

TITLE IX INVESTIGATOR TRAINING

Hosted by Southwestern Adventist University





WELCOME

Training Instructors

Tawny
Alonzo

Director of Training
Title IX Solutions, LLC



Elizabeth
Abdnour

Advisor and Investigator,
Title IX Solutions, LLC



Training Agenda

8:30 a.m. - 8:45 a.m. | Welcome and Introductions

8:45 a.m. - 10:00 a.m. | Understanding Title IX Policies and Procedures

10:00 a.m. - 10:15 a.m. | Break

10:15 a.m. - 11:30 a.m. | Planning a Prompt, Thorough and Impartial Investigation

11:30 a.m. - 12:30 p.m. | Guidelines for Title IX Investigation Questions

12:30 p.m. - 1:30 p.m. | Lunch Break

Training Agenda

1:30 p.m. - 2:15 p.m. | Conducting Title IX Interviews- Part One

2:15 p.m. - 3:00 p.m. | Conducting Title IX Interviews- Part Two

3:00 p.m. - 3:15 p.m. | Break


3:15 p.m. - 4:45 p.m. | Formatting and Drafting the Investigation Report

4:45 p.m. - 5:00 p.m. | Training Debrief and Q&A

Learning Objectives

As a result of this training, participants will be able to:

Understand investigation procedural requirements under Title IX	Develop a basic understanding of the impact of trauma on parties and the basics to interviewing from an empathy-based perspective
Identify steps to designing a thorough Title IX investigation plan	Describe issues of relevance under Title IX
Identify how to serve impartially while conducting investigations	Understand the steps to drafting a Title IX investigation report
Identify helpful verbal and non-verbal communication strategies to improve the effectiveness of Title IX interviews	Understand the steps to compiling a thorough investigation file
Understand investigation procedural requirements under Title IX	



Understanding
Title IX
Policies and
Procedures

In This Session



TITLE IX
CORNERSTONES



TITLE IX DEFINITION
OF SEXUAL
HARASSMENT



RECIPIENT
RESPONSE TO
TITLE IX SEXUAL
HARASSMENT



TITLE IX
GRIEVANCE
PROCESS FOR
FORMAL
COMPLAINTS

Key Documents



2020 Title IX Regulations



Institutional Title IX / Sexual Harassment Policy and Procedures (May be called "Sexual Misconduct Policy")

Title IX Cornerstones



Title IX Coverage

Postsecondary Institutions

Includes:

- Undergraduate schools
- Graduate schools
- Vocational schools
- Professional schools/programs

Elementary and Secondary Schools

Includes:

- Preschools and Pre-K programs
- Private elementary and secondary schools
- Charter schools

Compliance with the Regulations

Recipients must comply with the requirements of Title IX as outlined under the regulations.

Recipients may:

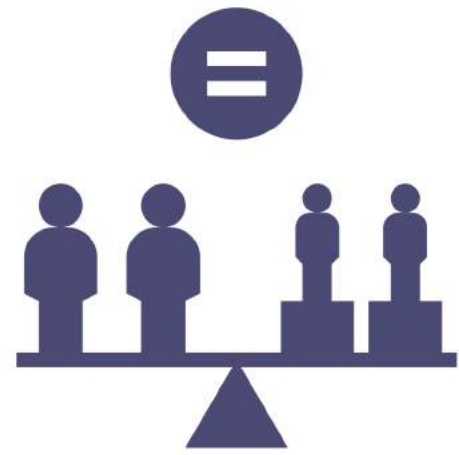
- Provide guidelines, policies or protocols through their codes of conduct beyond the scope of the regulations;

and/or

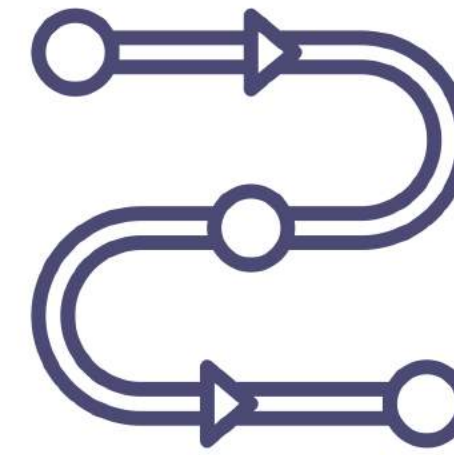
- Provide details regarding policies or procedures which are not addressed in the regulations

Compliance with the Regulations

Recipients must:



Have “prompt and equitable” grievance procedures for complaints of sex discrimination



Have in place a grievance process that complies with §106.45 for formal complaints of sexual harassment

When is Sexual
Harassment
Actionable?



When it denies a
person equal
access to education

Title IX's Application

Regulations apply equally to all persons, regardless of:



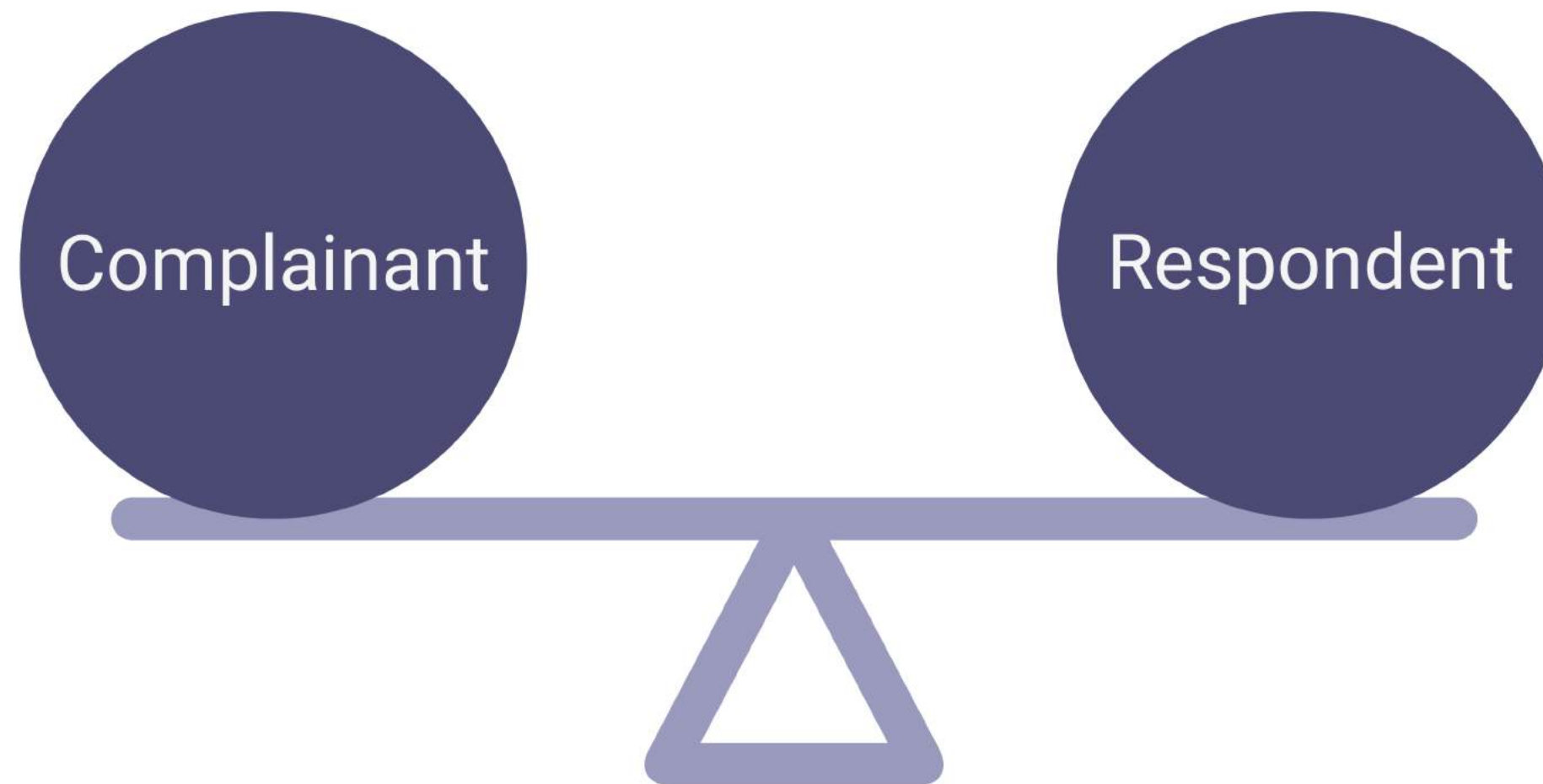
Gender identity or expression



Sexual orientation

Treatment of the Parties

A school must treat both parties equitably and equally throughout the process including supportive measures, investigations, and the grievance process.



