

SERIOUS HURTFUL SITUATION INVESTIGATION PROTOCOL

This Hurtful Incident Investigation Protocol can be used to document the investigation and intervention of a Serious Hurtful Incident, at school or involving students outside of school, including online incidents.

This form could be modified or expanded to comply with any reporting requirements for alleged incidents of school bullying consistent with applicable state laws. However, the objective of the Engage Students to Embrace Civility Accountability Process is to seek to resolve these issues using a Diversionary Intervention Approach, as well as to support the targeted student and correct any aspects of the environment that appear to be contributing to the concerns.

As will become immediately obvious, this Investigation Protocol is very comprehensive. Your first response to looking at this document is likely to be: “This is far too extensive. I can’t take the time to do this.” You are absolutely correct. Your second response may well be: “It looks like an attorney wrote this.” Guilty as charged—well “former attorney” is more accurate.

The reason for the length and comprehensiveness is that my focus is on making sure you have considered the issues necessary to support all students in resolving these situations and that you avoid concerns of litigation, agency action, or nasty news article. So I have indeed included everything I can think of that might be relevant, up to, but not including, “the kitchen sink.”

But clearly, all of these issues are highly likely not going to be relevant for most situations. Issues A, F, and P may be relevant for one situation and G, M, and Q may be relevant for another situation. Many times, talking with the Targeted Student will quickly result with that student telling you exactly what they need. Or when you talk with a Hurtful Student, that student may readily take full responsibility and be ready to move to the remedy of harm stage. Skip the Investigation. Skip also the full Accountability Process. Move to Accountability Agreement.

My hope is that you will review this Investigation Protocol and then use it for several really serious situations. With this level of review of all of the possible issues you could consider, your subsequent investigations can more quickly get to the key issues.

It is my opinion that more extensive use of this Investigation Protocol will likely be most helpful in situations where one or more involved students have disabilities that are impacting their behavior. Here, the factors are likely to be more complex. As it is necessary to incorporate a plan of action into these students’ IEPs or 504 Plans, this Investigation Protocol can provide a helpful guide.

Investigation Protocol

Administrator completing form:

Position:

Date and time incident was reported to school:

Date investigation began:

Date investigation completed:

Initial Report

Name(s) of person(s) reporting incident(s):

Role(s) of person(s) reporting incident(s):

Name(s), age(s), grade(s), and school(s) of alleged Targeted Student(s):

Name(s), age(s), grade(s), and school(s) of alleged Hurtful Student(s) and any supporter(s): (Note: Any student who engaged in actions that were in apparent support of a primary Hurtful Student should also be considered a Hurtful Student.)

Date(s) of incident(s):

Location(s) of incident(s):

Initial description of reported incident(s):

Notifications

Date, time, and manner incident reported to parent(s) or caregiver(s) of alleged Targeted Student(s):

Date, time, and manner incident reported to parent(s) or caregiver(s) of alleged Hurtful Students(s):

If obtained, superintendent/designee grant of a waiver of parent(s) or caregiver(s) notification should be attached.

Date, time, and manner incident reported to law enforcement, if necessary:

Investigation Actions

Date and time the following actions were taken to investigate this incident, if deemed necessary? If multiple targeted students or hurtful students, identify Investigation Actions for each.

Interviewed alleged Targeted Student:

Interviewed alleged Targeted Student's parent(s) or caregiver(s):

Interviewed alleged Hurtful Student:

Interviewed alleged Hurtful Student's parent(s) or caregiver(s):

Interviewed alleged Hurtful Supporter(s):

Interviewed witnesses or collected statements in writing:

Examined physical evidence:

Examined location:

Interviewed school staff or other adult witnesses:

Interviewed school nurse:

Interviewed school counselor or school psychologist:

Interviewed teachers and/or other school personnel:

Interviewed special education teacher or other special services provider:

Interviewed staff of school athletic team or extracurricular organization:

Interviewed staff of after-care program or other similar out-of-school organization/activity:

Reviewed alleged Targeted Student's academic records:

Reviewed alleged Hurtful Student's academic records:

Reviewed alleged Targeted Student's IEP or 504 Plan:

Reviewed alleged Hurtful Student's IEP or 504 Plan:

Reviewed alleged Targeted Student's medical information if any has been provided to the school:

Reviewed alleged Hurtful Student's medical information if any has been provided to the school:

Reviewed bus incident report:

Reviewed alleged Targeted Student's attendance records:

Reviewed alleged Hurtful Student's attendance records:

Reviewed records of digital interactions between parties:

Reviewed video surveillance:

Reviewed school history of prior student conflicts and/or problematic behavior related to alleged Targeted Student:

Reviewed school history of prior student conflicts and/or problematic behavior related to alleged Hurtful Student:

Reviewed other student records:

Other investigation actions:

Investigation Findings Related to the Targeted Student

Complete an Investigation Finding document for each identified Targeted Student.

