AVOIDING (SOME OF) THE TRAPS AND SNARES THAT COMPROMISE MISCONDUCT INVESTIGATIONS

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THE DUTY TO INVESTIGATE
Theories of liability and District policies govern the scope of your investigation.

- **Negligence**
- **Title VII-WLAD**
  - ✓ Staff on Staff Conduct
- **Title IX**
  - ✓ Student on Student Conduct
  - ✓ Staff on Student Conduct
- **RCW 28A.405 (Certificated Employees)**
Carefully Evaluate Your Duty To Report The Alleged Conduct To Law Enforcement/Child Protective Services.

Common Traps:

- Student On Student Conduct.
- Hearsay Or “2nd Hand” Information.
- Special Education Issues.
- Developmentally Inappropriate Play/Conduct.
- 48 Hours!
COMMON TRAPS

- Conduct off of District property.
- Notice, but no complaint.
- Failing to contact parents.
- Failing to ensure compliance with CBA.
- Failing to coordinate with law enforcement.
Clarify and elaborate the information

- You’ve told me a lot and that’s really helpful. But, I’m a little confused. To be sure I understand, tell me again how it started [or ended].

- Let’s see if I got this right...[paraphrase each segment of the incident]. Then pause and elicit response as to accuracy of each segment.
Avoid the trap of tunnel vision and solely focusing on the alleged incident.

Ask:

✓ Do you know about this or anything like it happening at any other time?
✓ Has the alleged offender done anything else?
✓ Who else knows anything about this?
✓ Has the alleged offender done this to anyone else?
OTHER TRAPS

Ask about other witnesses.
- Did anyone know about this?
- Did you tell anyone about this?
- What was their response?

Ask about applicable policies.
- Have you seen this before?
- When?

Ask about applicable trainings.
- Have you received any training on this?
- When?
- Review training materials with the witness!
MORE QUESTIONS FOR THE ALLEGED STUDENT VICTIM

- How has this affected your life at school?
- Your grades?
- Attendance?
- Friendships?
- Extracurricular activities?
- Your health?
Do not *assume* parents are protective.

Do not *assume* Staff are protective of students.

Do not *assume* all Staff understand grooming behavior.
COMMON ERRORS

- “It’s part of growing up!”
- Failing to document incidents and the response.
- Not following up with both parties.
- “It didn’t happen at school!”
- Failing to preserve evidence.
- Compartmentalizing the investigation or the response.
- Giving a “fresh start.”
Why not ask WHY?
Have the witness quantify the experience.

- You told me that he hit you. Rate it on a scale of 1 (not hard) to 10 (very hard).
  - You told me it scared you...
  - You said that it hurt...

- You seem upset. Did this affect how you think about your school? [If yes]. Rate it on a scale of 1 (no effect) to 10 (great effect). Now, tell me about that...

- You seem upset/calm. How serious do you think this is? Rate it on a scale of 1 (not serious) to 10 (very serious). Now, tell me about that...
Failing to obtain a reasonable account of the alleged event and the meaning that the material witness attached to it.

Failing to document what happened and what you did to resolve the issue.

Not acting soon enough.

Focusing on OUTCOME versus PROCESS!