Bias and Conflict of Interest

§ 106.45 (b)(1)(3)
Grievance process
for formal
complaints of
sexual harassment.

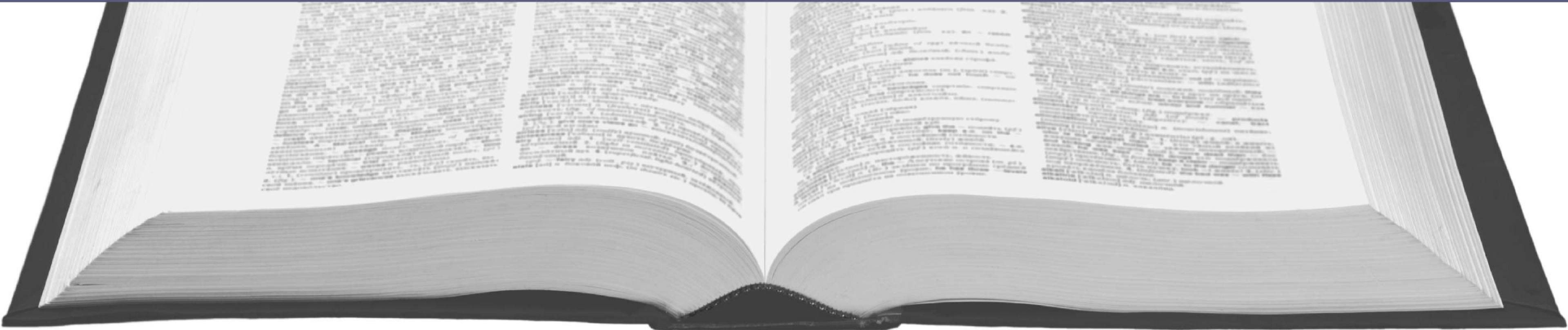
"...that any individual designated by a recipient as a Title IX Coordinator, Investigator, Decision-Maker, or any person designated by a recipient to facilitate an informal resolution process, not have a conflict of interest or bias for or against complainants or respondents generally or an individual complainant or respondent."

Title IX Personnel



Recipients have the flexibility to use their own employees or external Title IX Investigators, Adjudicators, or Informal Resolution Facilitators

Title IX Definition of Sexual Harassment



Definitions of Sexual Harassment

Conduct on the basis of sex that satisfies one or more of three types of behavior:

1

**QUID PRO QUO
HARASSMENT**

2

**UNWELCOME
CONDUCT THAT
IS SO "SEVERE,
PERVASIVE AND
OBJECTIVELY
OFFENSIVE" THAT
IT EFFECTIVELY
DENIES A PERSON
EQUAL ACCESS
TO EDUCATION**

3

**SEXUAL
ASSAULT**

**DATING
VIOLENCE**

**DOMESTIC
VIOLENCE**

STALKING

1

QUID PRO QUO HARASSMENT

"An employee of the recipient conditioning the provision of an aid, benefit, or service of the recipient on an individual's participation in unwelcome sexual conduct."

§ 106.30- Definitions

- May be expressed or implied
- Need not be "severe" or "pervasive" as a single incident
- Considered inherently "offensive" and jeopardizes equal educational access

2

**“SEVERE,
PERVASIVE AND
OBJECTIVELY
OFFENSIVE”**

"Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the recipient's education program or activity"

§ 106.30- Definitions

3

**SEXUAL
ASSAULT**

**DATING
VIOLENCE**

**DOMESTIC
VIOLENCE**

STALKING

Specific offenses defined under the FBI's
Uniform Crime Reporting (U.C.R) program.

20 U.S.C. 1092 (f)(6)(A)(v)

Sexual Assault

Sex Offenses, Forcible:

Any sexual act directed against another person, without the consent of the victim including instances where the victim is incapable of giving consent.

Forcible Rape

Forcible Sodomy

Sexual Assault with an Object

Forcible Fondling

Sex Offenses, Nonforcible:

Unlawful, nonforcible sexual intercourse (not including prostitution offenses).

Incest

Statutory Rape

20 U.S.C. 1092(f)(6)(A)(v)

Dating Violence

Violence committed by a person

- a. who is or has been in a social relationship of a romantic or intimate nature with the victim; and
- b. where the existence of such a relationship shall be determined based on a consideration of the following factors:
 - i. The length of the relationship.
 - ii. The type of relationship.
 - iii. The frequency of interaction between the persons involved in the relationship.

34 U.S.C. 12291(a)(10)

Domestic Violence

Felony or misdemeanor crimes of violence committed by a current or former spouse or intimate partner of the victim:

- a. by a person with whom the victim shares a child in common,
- b. by a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner,
- c. by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction receiving grant monies,
- d. or by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the jurisdiction.

34 U.S.C. 12291(a)(8)

Stalking

Engaging in a course of conduct directed at a specific person that would cause a reasonable person to:

- Fear for his or her safety or the safety of others; or
- Suffer substantial emotional distress

34 U.S.C. 12291(a)(30)

Consent



The Regulations do not include a definition of consent and do not require recipients to adopt a particular definition of consent, including “affirmative consent,” with respect to sexual assault.

Consult your sexual harassment policy to determine if consent has been defined at an institutional level.

Recipient Response to Title IX Sexual Harassment




Evaluating Reports for Title IX Sexual Harassment


Threshold criteria (all four must be met to constitute a potential Title IX violation):



Incident constitutes sexual harassment as previously defined



School must have “actual knowledge” of an allegation of the incident of sexual harassment



Conduct must have occurred within the school’s own education program or activity



Alleged harassment must have occurred within the United States

Actual Knowledge Defined

§ 106.30 Definitions.

"Notice of sexual harassment or allegations of sexual harassment to a recipient's Title IX Coordinator or any official of the recipient who has authority to institute corrective measures on behalf of the recipient, or to any employee of an elementary and secondary school"

- Does not need to be a written statement or a formal complaint
- May be conveyed by any person, not just the Complainant
- May be "written or oral, by observation, via a newspaper article or other means"



Postsecondary Institutions - reporting to Title IX Coordinator always constitutes actual knowledge

Elementary and Secondary Institutions - reporting to ANY employee constitutes actual knowledge

Education Program or Activity Defined

§ 106.44

Recipient's response to sexual harassment.

Locations, events, or circumstances over which the recipient exercised substantial control over both the respondent and the context in which the sexual harassment occurs, and also includes any building owned or controlled by a student organization that is officially recognized by a postsecondary institution.

- School may offer supportive measures if harassment occurred outside of the educational program or activity
- School's responsibility is limited under Title IX regulations, though conduct outside of this jurisdiction may be addressed by Code of Conduct
- Schools must make fact-specific determinations regarding substantial control over the respondent and the context

Avoiding Deliberate Indifference

Schools must not act in a manner that is deliberately indifferent, meaning:

"...clearly unreasonable in light of the known circumstances."

Recipient's Response

Qualifying Incidents of Sexual Harassment

- Treat Complainants and Respondents equitably by offering supportive measures

? When do they apply?

? What do they include?