Name of Targeted Student:

Incident Issues

- What happened from the perspective of the Targeted Student?
- Which student(s) were primarily being hurtful?
- What evidence is there of seriousness?
- What evidence is there of persistence of hurtful actions? How many times have similar incidents have occurred involving the same or other student(s) directed at this Targeted Student?
- Based on the evidence, did this appear to be reactive aggression or proactive aggression?
- Where did this and any other hurtful incidents occur?
- What was the prior relationship and interactions of the participants? Has the current target ever been hurtful to the student who is now being hurtful?
- What are the Targeted Student's thoughts on what the motivation of the Hurtful Student might have been?
- What evidence is there of "imbalance of power?" What is the Targeted Student's apparent social status within the school community and level of personal power? Are there objective, identifiable differences in social status and personal power?
- How did the student who was targeted respond and what was apparent result of the student's response?
- Are the hurtful activities in any way related to a school athletic team or extracurricular organization, or members thereof?
- Are there concerns associated with after-school care or other out-of-school activities, if so, describe?

- Are there concerns associated with use of digital technologies? If so, describe and complete Digital Incident Analysis?
- Does the situation raise possible criminal violations or gang-related concerns and require the involvement of law enforcement or the school's resource officer?

Incident Impact

- Were there any physical injuries? If so, describe:
- Was there any damage to Targeted Student's property? If so, describe:
- Has the Targeted Student experienced emotional distress related to this or these incidents? If so, describe:
- Has the Targeted Student experienced interference with learning related to this or these incidents? If so, describe:
- Has the Targeted Student experienced interference with school or class attendance related to this or these incidents? If so, describe:
- Has the Targeted Student experienced interference with participation in school activities related to this or these incidents? If so, describe:

Witness or Supporter Issues

- Were any other students present? If so, how did they respond and what was the result?
- Were there any friends of the Hurtful Student who appeared to be actively involved in instigating or encouraging the hurtful behavior? If so, identify and describe their actions:

Staff Issues

- Was any staff member present? If so, how did that staff member respond and what was the result of the staff member's response? (Note: If any staff member did not respond in an effective manner, on a separate document, identify corrective actions to be taken.)
- At this time, or other times, has any staff member disparaged or excluded this student or appeared to support students who were engaging in disparagement or exclusion? (Note: If the Targeted Student expresses that any staff member has acted in a manner that was interpreted by them or could be interpreted by other students as supporting such disparagement or exclusion a more significant investigation should be launched.)

Civil Rights Issues

- Is the Targeted Student a member of, or perceived to be a member of, a protected class under civil rights laws?
- Were any hurtful acts associated with this student's protected class status or perceived protected class status?
- Is this a situation that might involve a persistent or pervasive hostile environment within the school? Have there been persistent acts directed at this student by same students or different students based on this student's protected class status? What evidence is there of pervasiveness? How many other students who share this student's identity or are within this student's protected class does this Targeted Student think are seriously or persistently being treated badly?
- Does the Targeted Student appear to have any challenges in social emotional competencies, evidence of trauma disorder symptoms, suicide ideation, or other mental health concerns? Should there be further assessment of this student's social and emotional well-being by a mental health professional?

- Is this student is on an IEP or 504 Plan? (Note: If this student is on an IEP or 504 Plan and the hurtful acts directed at this student are interfering with FAPE or their learning in any way, a IEP or 504 Team meeting must be held to discuss modifications to objectives and accommodations to their IEP or 504 Plan to address these concerns.)
- Has the student sought assistance for medical or mental health concerns from the school's health or counseling program? If so, what concerns were reported, what support was requested, what support is deemed helpful? (Note: If this student has documented mental health concerns or you think should be referred for further mental health analysis, is being treated badly in a serious or persistent manner, and shows any signs that this is interfering with their learning or participation in school activities, under Section 504 Child Find, this student should receive protection on a Section 504 Plan. This Section 504 Plan may solely be designed to address the hurtful situation.)

