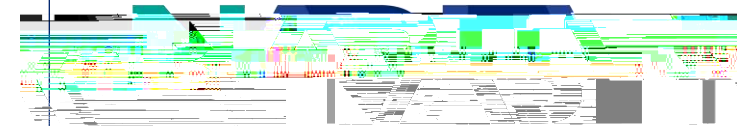




Civil Rights Investigator Level One: Foundations

Training & Certification Course

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Any advice or opinion provided during this training, either privately or to the entire group, is never to be construed as legal advice. Always consult with your legal counsel to ensure you are receiving advice that considers existing case law, any applicable state or local laws, and evolving federal guidance.

CONTENT ADVISORY

The content and discussion in this course will necessarily engage with sex- and gender-based harassment, discrimination, and violence and associated sensitive topics that can evoke strong emotional responses.

ATIXA faculty members may offer examples that emulate the language and vocabulary that Title IX practitioners may encounter in their roles including slang, profanity, and other graphic or offensive language.

1 Title IX Overview

2 Legal Basis for Title IX Liability

3 Title IX Coordinator Oversight

4 Civil Rights Investigation & Resolution Model: An Overview

Notice to the Recipient

Beginning the Investigation

AGENDA

7 Case Study

8 Evidence

9 Pre-Interview Considerations

10 Meeting with the Parties

11 Questioning Skills

12 Trauma-infused Interviewing

13 Witnesses

14 Helpful Investigation Documents

The Investigation Report

Role of the Investigator in Appeals



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TITLE IX OVERVIEW

The Law

The IX Commandments

Equality v. Equity

THE IX COMMANDMENTS

INVESTIGATION
(plus prompt & fair per
VAWA Sec. 304)



Thorough

Reliable

Impartial

PROCESS



Prompt

Effective

Equitable

REMEDIES

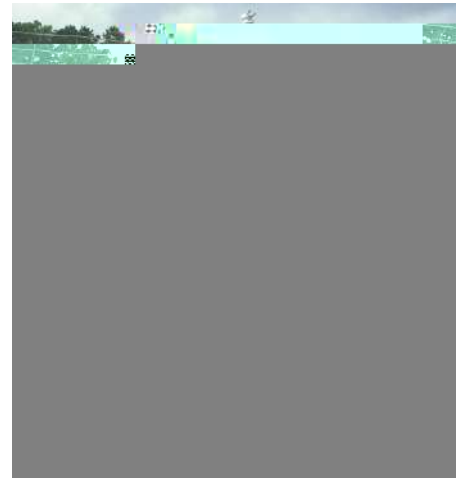


Act reasonably
to stop
discrimination

Act reasonably
to prevent
recurrence

Act equitably
to remedy
effects

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LEGAL BASIS FOR TITLE IX LIABILITY

Significant Cases

Intersection of Title VII and Title IX

Titles IX and VII Interrelated Investigations

Due Process



GEBSER V. LAGO VISTA INDEP. SCHOOL (CONT.)

524 U.S. 274 (1998)

Three-part standard:

1. An official of the educational institution must have had actual notice of harassment;
2. The institution must have taken appropriate corrective measures to prevent the harassment from recurring; AND
3. The institution must have acted reasonably in response to the harassment.

DAVIS V. MONROE COUNTY BD. OF ED.

526 U.S. 629 (1999)

Prolonged pattern of student/student sexual harassment

DAVIS V. MONROE COUNTY BD. OF ED. (CONT.)

526 U.S. 629 (1999)

Finding in favor of Davis, the Supreme Court expanded on Gebser:

actual notice

harassment; and the institution must have responded to deliberate indifference

Additionally, court held:

severe, pervasive, and

objectively offensive

systemic

educational opportunities or services.

DAVIS V. MONROE COUNTY BD. OF ED. (CONT.)

526 U.S. 629 (1999)

deliberate indifference stating that deliberate
clearly
unreasonable in light of the known circumstances

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INTERSECTION OF TITLE VII AND TITLE IX

Title IX was consciously modeled on Title VI of the Civil Rights Act of 1964 and borrowed heavily from Title VII.

Courts generally apply standards established under Title VII for guidance in how to establish a Title IX violation.

Title IX prohibits sex-based discrimination in the full range of activities related to the recruitment, evaluation, classification, payment, assignment, retention, or treatment of employees.

Individuals can use both statutes to pursue the same violations.

process protections for at-will employees accused of misconduct.

TITLE IX AND TITLE VII INVESTIGATIONS

Consider intersections of:

Role of institutional equity/AA/EOP officer

Human resources/faculty/teachers

Coordinator of school/campus conduct

Athletics

Public safety/SRO/Law enforcement

Oversight of deputy coordinators/Investigators

Coordination of remedies in student/employee and employee/student grievance processes

What happens when employee is a student or student is an employee?

" PROCESS A" OR " PROCESS B" ?

regulations. However, the Regulations effectively create two distinct processes for responding to sex-based

Limiting jurisdictional language and definitions of

with 34 C.F.R. 106.45) only applies when that language and those definitions are met.

If any of the allegations meet the definitions under 34 C.F.R.

" PROCESS A " OR " PROCESS B " ? (CONT.)

If none of the allegations meet the definitions or jurisdictional limitations under 34 C.F.R. 106.30, then

DUE PROCESS: CURRENT ISSUES

Due Process is at the heart of OCR's Title IX regulations.