- Follow a grievance process that complies with §106.45 of the Title IX Regulations

Receipt of a Report of Title IX Sexual Harassment

The Title IX Coordinator must promptly contact the Complainant to:

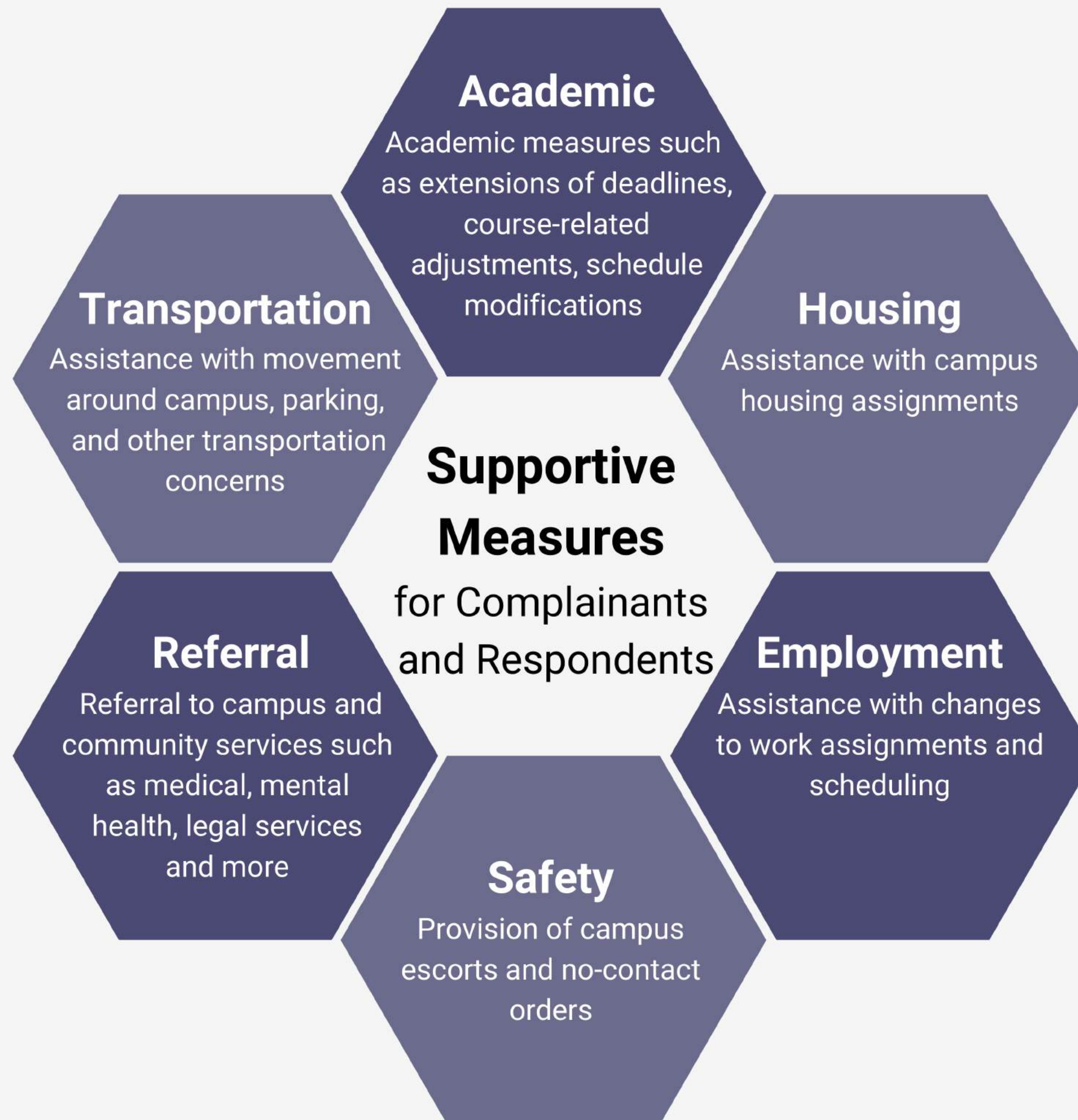
1. Discuss the availability of supportive measures as defined in §106.30;
2. Consider the Complainant's wishes with respect to supportive measures;
3. Inform the Complainant of the availability of supportive measures with or without the filing of a formal complaint;
4. Explain to the Complainant the process for filing a formal complaint.

Supportive Measures Defined

§ 106.30 Definitions.

"non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the complainant or the respondent before or after the filing of a formal complaint or where no formal complaint has been filed"

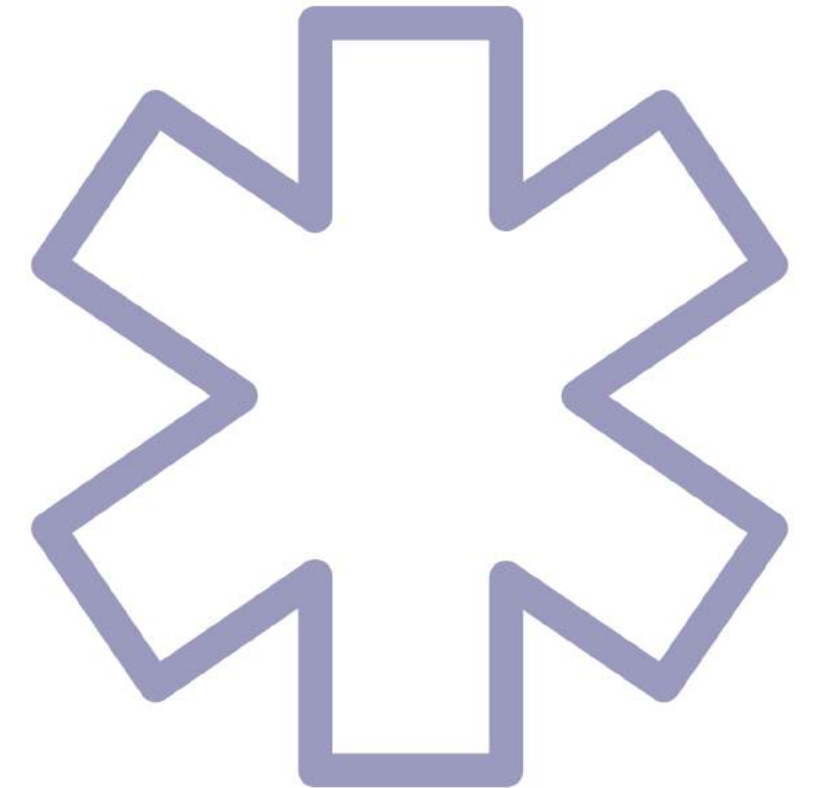
- Intended to restore Complainant's access to educational program or activity



Emergency Removal

The process by which to remove students from campus pending the outcome of the formal grievance process

- ❖ Title IX Coordinator conducts a safety and risk analysis
- ❖ Immediate threat to physical health or safety
- ❖ Provide Respondent with notice and opportunity to challenge the decision

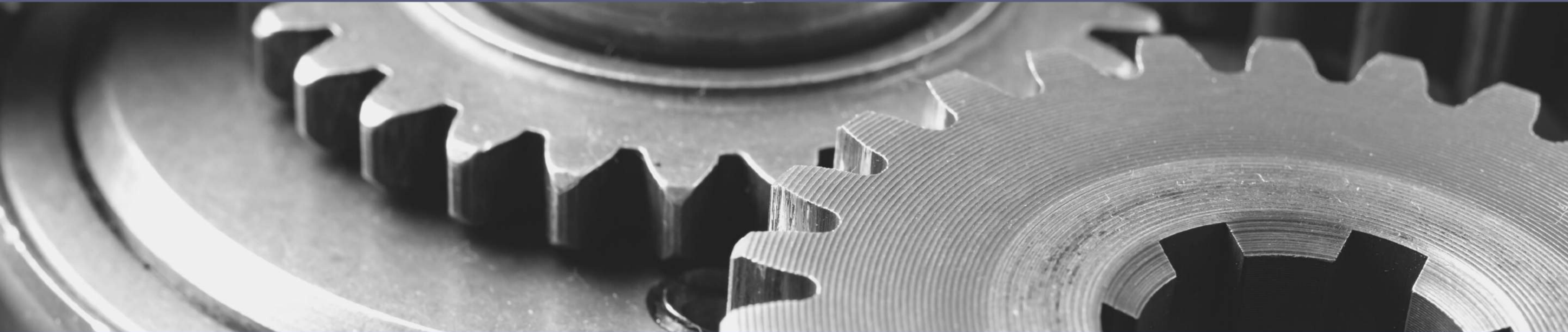


Administrative Leave

- ❖ Applies to non-student employees



Title IX Grievance Process for Formal Complaints



Title IX Grievance Process

REPORT/
REVIEW

FILING OF A
FORMAL
COMPLAINT

INVESTIGATION

DECISION-
MAKING
PROCESS

WRITTEN
DETERMINATION

APPEALS
PROCESS

INFORMAL RESOLUTION
(OPTIONAL, BUT MAY BE INITIATED IN THIS WINDOW)

Formal Complaint Defined

§ 106.30 Definitions.

