decisions will the investigation help you make?
 - Was a university policy violated?
 - Is any disciplinary action warranted?
 - What resolution is appropriate?
- What risks are you trying to address?
 - Harassment
 - Retaliation
 - Academic freedom
 - Reputational

DISCUSSION– Marketing Case Study

- Is there one investigation or more than one?
 - ***"[O]ne post included a video that showed non-consensual touching that was sexual in nature. Another post included a video where a model jokingly referred to another model using slang that some consider a racial slur."***
 - ***"The students are asking for grades on the case study to be nullified and for the termination of the faculty member who wrote and administered the exam."***
 - ***"The faculty member . . . would like to know what the university will do to protect their reputation and the academic freedom of faculty, and whether student conduct charges will be brought against students if they publish the petition, which names the faculty member."***

Who Should Conduct the Investigation?

- Considerations:
 - Objectivity/Impartiality
 - Required training
 - Expertise/credibility
 - Timeliness
 - Privilege
 - State law requirements related to qualifications
- Application:
 - Faculty Affairs
 - Title IX, other civil rights investigators
 - Student Conduct
 - Compliance
 - OGC
 - Outside Counsel

To Whom Should the Investigator Report?

- Relates to decision of who should conduct the investigation, privilege, jurisdictional issues
- Objectivity/impartiality
- Consider path for appeals

DISCUSSION– Marketing Case Study

- Who investigates allegations of sexual harassment in course material?
- Could an investigation of alleged sexual harassment result in a grade change and, if not, who else needs to be involved in the investigation?
- Who investigates alleged violations of reputational harm and violations of academic freedom?
- What role does the Dean have, if any, in investigating or evaluating the issues?
- Can the Dean perform the role objectively?
- What type of expertise is necessary to conduct the investigation?

Is Interim Action Necessary?

- Interim supportive measures
- Suspension pending investigation
- Protection against retaliation
- Communications/PR

DISCUSSION – Marketing Case Study

"The dean would like to know what action she can take today and would like to relieve the faculty member of teaching duties while she learns more about the situation."

The "faculty member . . . was told by the students that if posted grades are not changed by close of business on Tuesday, the petition will be published on social media and shared with local and national media outlets."

- Does the situation warrant suspension pending investigation?
- Can/should grades be removed pending investigation?
- What communications plan should be put in place in the event the petition is published?
- Should the university encourage the students not to publish the petition?
- What steps should the university take to protect against retaliation?

Initial Steps in the Investigation

- Notices
- Dismissal of any allegations that will not be investigated
- Opportunity to challenge investigator based on bias
- Setting up electronic data room
- Investigation plan
- Will interviews be recorded?
- How will review of interview summaries or transcripts of interviews be handled for parties and witnesses?
- Will advisors be permitted and what is their role?

Common Issues that Arise

- Cross-complaints
- New claims
- Refusal to participate
- Allegations that the investigator is biased
- Complainant or respondent leaves the university
- Privacy, confidentiality, FERPA
- Threat of, or possible, retaliation
- Publicity

DISCUSSION – Marketing Case Study

- If no additional facts are uncovered, has the faculty member's academic freedom been violated by the petition?
- If academic freedom has not been violated, should that determination be documented as a dismissal?
- Is the faculty member's email a complaint? A cross-complaint?
- Would pursuit of conduct charges against the students be considered retaliation?

What Happens When the Scope Changes?

- Revisit:
 - Why are we investigating?
 - What is the purpose and scope of the investigation?
 - What policies/offices are at issue?
 - What procedures apply?
 - Who should conduct the investigation?
 - Have issues related to privilege changed?
 - To whom should the investigator report?
 - Is interim action necessary?
 - Should there be a change in communications strategy?
 - Is litigation now anticipated?

Hypothetical – Part III

- *"The students publish the petition on X/Twitter and Instagram. They include the videos, which results in inquiries from the student press and national media outlets."*

Hypothetical – Part IV

"Students, faculty, and staff become interested in the faculty member's academic background."

"The dean receives an anonymous complaint alleging that the faculty member falsified participant names/information and fabricated data for the nonexistent participants in connection with a federally sponsored research grant."

DISCUSSION – Marketing Case Study

"The dean receives an anonymous complaint alleging that the faculty member falsified participant names/information and fabricated data for the nonexistent participants in connection with a federally sponsored research grant. "

- What can be done about anonymous research misconduct complaint and does faculty member need to know of its existence before any next step?
- If research misconduct procedures allow anonymity protections for complainants but EEO procedures do not, how to handle situation if we learn same person has reported both?

DISCUSSION – Marketing Case Study

- Now that the petition has been published, how does that change the scope of the investigation?
- What impact does inquiry from the press have on the scope?
- Now there is an allegation of research misconduct, who handles that investigation and how does it relate to pending investigations?



Post-Investigation Strategies

Form of Report

- Written, oral, or combination
 - Executive summary or detailed full written report
 - May depend on expected use of information and extent to which any aspect of investigation set as attorney-client privileged
 - Public records laws often influence such decisions
- Who receives or will have access to any report?
 - Internally
 - Externally
 - Media – voluntary publication or public records requests
- Litigation issues
 - Existing claims or proceedings already ongoing?
 - Potential future claims?

Efforts to Redress Confirmed Problems

- Consider extent to which constituents involved can learn information about outcome of investigation or steps institution chooses to take to redress any concerns
 - Often limited by confidentiality concerns regarding employee discipline
 - Policies or procedures may dictate what can be shared
 - Sharing something with complainants may help prevent ensuing litigation

DISCUSSION – Marketing Case Study

- How many different reports might result here, and will each be accessible by the same group of people?
- Given public nature of students' social media posts, should faculty member be allowed to publish any report if helpful to restore reputational concerns?
- Can the institution place any limits on students publishing written report of outcome and should that influence decisions about how any such reports are structured?



Questions?

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