Intervention Insight

- What are the student's concerns about reporting this incident to the school? What does the student believe might occur if or when the student(s) being hurtful becomes aware of the report? How can these risks be effectively addressed?
- How does the Targeted Student want to proceed in resolving this situation? (Note: The student could desire support in addressing this situation that does not involve proceeding with an Accountability Process with the Hurtful Student. Alternatively, this student may want to arrange for the school to have alert staff present in the place or places where this hurtful behavior is occurring who will intervene and report. In this way it will appear to the Hurtful Student that their hurtful behavior came from a report by staff and not a report by the student. This approach can avoid the Targeted Student from being labeled a "snitch.")
- What actions are necessary to protect the student's safety and well-being while at school?
- What actions are necessary to protect the student's safety and well-being while engaged in school activities?
- What actions are necessary to protect the student's safety and well-being while coming or going from school?
- What actions are necessary to protect the student's safety and well-being in other environments the school may be able to influence (eg. after care)?
- Actions that may be necessary to protect this student's safety when using social media environments are addressed through a Digital Situations Investigation.

Parent or Caregiver Concerns

- What are the parent(s) or caregiver(s)' insight into the above questions?
- What are the parent(s) or caregiver(s)' concerns?
- Have the parent(s) or caregiver(s)' involved any other community professional, such as a pediatrician or community mental health practitioner, or does the parent(s) or caregiver(s)' desire any such involvement?
- Do there appear to be family related concerns that should be addressed through a referral to a community professional?

Investigation Findings Related to the Hurtful Student(s)

Complete an Investigation Finding document for each identified Hurtful Student.

Name of Hurtful Student:

Incident Issues

- What happened from the perspective of the Hurtful Student(s)?
- What was this student trying to accomplish? What was this student's apparent motivation? Why did this student think their actions were okay? Is this student rationalizing their hurtful actions?
- What was the prior relationship and interactions of participants? Has the current target ever been hurtful to the student who is now being hurtful?
- What is the Hurtful Student's apparent social status within the school community and level of personal power?
- Based on this student's perspective, did this appear to be reactive aggression or proactive aggression?
- What else is going on in this student's life that might be influencing their actions?
- Does this student appear to be willing to accept personal responsibility and take actions to remedy the harm?

Witness or Supporter Issues

- Were any other students present? If so, how did they respond and what was the result?
- Were any other students supporting or encouraging this student's hurtful actions?

Staff Issues

- Was any staff member present? If so, how did that staff member respond and what was the result of the staff member's response? (Note: If any staff member did not respond in an effective manner, on a separate document, identify corrective actions be taken.)
- At this time, or other times, has any staff member disparaged or excluded this student or appeared to support students who were engaging in disparagement or exclusion? (Note: If the Hurtful Student expresses that any staff member has acted in a manner that was interpreted by them or could be interpreted by other students as supporting such disparagement or exclusion a more significant investigation should be launched.)

Hurtful Student Issues

- Does the Hurtful Student appear to be well integrated socially and seeking dominance? Does the Hurtful Student appear to be more marginalized and is this student known to have other challenges?
- Is this Hurtful Student also being treated in a hurtful manner or being marginalized in the school?
- Does the Hurtful Student appear to have challenges in social emotional competencies, evidence of trauma disorder symptoms, suicide ideation, or other mental health concerns? Should there be further assessment of this student's social and emotional well-being by a mental health professional?
- Is the Hurtful Student is on an IEP or 504 Plan? (Note: If this student is on an IEP or 504 Plan and their actions are interfering with FAPE or their learning in any way, a IEP or 504 Team meeting must be held to discuss modifications to objectives and accommodations to their IEP or 504 Plan to address these concerns.)
- Has the student sought assistance for medical or mental health concerns from the school's health or counseling program? If so, what concerns were reported, what support was requested, what support is deemed helpful?

Parent or Caretaker Concerns

- What are the parent(s) or caregiver(s)' insight into the above questions?

- What are the parent(s) or caregiver(s)' concerns?
- Have the parent(s) or caregiver(s)' involved any other community professional, such as a pediatrician or community mental health practitioner, or does the parent(s) or caregiver(s)' desire any such involvement?
- Do there appear to be family related concerns that should be addressed through a referral to a community professional?

Investigation Findings Related to the Hurtful Supporter(s)

Complete an Investigation Finding document for each identified Hurtful Supporter.