"Document filed by a complainant or signed by the Title IX Coordinator alleging sexual harassment against a respondent and requesting that the recipient investigate the allegation of sexual harassment"

- May be filed by parent or guardian who has a legal right to act on behalf of an individual
- At the time of filing, complainant must be participating in or attempting to participate in the education program or activity of the recipient with which the formal complaint is filed
- May be filed in person, by mail, or by electronic mail
 - Can use the contact information required to be listed for the Title IX Coordinator or any additional method designated by the school
- Must contain the Complainant's physical or digital signature, or otherwise indicates that the complainant is the person filing the formal complaint
- If Title IX Coordinator signs a formal complaint, the Title IX Coordinator is not a Complainant or otherwise a party

Report vs. Formal Complaint

Report

- May allege sexual harassment, sex discrimination, or sexual misconduct
- May be written or oral
- May be submitted by any person, not just the alleged victim
- May be anonymous
- May be made at any time
- May be made in person or by mail, phone, email or any other means

Formal Complaint

- Alleges Title IX sexual harassment
- Required for initiation of the Title IX grievance process
- Required to be filed and signed by the Complainant (or Title IX Coordinator in certain instances)
- Cannot be filed anonymously or by a third-party

Dismissal of a Formal Complaint

School MUST dismiss if the conduct alleged in the formal complaint:

Would not constitute sexual harassment as defined in §106.30 even if proved

Did not occur in the recipient's education program or activity

Did not occur against a person in the United States



Dismissal does not preclude the school from investigating and adjudicating under another provision of the school's Code of Conduct.

Dismissal of a Formal Complaint

School MAY dismiss if the conduct alleged in the formal complaint:

Complainant notifies the Title IX Coordinator in writing that the Complainant would like to withdraw the formal complaint or any allegations therein

The Respondent is no longer enrolled or employed by the recipient

Specific circumstances prevent the recipient from gathering evidence sufficient to reach a determination as to the formal complaint or allegations therein



A complaint will not be dismissed because a Complainant remains at or leaves the school.

Consolidation of Formal Complaints

Schools may consolidate formal complaints:

- ❖ Against more than one Respondent
- ❖ By more than one Complainant against one or more Respondents
- ❖ By one party against the other, where the allegations arise out of the same facts or circumstances

Grievance Process

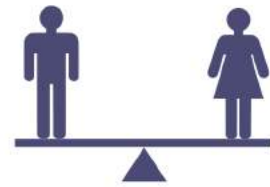
A recipients grievance process MUST:



Treat Complainants and Respondents equally



Require objective evaluation of relevant evidence



Require Title IX personnel not have bias and conflict of interest



Include a presumption that Respondent is not responsible until a determination is made



Include reasonably prompt time frames



Describe range of possible disciplinary sanctions and remedies



State the standard of evidence



Include the permissible bases for appeal



Describe the range of supportive measures available



Not require or rely on privileged information, unless waived

Standard of Evidence

Standard used to determine whether or not a sexual harassment policy violation occurred.

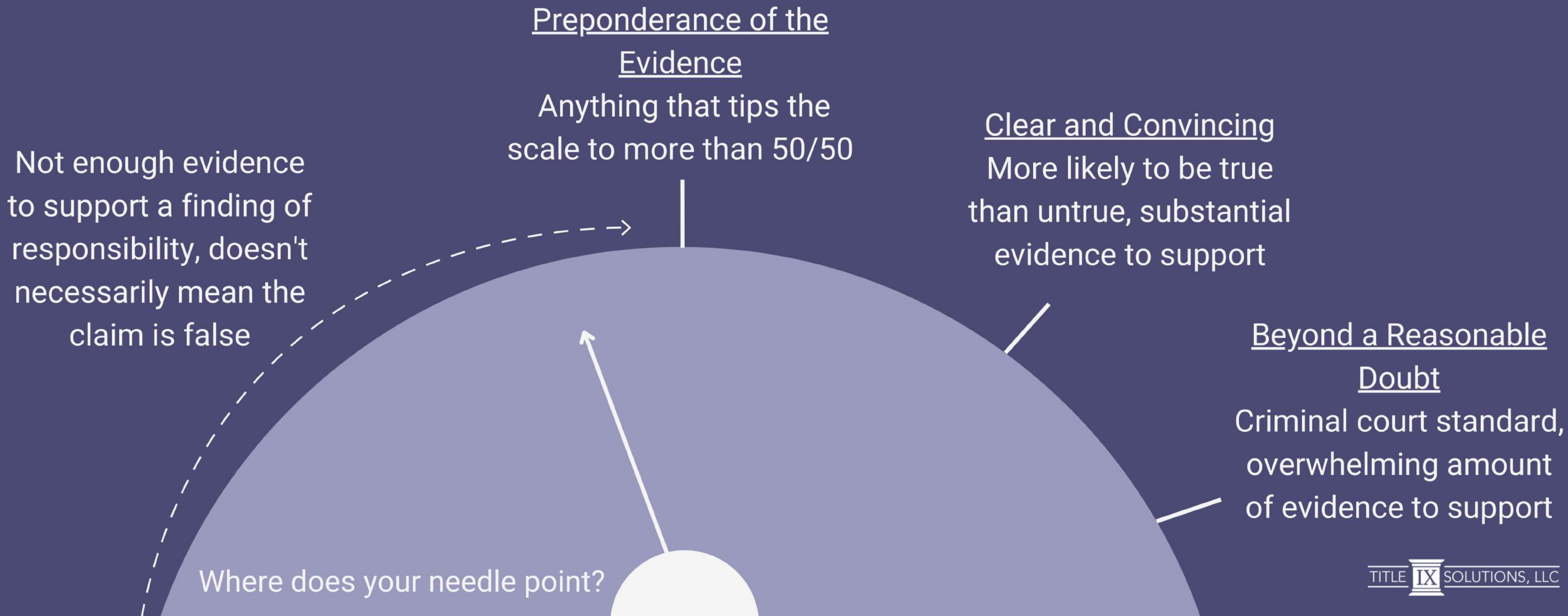
Preponderance of the Evidence

- Evidence demonstrates it is “more likely than not” the alleged conduct or policy violation occurred
- Greater than 50% chance a policy violation occurred

Clear and Convincing

- Evidence is highly and substantially more likely to be true than untrue
- A higher standard of evidence to meet when compared to the “preponderance of the evidence” standard

Standard of Evidence



Notice of Allegations

- Notice of the school's grievance process
- Sufficient details of the allegations, including:
 - Identities of the parties involved;
 - The conduct allegedly constituting sexual harassment;
 - The date and location of the alleged incident(s)
- Sufficient time period for the parties to prepare a response before interview
- Presumption of not responsible
- Determination of responsibility at the conclusion of the grievance process
- Allowance of an Advisor
- Right to inspect and review all evidence gathered during the investigation
- Reference to any policy in the school's code of conduct which prohibits knowingly making false statements

Title IX Investigation

A recipient must investigate a formal complaint.