Applies to both public and private Recipients

Standard of Evidence

Detailed notice of investigation and allegations (NOIA)

Investigation report and evidence for review/response

Live hearing with cross-examination mandatory for Higher or 9rEd; esp



TITLE IX COORDINATOR OVERSIGHT

In the Investigation Process:

- Supervise Investigation Structure

- Supervise Investigation Process

- Train Investigators



TIXC: SUPERVISOR OF THE INVESTIGATION STRUCTURE

The Title IX Coordinator is responsible for:

- Appointment/engagement of Investigators

- Training Investigators and Decision-makers (policy and appeal)

- Supervision of Investigators and investigations

- Helping Investigators develop investigation strategy

- Coordinating supportive measures

- Timeline compliance

- Communication and coordination of investigation teams

- Providing institutional memory to Investigators

- Retaining records of all activities

- May be an Investigator but may not be a Decision-maker

TIXC: SUPERVISOR OF THE INVESTIGATION PROCESS

Title IX Coordinator or designee is responsible for:

Documenting complaint

Initial assessment

Determining extent/footing/nature of investigation

Notice of investigation and allegations (NOIA)

Notice of hearing

Reviewing/transmitting the Decision-determination

Coordinating any duty to warn

Assurance of supportive measures/remedies

Recordkeeping of all activities




BIAS – REGULATIONS

The Title IX Coordinator, Investigator, Decision-maker, or any person designated by a Recipient to facilitate an informal resolution process must not:

- Have a conflict of interest or bias for or against Complainants or Respondents generally, or

- For or against an individual Complainant or Respondent
- Bias and conflict of interest by Investigators that impact the outcome are grounds for appeal

Let's explore both bias and conflict of interest. What do these mean?



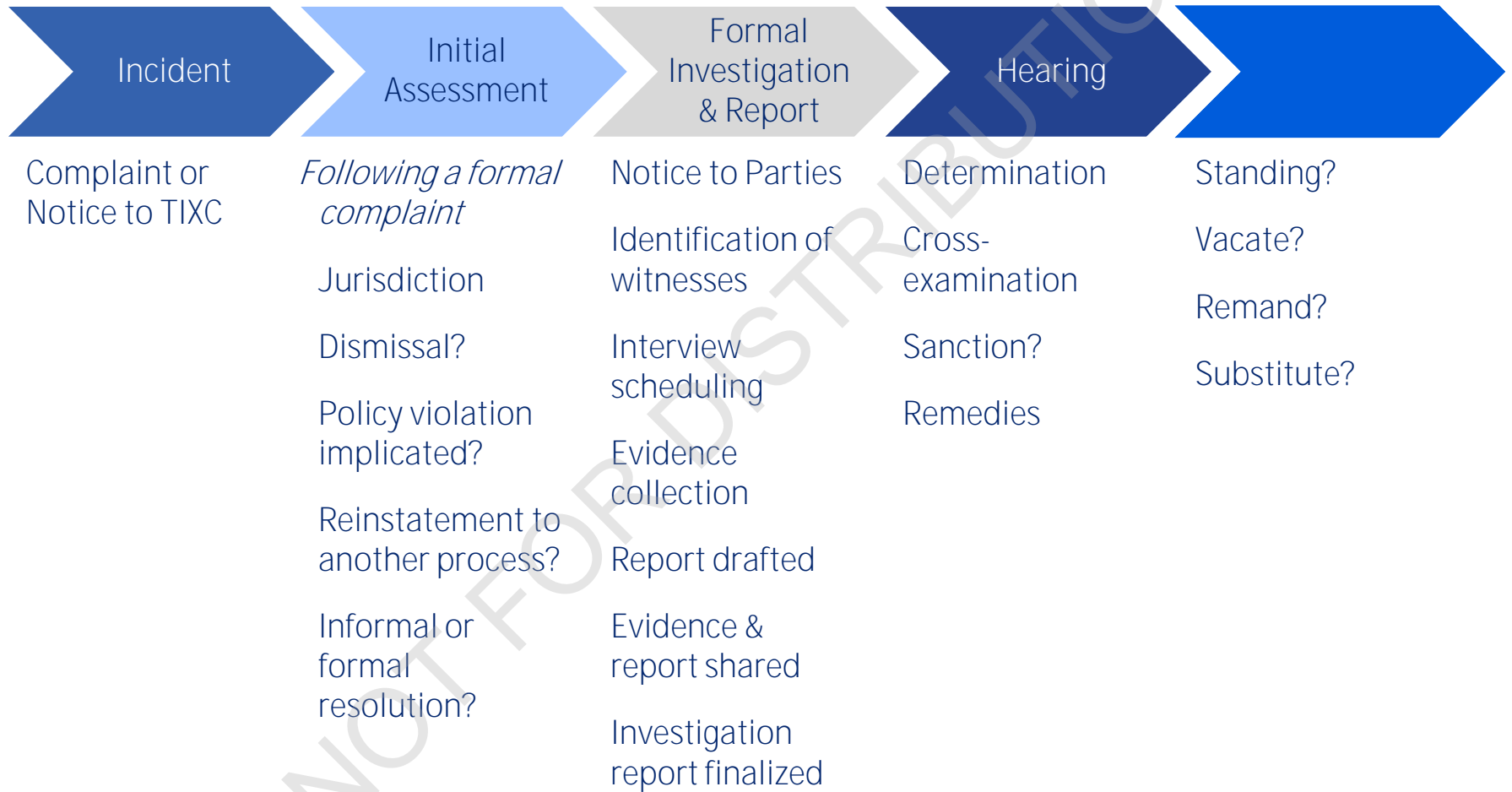
Remember: As an
Investigator,
you have no "side"
other than
the integrity of the
process!



