

The SLO Newsletter

Sanghavi Law Office, LLC

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The End of a Civil Rights Investigation Is Sometimes Just a Start

When a civil rights investigation is complete, the job of addressing issues of bias, racial and cultural identity, equity, and inclusion has often only just begun.

It is important to note that a discrimination investigation explores a specific set of facts under a specific lens. Beyond the scope of any discrimination investigation are layers of context, most of which do not lend themselves to evidentiary testing or characterization as knowing or intentional discrimination. Institutions should be mindful not to conflate the weighing and testing of the specific facts in a discrimination investigation with the larger climate of the organization.

An institution might decide to take action to address climate issues, regardless of whether a complaint investigation supports a formal finding of discrimination. The following are a sampling of steps schools and other organizations might take.

- Institutions can designate an administrator, auditor, or task force to review the evidence collected from a climate perspective. The information obtained during a formal investigation might provide valuable insight about the organization's climate.
 - An investigation will offer first-hand accounts of key points of conflict and their resolution, if any, from a variety of perspectives.
 - An investigation may include comparative data about objective and subjective measures of merit and performance that may reveal information about both evaluatees and evaluators.
 - An investigation may offer corroborated accounts that yield insights into how power dynamics and perceived power dynamics have played out among community members.
- Institutions can use the information obtained in an investigation to review policies, procedures, and practices through a different lens and to implement modifications if necessary.
 - Policies and statements of purpose can be refined to address expectations and values concerning bias, racial and cultural identity, equity, and inclusion that may not be adequately addressed in formal discrimination and harassment policies.
 - Policy shifts around frequent, sensitive, or misconstrued interactions can remove subjectivity and, thus, the possibility of bias or concerns about bias.

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This Month in the History of Equal Access

March 1, 1875: President Ulysses S. Grant signed a bill that required: "That all persons within the jurisdiction of the United States shall be entitled to the full and equal enjoyment of the accommodations, advantages, facilities, and privileges of inns, public conveyances on land or water, theaters, and other places of public amusement; subject only to the conditions and limitations established by law, and applicable alike to citizens of every race and color, regardless of any previous condition of servitude." The Supreme Court declared the law unconstitutional in 1883.

March 4, 1933: Frances Perkins was sworn in as Secretary of Labor under President Franklin Delano Roosevelt, becoming the first female Cabinet member. Perkins was instrumental in drafting landmark legislation, including the Social Security Act, the Fair Labor Standards Act, the National Labor Relations Act, and major New Deal jobs programs.

March 12, 1993: Janet Reno was sworn in as first female Attorney General of the United States.

March 15, 2011: Revised ADA regulations went into effect with some new requirements including regarding: 1) the adoption of the 2010 ADA Standards for Accessible Design; 2) selling and issuing tickets for accessible seating to individuals with disabilities; 3) accommodating service animals, wheelchairs and other power-driven mobility devices; 4) providing auxiliary communication aids; and 5) making reservations in places of lodging.

Trainings Offered by Sanghavi Law Office

Sanghavi Law Office offers various trainings, and can work with clients to develop trainings to fit their needs. Examples of new trainings offered are provided below:

1) Weighing Evidence and Reaching Conclusions: Designed for hearing officers and decision-makers, this half-day training is designed to develop skills and strategies for evaluating evidence and making findings of fact with interactive, hypothetical scenarios.

2) Climate Assessments: Climate assessments can be used to open up candid conversations on matters of equity, inclusion, racial and cultural identity, and bias. This workshop explores why and when a school should conduct a climate assessment and outlines the steps and considerations in conducting climate assessments.