- Burden of proof and gathering of evidence is on the school
- Medical and similar privileged records are not available unless the party (or parent/guardian) provides written consent for release
- Both Parties must be given the equal opportunity to present witnesses and evidence
- Neither party may be restricted in their ability to discuss the allegations or gather and present relevant evidence

Investigation of Formal Complaints

- Both parties have the right to an Advisor throughout the grievance process
- School must give written notice of any meeting in which the party is required to participate
- Parties and their Advisors must be given equal access to inspect and review all evidence gathered
- Parties must be given at least ten days to file a written response regarding the investigation evidence
- School may require the parties to submit any additional evidence prior to the finalization of the investigation report

Investigation Reports

- Evidence provided to the parties must also be available at the hearing with each party having equal access
- Investigator must complete a report that fairly summarizes relevant information at least ten days prior to a scheduled hearing, and;
 - Must provide copies to each party and their Advisors
- Investigator may include recommended findings or conclusion in the investigative report
 - Decision-Maker is under the independent obligation to objectively evaluate relevant evidence in making a determination

Title IX Hearings



A postsecondary school must provide for a live hearing

- The Decision-Maker in a hearing cannot be the same person as the Title IX Coordinator or the Investigator

The "Decision-maker(s) must permit each party's advisor to ask the other party and any witnesses all relevant questions and follow-up questions including those challenging credibility..."

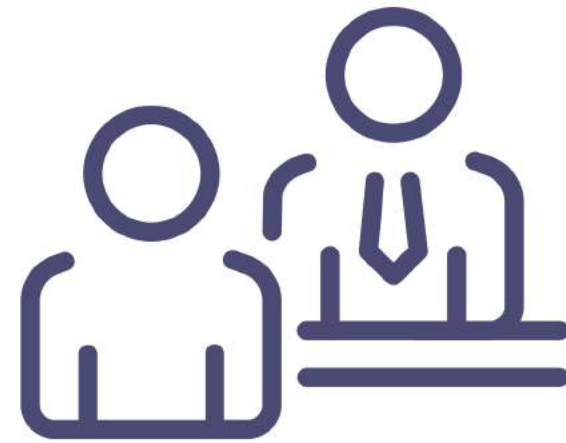
§106.45(b)(6)(i)

Grievance Process

Hearings



Hearings may occur with parties present in the same geographic location or live, virtually



If a party does not have an Advisor, one must be provided by the institution



Only relevant questions may be asked during cross-examination. Decision-Maker will determine relevance

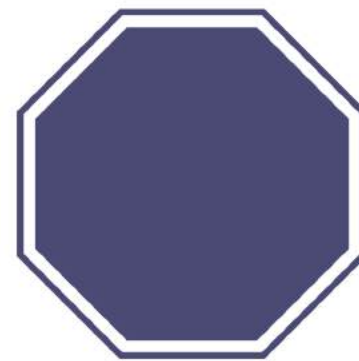
Written Determination Regarding Responsibility

- Determination reached by applying the preponderance of evidence or clear and convincing standard (consult your policy to determine which evidence standard your institution uses)
- Written determination must include:
 - Identification of the allegations
 - Description of the procedural steps taken
 - Findings of fact supporting the determination
 - Conclusions regarding the application of the recipient's code of conduct to the facts
 - Statement of, and rationale for, the result as to each allegation, including:
 - A determination regarding responsibility
 - Any disciplinary sanctions the recipient imposes on the Respondent
 - Whether remedies designed to restore or preserve equal access to education program
 - Bases for appeal

Written Determination Regarding Responsibility



The recipient must provide the written determination to parties simultaneously



Determination is final after appeal determination (if appeal was filed) or upon expiration of appeal window



School is responsible for provision of remedies

Appeals

- Must offer an appeal process with the following bases of appeal
 - Procedural irregularity
 - New evidence, not previously available, that could affect the outcome
 - The Title IX Coordinator, Investigator or Decision-Maker had a conflict of interest or bias
- Can provide additional bases, but must do so equally to both parties
- Appeal Decision-Maker cannot have a conflict of interest and cannot be the Title IX Coordinator, Investigator, or Decision-Maker, must be trained
- Parties must be notified in writing of
 - Other party's decision to appeal
 - Decision rendered upon review of the appeal
- Parties must be offered opportunity to provide written argument

Informal Resolution

- School may offer informal resolutions of alleged incidents
 - Mediation, restorative justice, or other forms of alternative dispute resolution
- Does not require a full investigation or adjudication
- Must be voluntary, with the parties being fully informed of the process and options and the parties must consent in writing to the process
- Informal resolution cannot be offered or facilitated by a recipient in a case involving an employee's sexual harassment of a student

Retaliation

"Retaliation prohibited. No recipient or other person may intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by title IX or this part, or because the individual has made a report or complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing under this part.

§ 106.71



Let's take a break!

A black and white photograph of a spiral-bound notebook with a pen resting on it. The notebook is open to a page with a calendar grid. The pen is black with a silver clip. The calendar grid shows dates from 17 to 30. The text "Tuesday" is visible on the left edge. The text "Hanukkah" and "Boxing Day" are visible on the calendar page. The text "TITLE IX SOLUTIONS, LLC" is visible in the bottom right corner.

Planning a
Prompt,
Thorough, and
Impartial
Investigation

In This Session



FORMING AN
INVESTIGATIVE
TEAM



REVIEWING KEY
DOCUMENTS



DRAFTING AN
INVESTIGATIVE
PLAN



SETTING THE
SCENE FOR
INVESTIGATIVE
INTERVIEWS

Forming an Investigative Team



Forming an Investigative Team

Factors to Consider:

- Experience with Title IX investigations, specific forms of sexual harassment, student or employee cases, etc.
- Availability to conduct an investigation
- Conflicts of interest and/or actual and perceived biases



Additional Factors to Consider

Gender Balance

Native Language of the Parties

- Lead Investigator is a native speaker or very fluent in the interviewee's language
- If not possible, interviews may require a translator
 - The translator should be briefed on the Title IX process and relevant terms

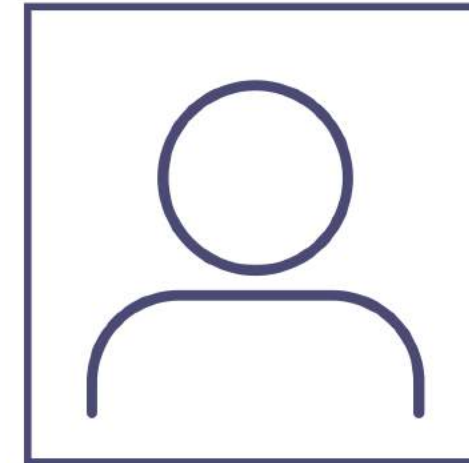
Rapport

Team of Two Investigators



LEAD INVESTIGATOR

- Coordinates with the Title IX Coordinator and the Parties
- Leads investigative interviews
- Drafts the Investigative Report and prepares the Investigation File



CO-INVESTIGATOR

- Takes notes during interviews, notes questions, and asks questions during the interview if prompted by the Lead Investigator

Communicating With Your Co-Investigator

As a team, it is important to delegate tasks and play off one another's skills and experiences. At a minimum, discuss the following topics with your co-investigator:



- Who is the Lead Investigator?
- Who will take notes during interviews?
- Who will communicate with the Title IX Coordinator?
- Who will communicate with the Parties and witnesses?
- Who will draft the Investigative Report?

Reviewing Key Documents



Documents to Review



Institutional Title IX / Sexual Harassment
Policy and Procedures
(May be called "Sexual Misconduct Policy")



Initial Report (if available)



Formal Complaint



Notice of Allegations (Notice of Investigation)



Internal Templates

Institutional Title IX / Sexual Harassment Policy and Procedures

This policy outlines key definitions, investigation procedures, rights of the parties, and the institution's overall requirements under Title IX.