CIVIL RIGHTS INVESTIGATION AND RESOLUTION MODEL: AN OVERVIEW

The Process & Ten Steps
Who Should Investigate?

THE PROCESS



10 STEPS OF AN INVESTIGATION

7. Draft report

8.



THE CONSENT CONSTRUCT

Was force used by the Respondent to obtain sexual or intimate access?

Physical violence

Threats

Intimidation

Coercion

Was the Complainant incapacitated?

f Did the Respondent know the Complainant was

THE CONSENT CONSTRUCT

What clear words or actions by the Complainant gave the Respondent permission for each specific sexual or intimate act that took place as it took place?

THIS IS COVERED IN MORE DETAIL IN INVESTIGATOR TWO

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WHO SHOULD INVESTIGATE?

Investigations of sexual harassment must be impartial, thorough, and reliable. Investigators must be well-trained.

Title IX Coordinator?

Standing panel of
Investigators?

Human resources?

Student services?

Administrators/staff?

Teachers/faculty?

Coaches?

Outside/external
Investigator?

NOT Legal Counsel

ROLE OF LAW ENFORCEMENT IN CIVIL RIGHTS INVESTIGATIONS

Legal standards for criminal investigations are different

Police investigations or reports may not be determinative of whether harassment occurred under Title IX and do not relieve the school of its duty to respond promptly and effectively

Conflict of interest for sworn officers

Establish MOUs with Recipient police and other local enforcement and update annually

The power of the tabletop exercise

SHOULD THERE BE MORE THAN ONE INVESTIGATOR?

No specific requirement, but:

Investigation must be prompt, thorough, and impartial

A pool of Investigators may help to ensure that your

TEAM INVESTIGATIONS

Other benefits:

Allows for strategic selection of Investigators based on case elements and parties

Ability to brainstorm investigation steps and lines of

INVESTIGATION TEAM PROCESS OVERVIEW

The investigation team, in consultation with the Title IX Coordinator, strategizes the entire investigation, including methodology, order, timeline, goals, obstacles, etc.

Interview all witnesses

Gather and assesses all available evidence

Write a report

Provide report to the parties for review, then edit as needed and provide final report and investigation file to:

Coordinator, who then shares with the Decision-maker(s)

Parties and Advisors

NOTICE/ACTUAL KNOWLEDGE – REGULATIONS

Actual knowledge:

Notice of sexual harassment or allegations

In an education program or activity

Against a person in the United States

To a TIX Coordinator, or

Any official with authority to institute corrective measures on behalf of college or university

Any employee of an elementary or secondary school

ACTUAL KNOWLEDGE

NOTICE/ACTUAL KNOWLEDGE – REGULATIONS (CONT.)

What is required after Actual Knowledge?

A prompt response that is not deliberately indifferent

Outreach to Complainant

Optional supportive measures

FORMAL COMPLAINT – REGULATIONS

Formal Complaint:

Document or electronic submission requesting an investigation

Filed by Complainant or signed by TIX Coordinator

Alleging Sexual Harassment

Complainant must be participating or attempting to

Initiates mandatory grievance process (investigation and hearing)



WHEN DO YOU INVESTIGATE?

Upon receipt of a formal complaint, investigation is required

What about misconduct that is open and obvious to OWAs?

What about rumors, gossip, social media, etc.?

Discretionary, but often recommended

OCR may not think these create an obligation for formal action, but will courts agree?

Anonymous reports

WHEN DOES TITLE IX APPLY?

Title IX complaint must be dismissed if did not occur against a

Contrary to case law

WHEN DOES TITLE IX APPLY?

Jurisdiction

Covered Programs (all programs)

Jurisdictional Limitations

Geographic

Temporal

Application-Admission-Registration-Attendance-Breaks

When is an employee an employee?

WHEN DOES TITLE IX APPLY?

Jurisdiction for Off-Campus Incidents:

When sufficient Recipient control is established

Or when the off-campus conduct has an in-program effect that meets the definition of 34 C.F.R. 106.30

If Title IX jurisdiction is not present, the behavior could still violate:

Institutional harassment/discrimination policies

Student Handbook/Conduct policies

Technology/Acceptable Use policies

Employee Handbook/policies

Professionalism standards







NOTICE OF DISMISSAL

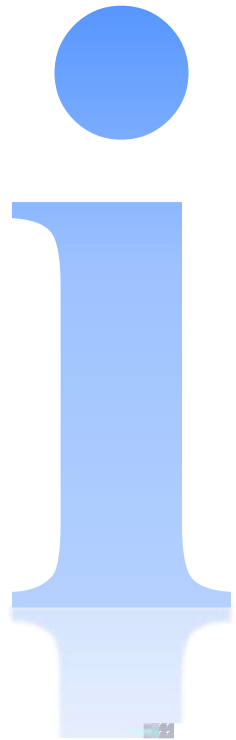
Upon a mandatory or permissive dismissal, the Title IX Coordinator should promptly send written notice of the dismissal and reason(s) therefor simultaneously to the parties

- Dismissal is appealable

- May reinstate the complaint under another provision of resolution procedures

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INITIAL ASSESSMENT IN SUMMARY



Has there been a formal complaint?

