A Restorative Approach to Conducting Investigations

Seizing the Opportunity to Repair Harm and Create Community
Philadelphia Commission on Human Relations

- Enforces Philadelphia’s civil rights and anti-discrimination law, the Fair Practices Ordinance

- Protected categories include:

  - Age;
  - Ancestry;
  - Color;
  - Disability;
  - Domestic or Sexual Violence Victim Status;
  - Ethnicity;
  - Familial Status;
  - Gender Identity;
  - Marital Status;
  - National Origin;
  - Race;
  - Religion;
  - Retaliation;
  - Sex;
  - Sexual Orientation
Philadelphia Commission on Human Relations

- Investigates and adjudicates complaints of discrimination in:
  - Employment
  - Public Accommodations
  - Housing and Real Property

- Community Relations
  - Outreach to promote positive intergroup relationships
  - Authority to conduct public hearings for educational purposes
Widening the Circle of Our Concern

Public Perceptions of the School District of Philadelphia’s Response to Intergroup Conflicts

A report from the Philadelphia Commission on Human Relations

www.wideningthecircle.org
- Personal Injury
- Family Law
- Criminal Defense
- Employment Law
- ERISA/Employee Benefits Litigation
- Workers’ Compensation
- Debt Collection
- Public Finance
• Commercial Litigation
• Employment Law
• ERISA/Employee Benefits Litigation
• Employment Discrimination and Harassment
• Harassment and Bullying in Schools
• Local Agency Law/ Administrative Law Hearings
Civil Rights and Anti-Discrimination Laws

- Employment
  - Title VII of the Civil Rights Act of 1964
  - Pennsylvania Human Relations Act
  - Philadelphia Fair Practices Ordinance
  - Age Discrimination in Employment Act
  - Americans with Disabilities Act
A Shield to Liability

- Defense to a claim of discrimination:
  - The employer exercised reasonable care to prevent and correct promptly and harassing behavior, and
  - The employee unreasonably failed to take advantage of any preventive or corrective opportunities provided by the employer or to avoid harm otherwise
Retaliation

- It is illegal to fire, demote, harass, or otherwise retaliate against people because they
  - filed a charge of discrimination,
  - complained to their employer or other covered entity about discrimination on the job, or
  - participated in an employment discrimination proceeding (such as an investigation or lawsuit)
Workplace Policies and Procedures

- Anti-discrimination policies
- Complaint mechanism with prompt investigative procedures
- Training
  - Employees on employer’s anti-discrimination policies and complaint procedures
  - Managers
  - Investigators
Investigations in Schools

- Employment laws are applicable to schools
- Federal laws
  - Sex Discrimination – Title IX of the Education Amendments of 1972
  - Race & National Origin Discrimination – Title VI of the Civil Rights Act of 1964
  - Disability Discrimination – Section 504 of the Rehabilitation Act of 1974 and Title II of Americans with Disabilities Act of 1990
- State and Local Laws
- School or District Policies
Obligations on Schools

- If a school knows (or reasonably should know) about harassment that creates a hostile environment, the school must take immediate action to:
  - eliminate the harassment,
  - prevent its recurrence, and
  - address its effects

- Notice of Nondiscrimination

- Grievance Procedure

- Training
Essential Elements of an Investigation

- The Right Investigator
- Interim or Temporary Corrective Action Before the Investigation
- Collecting and Reviewing Relevant Documents
- Conducting Effective Interviews
- The Written Report
- Permanent Corrective Action
Fair Process

“[I]ndividuals are most likely to trust and cooperate freely with systems – whether they themselves win or lose by those systems – when fair process is observed.”

What Doesn’t Work

- A policy and complaint mechanism that are not reasonably effective in practice
- Training that is inadequate
- Unreasonably delay in starting the investigation
- Lack of clarity as to the path for reporting harassment and discrimination
Motivating Employers to Adopt Restorative

- Avoiding litigation
- Avoiding punitive damages
- Establishing litigation defenses
- Managing risk
- Repairing harm
- Creating community
Restorative Practices Continuum

Size and Scope of Investigations Exist Along a Similar Continuum
A Restorative Approach

- Affective Statements
- Affective Questions
- Restorative Questions
- Restorative Conferencing
- Professional Learning Groups
- Harassment Trainings
- Social Discipline Window
- Compass of Shame
- Fair Process
- Leadership Training
- Authority With Grace