- Review the Policy and Procedures numerous times and at every stage of the investigation process
 - The Policy and Procedures must be followed throughout the investigation
- Review the Rights of the Parties
 - For example: Parties are not required to participate in the investigation, have the right to share their account and have it on the record, and may have an Advisor
- Direct Parties and Witnesses to the Policy and Procedures
- Direct questions or concerns about the Policy or Procedures to the Title IX Coordinator

Incident Report and Formal Complaint

Incident Report

- Submitted by Complainant or a third party
- May be anonymous
- Makes the institution aware of an alleged incident
- Does not initiate the Title IX grievance process

Formal Complaint


- Signed and submitted by the Complainant or Title IX Coordinator
- Alleges sexual harassment against a Respondent
- Requests the school investigate the allegation
- Required for the Title IX grievance process to begin


Sample initial report of potential concern


To Manager
Done
Create New

Move Rules OneNote
Unread/Read
Categorize
Follow Up
Search People
Address Book
Filter Email
Store

Reply Reply All Forward

 Rhonda Logan | Tawny Alonzo; Tom Denton
Title IX Issue- Assistance Needed

 If there are problems with how this message is displayed, click here to view it in a web browser.

 A. Baker Email_3.6.23
Contoso-my.sharepoin...

Tawny,

I just got a concerning email from one of my students. I think this is going to be something for your office to look into. Read the attached Word doc with Alex Baker's email and please give me a call at your earliest convenience.

Best,

Rhonda



Issue Date: 8-1-2019



T I G E R S

Alex Baker

SID: 6527411

Complainant



Issue Date: 1-11-2017



Jordan Reynolds

SID: 6527476

Respondent

Sample Formal Complaint

Sample Formal Complaint

March 10, 2023

To the Sample University Title IX Coordinator,

On the night of March 3rd, a Friday, the Music Department held a celebratory dinner for all seniors who will be graduating this spring. The students, department faculty, and some program alumni were invited to attend the event which was held in the main banquet room in Briggs Hall. The event started at 7 PM. I was seated at a table with two Music Department faculty members, one of which was my professor Dr. Logan, and three other students, one of which was Jordan Reynolds. I thought the dinner was pleasant and overall, conversation seemed pretty normal. However, there was a cash bar provided, with wine and beer, and I saw Jordan Reynolds drinking quite a bit. I noticed Jordan getting louder and more talkative with each drink they had. I saw Jordan drink four beers, but I don't know if they had more than that because I was not around them until we were seated. I don't drink, so I didn't visit the bar.

When the event was over, Dr. Logan asked if she could have some help taking two boxes of table decorations back to the Music Department administrative office also in Briggs Hall. I wanted to be helpful, so I volunteered to take a box back. Jordan immediately jumped in saying they would join me. I was somewhat annoyed because they were clearly intoxicated and had been looking at me strangely all night.

Dr. Logan informed me that the main office was unlocked and that we could place the boxes behind the main reception desk. Dr. Logan said she would lock up later when she gathered her personal belongings from her office. Jordan and I walked down the hall to the Music Department office where it was extremely dark. We put the boxes behind the reception desk as Dr. Logan instructed us to do. I felt weird about being in there with them, so I immediately made my way to the door so I could go to my car and go home. Jordan ran to the door and pushed it closed, pinning me between themselves and the door. I was terrified. Jordan told me we should "take advantage of the privacy" and started telling me how attracted they are to me. I froze and couldn't say anything or even more. Jordan forcefully began kissing my neck and had my arms held down to my side. Jordan started pulling my dress up and put their hand inside my underwear. I started to squirm around and felt myself crying. Jordan said something like, "You'll enjoy it if you just let it happen," and told me we should keep going. As they started to unbuckle their belt, I had enough space to push them away and ran out the door as fast as I could.

As I was running down the hall, I passed Dr. Logan, who I think saw me crying. I couldn't stop because I was afraid Jordan would follow me into the parking lot. I missed classes on Monday because I didn't want to risk bumping into Jordan on campus. One of the classes I missed was Dr. Logan's capstone class, which I never skip. I emailed her to tell her I was sick, but she asked if my absence had anything to do with what she saw Friday night. I didn't know what to do, so I just broke down and told her everything.

I would like to file a formal complaint against Jordan Reynolds. I feel unsafe and scared.

Signed,



Alex Baker

Notice of Allegations

- Prepared by the Title IX Coordinator and sent to the Complainant and Respondent at the start of the investigation
- Contains significant detail about the alleged incident, including the identities of the involved parties, conduct allegedly constituting sexual harassment, and the date and location of the reported incident
- Ideally includes the definitions of the alleged policy violations



March 13, 2023

Jordan Reynolds

Sent electronically to jreynolds@sampleu.edu

PERSONAL AND CONFIDENTIAL

Regarding Case Number: 2023-Q1-0120

Dear Jordan:

The Sample University ("University") Title IX Office has received a Formal Complaint from Alex Baker ("Complainant") alleging that you ("Respondent") have engaged in conduct that may be a violation of Sample University policy.

Complainant alleges the following:

On March 3, 2023 at approximately 7:00 PM, Respondent attended an event honoring the Music Department graduating senior students. Following the event, in the Music Department administrative office, located in Briggs hall on the campus of Sample University:

- Respondent kissed Complainant without consent;
- Respondent placed their hand up Complainant's dress and inside of their underwear without consent

This letter serves as formal notice that the Title IX Office will be conducting a prompt, thorough, and impartial investigation of these allegations in accordance with the procedures detailed in the Sample University Sexual Harassment Policy, SU Policy 237.

You are alleged to have engaged in Sexual Harassment as defined in the Sample University Sexual Harassment Policy, specifically:

237(4)(iii) "Sexual assault" - includes any sexual act directed against another person, forcibly and/or against that person's will; or not forcibly or against the person's will where the victim is incapable of giving affirmative consent.

(b) Fondling: The touching of the private body parts (including genitalia, anus, groin, breast, inner thigh or buttocks) of another person for the purpose of sexual gratification, without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental incapacity.

237(4)(ii) "Sexual harassment" - means conduct on the basis of sex that satisfies one or more of the following:

Sample Notice of Allegations

Sample Notice of Allegations

- (a) An employee of the University conditioning the provision of an aid, benefit, or service of the University on an individual's participation in unwelcome sexual conduct (commonly referred to as a "quid pro quo");*
- (b) Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the University's education program or activity (commonly referred to as a sexually or gender-based "hostile environment").*

Respondent is considered "not responsible" for violating University policy unless and until the University determines at the conclusion of the grievance process, by a preponderance of the evidence, that the Respondent is responsible for the conduct. The burden is on the University to gather evidence, investigate the allegations, summarize all relevant evidence in an investigation report, conduct a live hearing for the cross-examination of the parties and reach a final determination for all matters alleged.

You may have an advisor of your choice assist or represent you in this process....

Why is the Notice of Allegations important?

If written correctly, it can lay the foundation for an investigation.

- Outlines details from the alleged incident to be verified during the investigation
- Contains names of potential witnesses and/or sources of evidence to be collected
- Presents the timeline of the incident and reporting process
- Helps investigators focus on the key questions that are to be addressed during the Title IX Grievance Process

Internal Templates

Your institution may provide templates for you to use during the investigation process. Templates may include:



Invitation to
Interview



Interview
Preamble



Advisor
Agreement



Notice of
Investigative
Report



Investigative
Report
Format

Drafting an Investigative Plan



Getting Started

Before drafting your plan, confirm that you have completed the following steps:

- Formed your investigative team
- Reviewed key documents, including the Combined Discrimination and Harassment Policy, Procedures Under the Nondiscrimination, Discriminatory Harassment or Sexual Misconduct Policies Notice of Allegations, and the Formal Complaint
- Conducted an assessment for potential conflicts of interest or biases
- Preserved any potential evidence
- Communicated with the Title IX Coordinator about the case

Key Questions to Keep in Mind

- ① What is the alleged incident and did it occur?
- ② Is the alleged incident a policy violation?