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- Institutions can use the information obtained from an investigation as a source for identifying training opportunities and for examining ways to improve communication.
 - Sensitive, tailored workshops can reinforce values and expectations while building connections across constituent groups.
 - Reinforcement of reporting options can ensure that students, employees, and other constituents feel comfortable reporting their concerns.
- Institutions can work to provide departments and/or teams with support and guidance at the conclusion of a discrimination investigation to address any residual issues.
 - Check-ins with department/team members can help address any ongoing relational or communication issues arising from the investigation process in order to reestablish a cohesive department or team.
 - Targeted climate assessments can gauge the depth and breadth of issues, keep climate issues on managers' radar, and let team members know that the organization takes issues of bias, racial and cultural identity, equity, and inclusion seriously.
- Institutions can develop a deeper understanding of the climate experienced by their students, employees, and other constituents by conducting broader organizational climate assessments.
 - Anonymous questionnaires, such as pulse surveys, can offer a snapshot of concerns, and responses can be disaggregated to assess how specific groups may be affected by climate issues.
 - Focus groups can provide perspective on how key issues are viewed across constituent groups, and can quickly reveal dynamics and emerging issues.
 - A review of data can yield insights into how the experiences or outcomes of various groups might differ, and can offer pathways for exploring the causes of any notable differences.

Civil Rights History Spotlight

Nannie Helen Burroughs – Born in 1879, Burroughs applied but was rejected for a teaching position in the D.C. Public Schools, despite her qualifications, which some historians believe was “because she had darker skin.” She decided to start her own school for Black women, relying in part on small donations from Black women and children in the community, and opened the National Training School for Women and Girls in Northwest Washington, D.C., in 1909. Following her death in 1961, the school changed its name to the Nannie Helen Burroughs School in 1964. In addition to fighting for the right of Black women to have an education, she also worked in other areas of civil rights, working throughout her life for women to have the right to vote, participating in the National Association of Colored Women, and chairing a committee on housing for Black people, having been appointed by President Hoover.

Sources:

National Park Service: <https://www.nps.gov/people/nannie-helen-burroughs.htm>

The Martin Luther King, Jr. Research and Education Institute at Stanford University: <https://kinginstitute.stanford.edu/encyclopedia/burroughs-nannie-helen>

Legislative Update

With the implementation of the new Title IX regulations by the Trump administration, and now the discussion of changes to these regulations by the Biden administration, colleges and universities have been focused on Federal requirements regarding responses to sexual harassment and sexual assault. Sanghavi Law Office reminds schools that some states have proposed and/or passed laws with state-specific requirements, including but not limited to:

Climate Surveys:

Massachusetts, New York, and New Hampshire have enacted laws that require colleges and university to conduct sexual misconduct climate surveys. Other states (e.g., New Mexico, Connecticut, and Illinois) have proposed legislation with similar requirements.

Equitable Process:

A number of states (e.g., New Hampshire, Texas, Massachusetts, and New York) have enacted legislation requiring that institutions of higher education have a timely and equitable investigative process, affording the reporting party and responding party the right to access relevant evidence used in the determination, and the right to present evidence and witnesses on their behalf. Connecticut has proposed legislation with similar rights.

Defined Terms:

Legislation in New York and New Hampshire mandates that institutions define certain terms (e.g., domestic violence, dating violence, stalking, and sexual assault) “in a manner consistent with applicable federal definitions.”

Amnesty Provisions:

Multiple states (e.g., Massachusetts, New Hampshire, New York, and Texas) have enacted legislation that requires institutions of higher education to implement amnesty policies, protecting reporting individuals and witnesses from student conduct disciplinary action with regard to a reported incident. Other states (e.g., Connecticut and New Mexico) have proposed legislation providing similar protections to reporting individuals.

Continuation of Investigation Even if Respondent Withdraws:

Under Texas legislation, if a student withdraws or graduates from an institution pending a disciplinary charge regarding sexual misconduct, the institution may not conclude the disciplinary process or issue a transcript to the student until a final decision is determined. Similarly, under New York legislation, if the respondent withdraws from an institution while charges are pending and declines to complete the disciplinary process, the institution must make a notation on the respondent's transcript indicating that the student “withdrew with conduct charges pending.”