Does the TIXC need to sign/initiate a formal complaint?

Does the alleged conduct meet the required definitions?

Does jurisdiction exist?

Can/should Recipient remedy informally or without discipline?

Mandatory/Discretionary dismissal considerations

If dismissed, should an alternate process begin?



SUPPORTIVE MEASURES

Provided to all parties throughout the process:

Non-disciplinary, non-punitive

Individualized

Restore or preserve equal access

Without unreasonably burdening other party

Protect safety of parties or environment, or deter sexual harassment

Remedy on behalf of community, not just parties

If supportive measures not provided, document why not

SUPPORTIVE MEASURE EXAMPLES

Counseling and/or health
service referral

Employee Assistance Program
referral

subl
Visa and immigration
assistance

Student financial aid
counseling

Community or community
subl





BEGINNING THE INVESTIGATION

INVESTIGATION PHILOSOPHY

The burden of proof and the burden of gathering evidence rest on the Recipient, not the parties

This is likely not a change from current investigation requirements

Affirmative consent standards do not shift this burden, but that is a common misunderstanding of how affirmative consent standards work.

Title IX regulations require a stated presumption of the

"REASONABLY PROMPT" TIMEFRAMES FOR GRIEVANCE PROCESS

60-90 days to resolution is a good guide for more complex cases in higher education

Timeline starts from notice, not from the incident itself

No set requirement other than to have prompt, designated timeframes in your procedures

Goal is to avoid undue delay

For K-12, the timeframe will be much shorter.

What about injunctions?

What about Summer break? Sabbatical? FMLA? Winter break? Studying abroad?

TIMELINES

Ensure that all steps in the investigation are conducted

Procedures should provide some flexibility at the discretion of the TIXC.

Parties and witnesses should be interviewed as soon as possible:

Ensures that recollections are as fresh and accurate as possible

Not before Notice of Investigation and Allegations (NOIA)



INFORMAL RESOLUTION PROCESS

The OCR endorses and encourages informal resolution, and it is an effective practice, when voluntary.

Following formal complaint

Allowed at any time prior to a final determination at discretion of TIXC

Voluntary written consent of the parties

Title IX regulations preclude informal resolution of allegations that an employee harassed a student

FORMAL COMPREHENSIVE INVESTIGATION

Commence a thorough, reliable, impartial, prompt, and fair investigation

- Determine the strategy for the investigation

- Witness interviews

- Evidence gathering

- Intended timeframe to complete the investigation

- Evidence review

- Report writing and review

Complete the investigation without unreasonable deviation from the timeline

STRATEGIZE THE INVESTIGATION

Common questions to consider:

Whom to interview?

When/in what order?

What information/evidence can be obtained?

How do we maximize the quantity/quality of evidence?

How and when do we notify witnesses?

Who needs to be aware of the investigation?

CASE STUDY: GWEN AND MARK

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GWEN'S STATEMENT

Gwen is a first-year student who lives in Cedar Hall with her roommate, Holly. She has been having some strange things happen. She told Campus Public Safety about it, but

to you. Gwen has made a formal complaint.

About a month ago, Gwen was studying in Fleming Library on campus. She went to check out a reading that was on reserve at the front desk for her Intro. to Economics class. The male at the front desk was kind of chatty and they made small talk. The next day, she got an email sent to her

talking to you. I took Econ when I was a freshman, so if you

GWEN'S STATEMENT

email account, Mark Noy, but she assumed that it was the guy who worked at the library.

sent her some pictures of himself, and it was the guy from the library. Gwen stopped responding because she started to get a little creeped out. He asked for her Snapchat but

GWEN'S STATEMENT

Last week, Gwen was leaving math class with her roommate Holly and saw Mark standing outside the math building by himself, staring at her. She sort of waved but kept walking.

A few days ago, Gwen found a note on her car which she parks on campus; it had a hearts and arrows on it. That outside her room and drew the same hearts and arrows. Last night, she got a text middle of the night from a

GWEN'S STATEMENT

must be Mark.

She has been avoiding Fleming Library and has been having friends walk her to and from her car at night.

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CASE STUDY

How will you proceed with an investigation?

Who do you want to talk to?

Order of interviews?

What information do you need to gather?

When will you meet with Mark?

When does Mark receive an NOIA?

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NOTICE TO THE PARTIES - REGULATIONS (CONT.)

Respondent is presumed not responsible and a determination regarding responsibility is made at the conclusion of the grievance process

Parties may have an Advisor of their choice, who may be an attorney

Parties may inspect and review evidence prior to the completion of the investigation report

Any provision from code of conduct that prohibits knowingly making false statements or knowingly submitting false information (if any)

Update notice if additional allegations will be added/investigated

RIGHTS OF THE PARTIES DURING THE INVESTIGATION - REGULATIONS

Right to:

- present witnesses, including fact and expert witnesses
- present inculpatory and exculpatory evidence
- discuss the allegations under investigation without restriction
- gather and present relevant evidence without restriction
- be accompanied to any related meeting or proceeding by Advisor of their choice, who may be, but is not required to be, an attorney
- written notice of the date, time, location, participants, and purpose of investigation interviews or other meetings, with sufficient time to prepare
- inspect and review evidence and draft investigation report before finalized

WITNESS INTERVIEWS - STRATEGIES

Strategize contacting witnesses, ordering witness interviews, and preventing contact between witnesses, where necessary

Is there any allowance for interviewing witnesses and accumulating evidence prior to sending the NOIA?