As investigators, these questions help us:

- Understand the scope of the investigation and what is “relevant” and “directly related”
- Recognize key words from policy violations to address during the investigation
- Focus the investigation planning, interview questions, interview summaries & investigative report

Drafting the Investigation Plan

At a minimum, the Investigation Plan includes:

- 1 Names of the Investigators
- 2 Names of the involved parties
- 3 Summary of allegations
- 4 Definitions of alleged policy violations
- 5 Witness list
- 6 Order of interviews for parties and witnesses
- 7 Evidence list
- 8 Preliminary investigation timeline



Investigation plans may change and evolve throughout the investigation! Be flexible!

Drafting the Investigation Plan



Start with any information you already know.

Input information from the Notice of Allegations (Notice of Investigation), Formal Complaint, and Report!

1 Names of Investigators

Include any known information, such as:

- Full name
- Title
- Email address
- Phone number
- Designation of Lead Investigator
- Known scheduling conflicts (vacations, conferences, etc.)

2 Names of the Parties

Include any known information, such as:

- Full name
- Contact information
- Parent and/or guardian name(s)
- Parent and/or guardian contact information
- Status at institution
- Age, Grade/Year
- Native language
- Other special considerations or (accommodations needed
- Name of Advisor (if known), relationship to Advisor (friend, mother, attorney, etc.)

3 Summary of Allegations

Include information from the Notice of Allegations, Formal Complaint, and Report, such as:

- Summary of the incident
- Date of the incident
- Location of the incident
- Encounters between the parties before and/or after the incident
- Other available information

4 Definitions of Policy Violations

Include verbatim definitions:

- Ideally provided in the Notice of Allegations
 - If not provided in the Notice of Allegations, consult with the Title IX Coordinator about potential policy violations
- Analyze the language of the policy violation
- Recognize if more than one policy violation is listed

A thorough understanding of the policy violation will assist you in preparing interview questions.

Analyzing Potential Policy Violations

Forcible Fondling: The touching of the private body parts of another person (buttocks, groin, breasts), for the purpose of sexual gratification, forcibly, and/or against that person's will (non-consensually), or not forcibly or against the person's will in instances in which the victim is incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity.

Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the district's education program or activity.

5 Witness List

Include any known information, such as:

- Full name
- Contact information
- Status at institution
- Age, Grade/Year
- Relationship with Complainant or Respondent
- When and how they were identified as a witness

6 Order of Interviews

Order investigative interviews logically

- Typically, Complainant is interviewed first
- Then, Respondent and witness interviews follow

Be strategic planning interviews, particularly with Respondent and witnesses

- Scheduling conflicts, delays, or a refusal by the witness to participate may impact your ideal order of interviews
- Witnesses may be added throughout the investigation

7 Evidence List

Identify known and potential sources of evidence, such as:

- Communication between Complainant and Respondent
- Digital evidence and social media posts/messages
- Surveillance footage, key card logs, etc.

Document which evidence has already been obtained or provided, noting who provided the evidence

Outline how other sources of evidence will be obtained (i.e., asking parties for evidence, coordinating with campus police/campus security, etc.)

8 Timeline of Investigation

Consider the duration of each stage of the investigation:

- Confirm the investigation's start date
- Set investigation milestones
 - Can be helpful to work backwards from the goal end date of the investigation
- Many timeframes are outside of the investigator's control
- Check policy to determine timeframes for:
 - Number of days required between noticing Parties of an interview and conducting the interview
 - Amount of time allotted for Parties to review and respond to preliminary Investigative Report
- You may have additional responsibilities to juggle while investigating
- Consider potential roadblocks (school breaks, Party/Advisor conflicts, personal conflicts, etc.)

Drafting an Investigation Plan



Remain flexible and focused.

Even the most efficient investigations can be time-consuming.

Practice Drafting an Investigation Plan!

Review the Sample Report, Formal Complaint, and Notice of Allegations.

Input the appropriate information into the downloadable Investigation Plan sample.

Setting the Scene for Investigative Interviews



Key Considerations

As you prepare to interview Parties and witnesses, keep in mind the following:

- Title IX is an administrative, not judicial, process
- Investigators must remain neutral
 - Neutral does not mean you cannot have empathy
- Challenging process for all individuals involved can be emotional and time-consuming
- Consistent Communication can alleviate challenges
 - Build in moments for your own self-care and reflection

Structure the Environment

- The interview space itself is often overlooked!
 - Locate a space on campus with several elements in mind, including:



PRIVACY



SAFETY



COMFORT



SPACE

Virtual Investigative Interviews

It is much harder to control the setting with virtual interviews

- Tell the party/witness exactly how to join the meeting
 - Check parties' access to technology
 - Troubleshoot technology issues
- Advise the appropriate setting for the interview (if possible)
 - Private space, comfortable seating, etc.
- Advise what they should bring such as tissues, water, etc.
- Control your own setting
 - Maintain successful eye-contact, appropriate lighting, privacy, etc.

Notice of Interviews

After planning the investigation, you know:

- Most of whom needs to be interviewed
- What specific allegations you are investigating/policies are implicated

Every party must be sent a Notice of Interview with the following information:

- Date, time, location, expected attendees, and purpose of the interview
- Reminder regarding role of the Advisor
- Confirm with Title IX Coordinator
- How to prepare- evidence etc
- Time commitment
- Location
- Words of support
 - Same to both parties

Scheduling Interviews

Interview the
Complainant before
Respondent and
witnesses

Typically one to
two interviews
per person, but
could be more

Allow at least one
hour for each
interview

Be patient and
flexible in
scheduling, but do
not unreasonably
delay process

Delays for Good Cause

"...a process that allows for the temporary delay of the grievance process or the limited extension of time frames for good cause with written notice to the Complainant and the Respondent of the delay or extension and the reasons for the action. Good cause may include considerations such as the absence of a party, a party's advisor, or a witness; concurrent law enforcement activity; or the need for language assistance or accommodation of disabilities;"

34 CFR §106.45(b)(1)(v)

Are the following delays for good cause?

A Party's attorney
Advisor is booked
for the next two
months

The Respondent is
leaving the country
for a semester-
long study abroad
experience

The Title IX
Investigator has
been waiting six
weeks for security
footage to be
provided by
Campus Police