Name of Hurtful Supporter:

Incident Issues

- What happened from the perspective of the Hurtful Supporter(s)?
- What do they think the Hurtful Student was trying to accomplish? What was this student's apparent motivation? Did the Hurtful Student express why they thought their actions were okay? How is the Hurtful Student rationalizing their hurtful actions?
- What was the prior relationship and interactions of participants? Has the current target ever been hurtful to the student who is now being hurtful?
- Based on this student's perspective, did this appear to be reactive aggression or proactive aggression?
- Does this student know about what else is going on in the Hurtful Student's life that might be influencing their actions?
- How did the Hurtful Supporter respond? What actions did the Hurtful Supporter take that were also hurtful? Did the Hurtful Supporter try to stop or encourage the Hurtful Student to stop and say they were sorry? If so, what happened?
- Does the Hurtful Supporter appear to be willing to accept personal responsibility and take actions to remedy the harm and to encourage the Hurtful Student to stop and remedy the harm?

Investigation of Social Media Situations

- Document, document. document. This is an area of law where students have achieved success in litigation. Documenting your investigation steps and thinking will be helpful to avoid or respond.
- Make sure you or the student has preserved all relevant postings. After all of the postings have been preserved, seek to have them removed by the Internet company by filing an abuse report on the website.
 - If there is a possibility that criminal action might be taken, allow law enforcement to collect the evidence.
- Investigate any nexus between the off-campus online speech and the school community.
 - Ask about and document any associated on-campus hurtful actions or disruptions, however minor. In the vast majority of these situations, the hurtful acts are occurring both online and at school.
 - Check the time when postings were made or messages were sent to determine whether these were posted by students while they were at school. If the postings were made when students were in school, this makes these hurtful acts in school hurtful behavior and you do not have to worry about the off-campus legal standards.

- If the person who posted the hurtful materials has done so anonymously, but appears to be someone who knows the targeted student, the following investigation steps are suggested:
 - Ask the targeted student what has recently happened in their relationships with other students.
 - Review the postings and the history of the postings carefully. Other students, who are identifiable, may have commented. The initial comments, will likely be primarily from a group of students who were alerted to the posting by the one who created it. Determine if a key member of a known group of students is curiously absent.
 - Conduct interviews with some of the lesser involved students whose comments are identifiable. Act as though you have already identified the instigating student and are now simply seeking affirmation. Let them know their confidential assistance in resolving the situation will be taken into account when determining what school action to take against all involved students.
 - If arguably a criminal matter, law enforcement can file a subpoena with the Internet company to obtain identification information.
- Determine whether, as a result of the social media postings, there has there been a substantial disruption of student learning or a significant interference with the ability of any individual student to fully participate in learning and other student activities or whether such disruption of students or interference with a student reasonably foreseeable.
 - This requires an assessment of the degree of distress experienced by a Targeted Student as subjectively reported by this student, or overall disruption with learning of many students. This assessment must maintain a reasonably objective perspective of the situation. Document your rationale at the time.
 - If a harmful impact has not occurred, identify reasons why the school has a well-founded expectation such harmful impact is reasonably likely to occur. This might include an assessment of the situation, including the material posted, the extent of distribution, the parties involved, past experiences with these or other students in similar situations, etc.
- If the speech has targeted a staff member, demonstrate how this speech has, or reasonably could, interfere with the delivery of instruction to students or substantially disrupted the school environment from the perspective of the students. It is risky to believe that substantial disruption of that staff person's work will be considered a substantial disruption of the school and student learning.
 - Given the potential for an adverse legal action, it is advisable to discuss the situation with a district-level administrator or the school's legal counsel prior to disciplining any student who has targeted a staff member online.
- Conduct a fair and unbiased investigation.
 - Assess the possibility that the student who posted the hurtful material online has been the recipient of hurtful behavior at school and the online postings have been in an attempt to get this to stop. Watch for concerns of retaliation or bi-directional hurtful behavior.
 - Be alert to the possibility of impersonation where a student(s) have created a profile or have broken into a student's account and have sent hurtful materials in an effort to get this student into trouble.
 - Be alert to the possibility of self-cyberbullying. Sometimes, students will set up an anonymous account for the purpose of attacking themselves. Students who engage in self-cyberbullying should be considered at high mental health risk. If self-cyberbullying is suspected, the nature of such risk should provide sufficient justification for law enforcement to obtain a subpoena to obtain identification information from the Internet company. Mental health personnel must be involved in the intervention, as this is a high risk situation—including risk of suicide.
 - In any situation where a staff member has been attacked online, investigate the well-being of the student and the relationship between the student and the staff member. This may be a situation where

the student is acting in retaliation for being treated badly by this staff member. It is likely that this investigation should be done by district personnel.