EVIDENCE

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RELEVANCE

Evidence is generally considered relevant if it has value in proving or disproving a fact at issue

sexual predisposition is explicitly and categorically not relevant.

prior sexual behavior is not



EVIDENCE GUIDELINES

All relevant evidence must be objectively evaluated and considered inculpatory and exculpatory

No restriction on parties discussing case or gathering evidence

Equal opportunity to:

- Present witnesses

- Present evidence

- Inspect all evidence, including evidence not used to support determination

No limits on types/amount of evidence which may be offered

EVIDENCE COLLECTION AND ISSUES OF CONCURRENT CRIMINAL ACTION

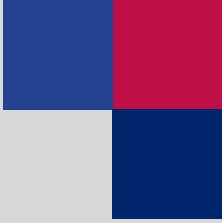
What if law enforcement is the sole source of evidence collection?

Does it matter if they are local or the SRO/campus law enforcement/public safety?

What if there is a pending criminal or civil case?

What if a party or parent/guardian threatens to call a lawyer or file a lawsuit?

What if a party files a lawsuit or complaint with the OCR?



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PRE-INTERVIEW CONSIDERATIONS

INTERVIEW SCHEDULING

Try to anticipate how long each interview will take (e.g., How many times will you interview the witness? How much time can the witness give you?). Schedule your interview slots accordingly.

Back-to-back interviews should be avoided, if possible. Interviews often take longer than expected and may require you to reschedule interviews.

Leave some time after each interview for post-interview review

PREPARE FOR EACH INTERVIEW

Outline your interview questions in advance but be flexible. If you need to deviate from your script and insert a logical follow-up question, be prepared to do so.

Plan the order of interviews

Most beneficial to conduct interviews in person, if conditions permit

Interviews should be conducted in a neutral, quiet, and private setting with no or minimal likelihood of interruptions

ESTABLISH PRE-INTERVIEW GROUND RULES

Who will attend?

How will records be kept? Recording? Access?

Role of Advisors

Difference between Advisor/attorney role in interviews vs. in a hearing

Involvement of parents/guardians, union reps, support persons, etc.

FERPA (students)/Employment records/confidentiality

SHARING INFORMATION WITH PARTIES AND WITNESSES DURING INVESTIGATION

Decide how much information you will share in advance of each interview and have a rationale for what information will be shared and what will not be shared

Remember that prior to a decision, the parties must

evidence

You may be challenged on a decision not to share, so have a rationale

Explore only those facts that are relevant to the issue at hand or that seem likely to lead to relevant evidence

Start with broad questions, then move to narrow, more pin-pointed questions



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MEETING WITH THE PARTIES

ADVISOR OF CHOICE

An "Advisor of choice" may be anyone, including:

Attorney

Advocate

Parent/
Guardian

Friend

Witness

You may establish ground rules for the participation of Advisors in all meetings

If a party does not have an Advisor, the Investigator should inquire as to whether they would like one provided by the institution at no cost (higher ed. only)

Under the regulations, this will have to be done at the hearing, but it is recommended to appoint one at the outset of the process

PROVIDING POLICY AND PROCEDURE COPIES

Each party should receive a copy of:

- The specific policies alleged to have been violated (not a link), including any sub-parts or sections

- The procedures that will be used to resolve the complaint, including the rights that extend to the parties (not a link)

Consider providing parties with your non-retaliation provision/policy

Keep copies of the applicable policies and procedures in the investigation file

Provide ample opportunity for the Complainant and the Respondent to ask questions

BEGINNING THE INTERVIEW

Be sure the Complainant and Respondent understand the parameters of the policy, what it does and does not cover, how the process works, and what the process can and cannot accomplish.

Discuss thoroughness and the need for completeness; make sure they don't leave facts out (i.e., alcohol/drug use). Explain your amnesty policy, if applicable.

Create comfort with language and sensitive subjects.

Establish rapport before questioning.

Document whether individual is cooperative or resistant.

Be professional: gather the facts, make no judgments, and make no unnecessary statements about the parties.

DEMEANOR OF INVESTIGATOR(S)

Work to establish a baseline of relaxed conversation

Maintain good eye contact

Listen carefully to the answers to your questions

- Avoid writing while party/witness is talking, if possible

- Do not be thinking about your next question while party/witness is talking

Ask questions in a straightforward, non-accusatory manner

Nod affirmatively and use active listening skills to prompt or keep party/witness talking

INTERVIEWING SKILLS

Take their statement from start to finish through a process of broad to narrow questions and issues that need to be addressed.

Ask questions about the allegations, the evidence, and the policy elements.

Focus on areas of conflicting evidence or gaps of information.

Drill down on timelines and details.

Pay attention to alcohol/drug consumption and timing of consumption, if relevant.

INTERVIEWING THE COMPLAINANT

Acknowledge difficulty of reporting and thank them

Acknowledge that they may have told this story multiple times already

Explain why you are taking notes and/or ask for permission to record, if applicable

Provide a copy of your policies and procedures

Ask them to share a complete account of what occurred

Have them give full narrative without asking questions, then drill down on details

Ask about outcry witnesses and possible documentation such as blogs or journals

What will witnesses likely say/know?

INTERVIEWING THE COMPLAINANT

Ask about those they spoke to about the incident

they hope to see as a result

Find out if their academics and/or work have been affected

Ask how the incident(s) affected them emotionally and/or physically

Advise that the allegations will be discussed with the Respondent and witnesses

Let the Complainant know next steps and when you will be in contact

Suggest that the Complainant consult their Advisor before discussing the investigation with others, without placing restrictions on doing so.

RELUCTANT COMPLAINANTS

When a Complainant is reluctant to make or continue with a formal complaint, or withdraws after filing one, the TIXC will determine next steps

A risk or threat assessment of some kind, as well as

whether the TIXC decides to proceed and file a formal complaint themselves

Although an investigation could proceed without the Complainant, it may prove difficult or impossible for the Investigator to gather sufficient evidence

Effect of not submitting to cross-exam at hearing

Possibility of informal resolution

REQUESTS FOR CONFIDENTIALITY

The TIXC should explain to the Complainant that:

Support and resolution may be limited based on the level of confidentiality or privacy requested by Complainant

Privacy cannot be guaranteed if doing so would jeopardize the safety of the Complainant or others in cases involving pattern, predation, violence, threat, weapons, minors, or other compelling safety risks.

If the Complainant chooses to proceed, only those with a need to know will be informed.

(really privacy)

Privacy vs. Confidentiality vs. Privilege

REQUESTS FOR CONFIDENTIALITY (CONT.)

Title VII implications for employee Respondents

Implications for minor Complainants

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RELUCTANT COMPLAINANTS

The Complainant should be notified of their options:

The process will still be available to them, regardless of how long they wait, as long as control over Respondent remains

The Recipient will support them in all reasonable ways (e.g., housing, classes, no contact orders)

Informal resolution could be an option, if offered

If information is brought to attention of the Recipient that may involve a threat to community, the Recipient may be forced to proceed with an investigation, but the Complainant will be notified of the process and treated as if they are fully participating, if they wish



FINAL QUESTIONS FOR ALL INTERVIEWS

" APPENDIX C" (CONT.)

Section 3: Questions the party wanted asked specifically that were asked but not in the manner the party wanted

Document: The question they wanted, the one that was asked, the answer and the rationale for changing the form of the question (e.g., argumentative, blaming, improper form)

Section 4: Questions the party wanted asked specifically that were not asked

Document: The rationale for not asking the question (e.g., irrelevant, already asked and answered)



QUESTIONING SKILLS

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QUESTIONING CONSIDERATIONS

An interview is a conversation designed to elicit information in a non-accusatory manner

Shifting to an interrogation approach should not be done lightly; you cannot go back – not recommended

What are the goals of questioning?

Learn the facts

Establish a timeline

NOT the goals of questioning:

Curiosity

Chasing the rabbit into Wonderland



TYPES OF QUESTIONS

Use

Open-ended Questions

how?

Closed-ended Questions

Did you, were you?

Use infrequently, but when needed to drill down on a specific issue.

Avoid

Compound Questions

I have two questions.

Multiple Choice Questions

Leading Questions

QUESTIONING

Listen carefully and adapt follow-up questions

Empathy vs. sympathy

Do not moralize or sanitize

Seek to clarify terms and conditions that can have multiple

Be cautious with questions that invite parties to second-guess their actions, as this may be perceived as blaming. The

QUESTIONING EXERCISE

Please critique the following questions:

- 1) When you did (X), what effect do you think that had on the other party?
- 2) What was your goal when you offered to take them home?
- 3) What were you thinking when you went into their room?
- 4) Do you feel like you had too much to drink?
- 5) Do you remember the training session we did on Title IX and consent and harassment?
- 6) I have a couple of questions: First, could you tell they were

QUESTIONING EXERCISE

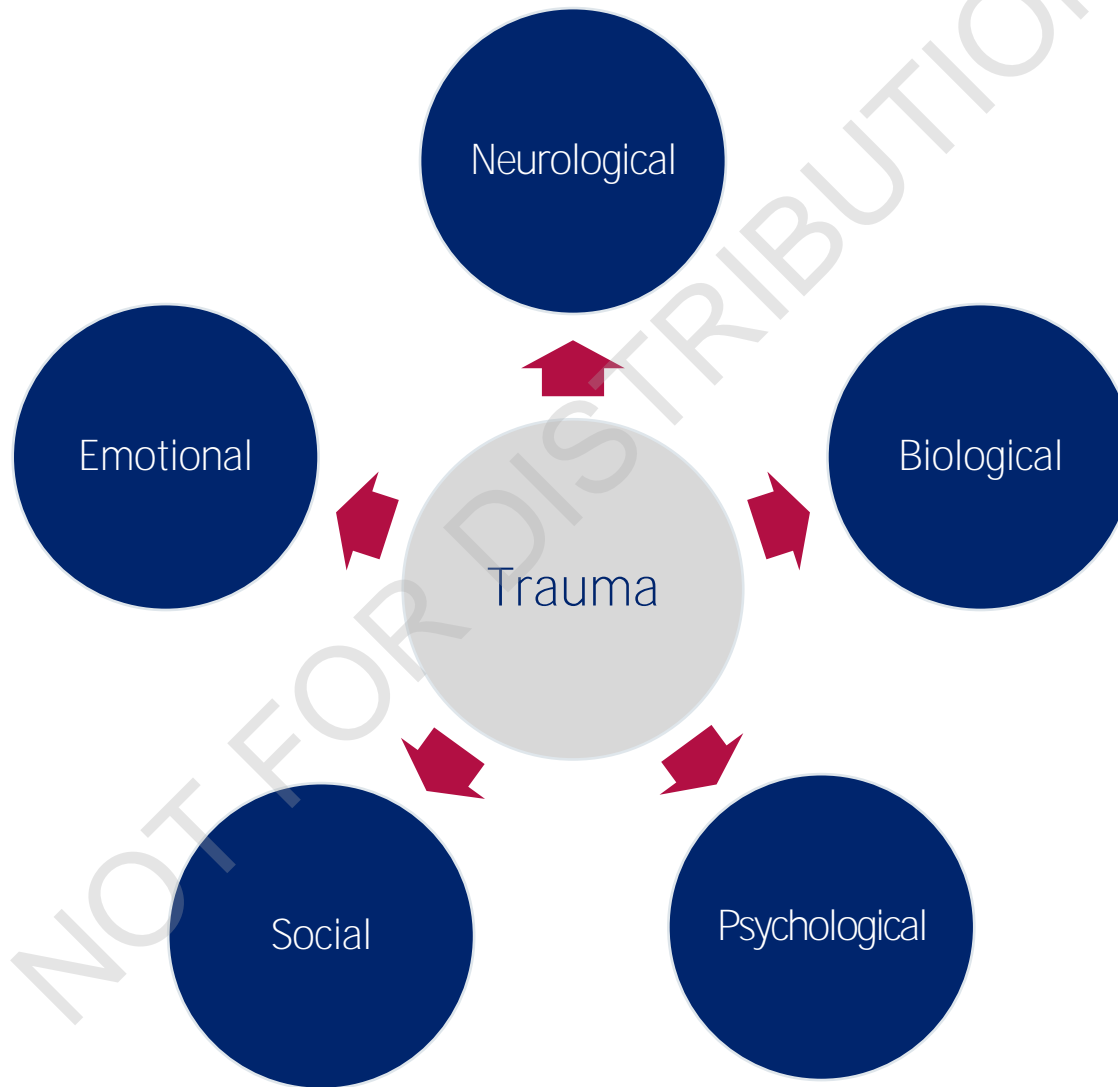
- 7) If you were in this situation again, what would you do differently?
- 8) Did you have any expectations when you got back to the apartment?
- 9) How would you feel if you were the other party?
- 10) How would you like if someone did this to you?
- 11) Do you think you have any responsibility for what happened?
- 12) What clear words or actions gave you consent?



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TRAUMA-INFUSED INTERVIEWING

IMPACT OF TRAUMA ON FUNCTIONING



THE BRAIN'S RESPONSE TO TRAUMA

In response to the anticipated trauma of sexual assault or other violence, hormones can be released into body which impact:

- Ability to react physically

- Ability to think rationally

- Ability to consolidate or group memories

This is a neurobiological response, not aspo. cd .ies



TRAUMA AND INTERVIEWING

Prioritize developing rapport and building trust

Emphasize transparency and predictability

TRAUMA AND INTERVIEWING (CONT.)

Avoid:

Unsupportive responses

Taking control any more than is necessary

Escalating the situation

Verbalizing judgment in the moment

Using trauma as a substitute for evidence or basis to assess credibility

violation

WITNESSES

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STARTING THE WITNESS INTERVIEW

Set the tone:

Thank them for meeting with you

Review your role as a neutral fact-finder

Put them at ease ask about them without being phony

Acknowledge any hesitation/awkwardness as normal

Review retaliation against a witness

Review immunity/amnesty

Review confidentiality

Review expectation of truthfulness

ANTICIPATING WITNESSES' QUESTIONS

Witnesses may ask or say:

Am I being investigated?

What are you really investigating?

How will you use the information you are given?

Is it confidential?

Will I get into trouble by giving you this information?

Will I get anyone else in trouble?

Do I need my parents/lawyer present during interview?

Anticipating these questions and/or covering them in advance can help to ensure that you establish good rapport, which should help you get the truth.

INTERVIEWING WITNESSES

Ascertain their relation to the other parties in the matter

Ask for their opinions about the parties and other witnesses

Ask if either party spoke about the incident(s) after they happened

Ask if they have noticed any significant change in the parties

Ask if they have made any previous statements, such as to law enforcement or private Investigators

Ask all interviewees to contact you if they remember anything else or want to add to their statement

RESISTANT AND QUIET WITNESSES

Gauge their resistance or hesitation and try to individually address their motivation

Answer their questions about the process and purpose of the interview

Explain the expectations of the school, if applicable

Having a framework of specific topics and questions can be helpful with quiet witnesses

Letting them know that you are interested in their perspective and that you are listening to them

LYING WITNESSES

Maintain rapport and avoid accusation

techniques

-solving

Allow opportunity for witness to restate

Try to understand and individually address their motivation

Explain the expectation for truthfulness and impact of dishonesty on the investigation/parties

Calmly bring them back to the questions

If needed, leave the door open for follow up

HELPFUL INVESTIGATION DOCUMENTS

NOT FOR DISTRIBUTION

INVESTIGATION RECORDS

The investigation file (including evidence)

Personal case notes

Witness education records

Investigation Report

Contact Log

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INCIDENT TIMELINE

Timeline of event(s)

Include as much detail as possible

What times can be established from phone calls, email, texts, and receipts?

may lead to
information not previously shared

Timing is highly relevant to alcohol/drug consumption in cases where consent may be an issue

INCIDENT TIMELINE (CONT.)

Timing also highly relevant in cases involving physical evidence such as bruising, bite marks, etc.

In stalking and/or verbal, online sexual harassment cases, times of communication between parties may be important

Establishing a reliable timeline useful when questioning witnesses such as bartenders and Uber/Lyft or cab drivers, and when searching for video footage

WITNESS LIST AND FLOWCHARTING BEST PRACTICES

Keep an updated list of witnesses as you learn of them

Identify which parties or witnesses led you to other witnesses

Keep track of whether witnesses are neutral, loyal and biased, or loyal but objective; include reasoning

In complex cases, use a flowchart to track witnesses the Complainant leads you to, the witnesses Respondent leads you to, and the witnesses who are neutral

Note in the flowchart where witnesses intersect in terms of relationships to each other and/or potential loyalties to parties

WITNESS FLOWCHART SAMPLE

Complainant:
Quinn

Respondent:
Kai

Witness:
Elliot

Witness:
Rory

Witness:
Harper

Witness:
Jamille

Witness:
Riley

Witness:
Sandy



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THE INVESTIGATION REPORT

- The Investigation Report
- Standard of Evidence
- Assessment of Credibility/Synthesis
- Referral to Decision-maker

THE INVESTIGATION REPORT

The investigation report is the one comprehensive document summarizing the investigation, including:

Results of interviews with parties and witnesses

Unbiased summary or compilation of other information collected

- E.g., copies of texts, emails, and social networking messages; information from law enforcement; medical exams; video surveillance; photographs

THE INVESTIGATION REPORT

References or contains all applicable policies(tasmrmT7Js 1a-5sT

THE INVESTIGATION REPORT – G.A.S.

Gather evidence

- Organize the evidence so it is useful to the Decision-maker who applies the policy elements

Assess credibility of parties and witnesses without making ultimate conclusions

- Point out areas of corroboration and issues that may bear on credibility

- Assess evidence to determine what is relevant

Synthesize areas of agreement/areas that are disputed

- Synthesis may also include an appendix of questions posed, questions rejected, and questions considered.

G.A.S. is covered in more detail in Investigator Two

MORE THAN FACT-GATHERING

Review the institutional policies that apply

Follow G.A.S. model, meaning stop short of making a finding, making a recommendation, or doing anything that influences or usurps the independent role of the Decision-maker

If you have an opinion on whether policy was violated, keep it to yourself

Refer report to TIXC for review and hearing/determination

IMPORTANCE OF THE REPORT

Decision process:

Investigator (through the TIXC) refers the investigation report to the Decision-maker(s) without determination
-maker

Report should highlight the relationships between different pieces of evidence

Contradictory, corroborating, (in)consistencies, etc.

point the Decision-maker(s) toward decisive or corroborating evidence without telling them how to interpret it

EVIDENCE AND REPORT REVIEW BY PARTIES

PART 1

Prior to the completion of the investigation report:

Evidence directly related to allegations must:

- Be sent to each party and Advisor

- Be in an electronic format or hard copy

- Include evidence upon which the Recipient does not intend to rely

- Include exculpatory and inculpatory evidence

After sending the evidence, the Investigator(s) must:

- Allow 10 days for written response

- Consider response prior to completion of report

Source: § 106.45(b)(5)(vi)

PARTY ACCESS TO EVIDENCE/REPORT

Whether included as relevant in the investigation report or not, all such directly related evidence is subject to the any hearing to give each party equal opportunity to refer to such evidence during the hearing, including for purposes of cross-

EVIDENCE AND REPORT REVIEW BY PARTIES

PART 2

At least 10 days prior to making a determination regarding responsibility (hearing):

Notice of the hearing (including a list of the evidence to be reviewed and the report to be reviewed) must be provided to the parties at least 10 days prior to the hearing.

LIVE HEARING

A live hearing, whether with a panel or an administrator, is required by OCR for Higher Ed.

Hearing is optional for K-12. Report review is followed by exchange of relevant written questions and responses facilitated by Decision-maker.

Hearings facilitate the parties' ability to review all available evidence and ask questions of witnesses and each other.

Can the hearing be waived?

Investigators should be prepared to be subjected to cross-examination at the hearing.

Avoid off-line discussions of case with any of the Decision-makers.

WHAT ROLE DOES THE INVESTIGATOR PLAY IN A HEARING?

The Investigator is often a key witness at any hearing

The investigation report is admitted as evidence

The Investigator may be questioned and subjected to cross-

Why did you decide some evidence relevant; other evidence was not?

responsibility should not influence the hearing, so

avoided; Investigators should not volunteer, and Decision-makers should not probe for, this information



THE APPEAL PROCESS

Appeals are mandatory under the Title IX regulations

Equitable

Clearly communicated to parties

One level of appeal is best practice

Defined window of time to request appeal

Three clear grounds for appeal (though Recipients may add others)

Committee versus individual determination preferred

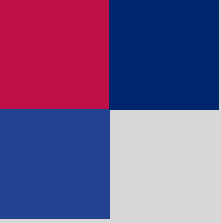
Deference to original hearing authority

Remand

THE ROLE OF THE INVESTIGATOR IN APPEALS

FINALITY OF DETERMINATION

If an appeal is filed, the determination regarding responsibility becomes final on the date that the Recipient provides the parties with the written determination of the results of the appeal.



Questions?

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