Guidelines for
Title IX
Investigation
Questions



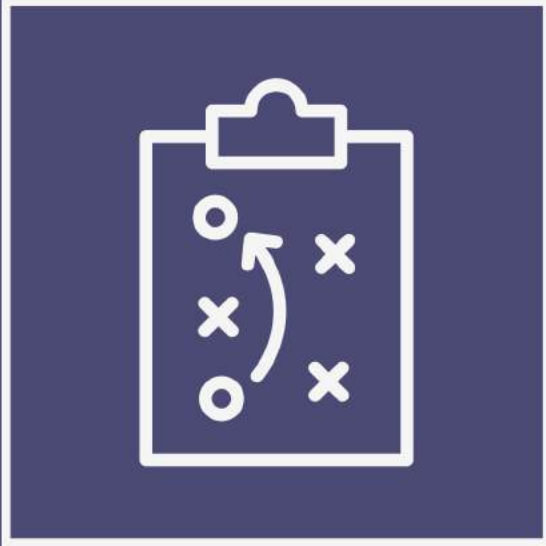
In This Session



RECORDING
INTERVIEWS



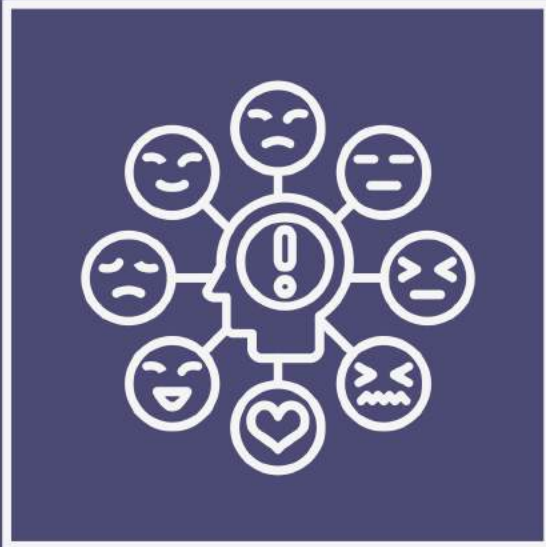
PREPARING A
PREAMBLE



PREPARING THE
INTERVIEW PLAYBOOK



CRAFTING SOUND
TITLE IX INTERVIEW
QUESTIONS



UNDERSTANDING
EMOTIONS OF THE
PARTIES

Recording Interviews



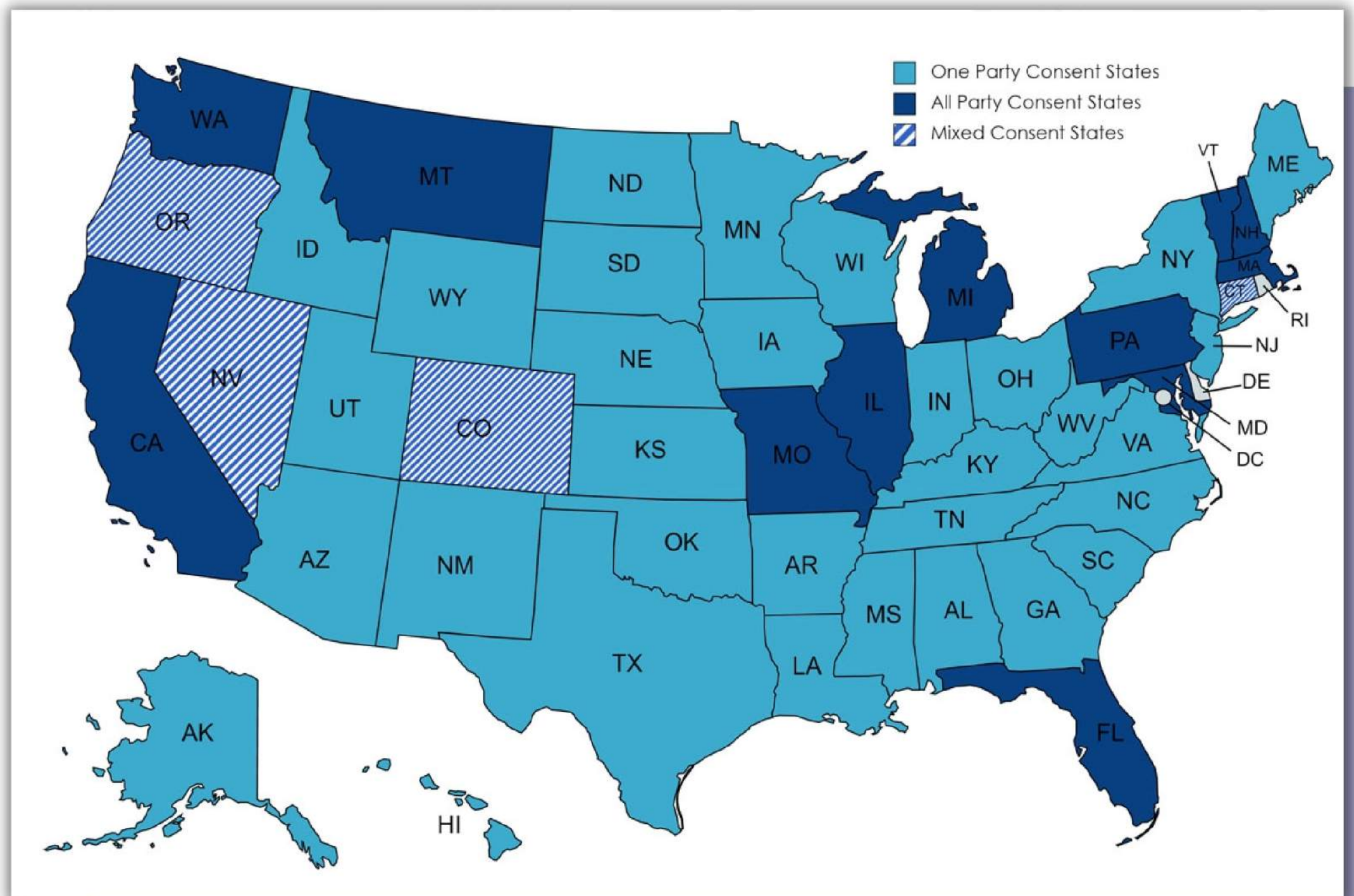
Recording Best Practices

Pros and cons:

Best practices include:

- Obtain consent from the interviewed party
- Recording device
- Have the interview transcribed
- Share transcript and recording of interview with the Parties and Advisors
- Include transcription and audio recording in the final investigation report and/or file

Obtaining Consent



- Review state and local law, as well as school policy
- Prepare for what you will do if a Party does not give consent to record

Transcription

Transcripts will provide quotes and narratives for investigative report

- Provides a complete word-for-word record of the investigative interviews
 - Does not contain paraphrasing of questions or responses
 - May contain grammatical or syntax errors depending on speech of parties
- Should be provided to the parties for review before including in the investigation file

Transcription by a service vs. self-transcription



Cost



Accuracy



Efficiency

Preparing a Preamble



What is a Preamble?

- Read by Investigator at the beginning of the interview
 - State date, time, purpose of the interview, location, persons present and verbal consent of all persons participating
 - Ask each person to state their name for later voice identification during transcription
 - Time and date should be read onto the recording at the end of the recorded interview

What is a Preamble?

- Consistency
- Ensures consent, policy violations in question, relevant sections of the policy in question are on the record
- Helps if the Investigator is called as a witness during the hearing or litigation
- Assists in putting the party or witness at ease – they become used to Investigator's voice, presence, etc.

Other Elements to Include

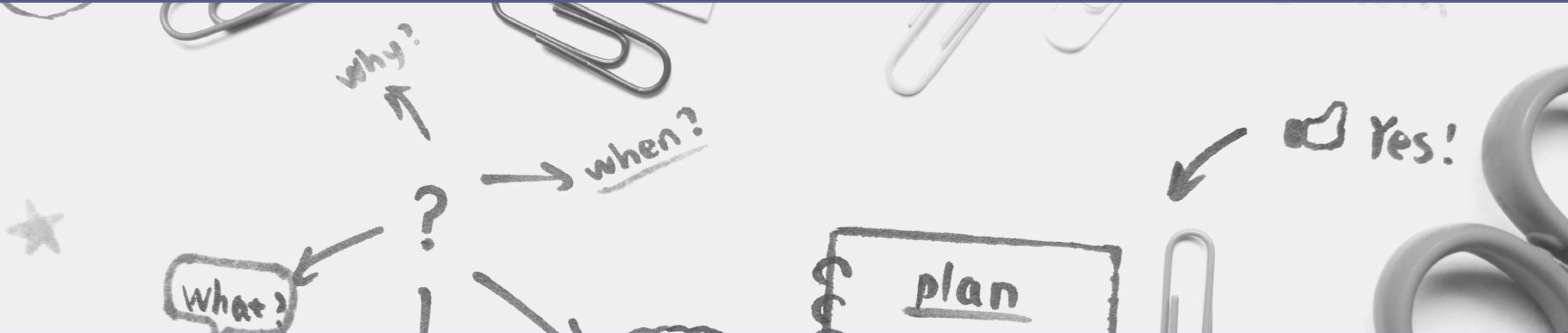
- Explain investigative process (refer to policy) and roles and names of Title IX personnel (Coordinator, Investigator(s), Decision-Maker, etc.)
- Cover rights under Title IX and policy
- Inform party of their opportunity to share what actually happened
- Remind party of Advisor's role
- Provide clarification of policy, procedure, and timeline
- Establish meeting decorum (breaks, use of phone, etc.)
- Demonstrate the Investigator's comfort with difficult topics

Sample Preamble



Take a look at your
training booklet!

Preparing the Interview Playbook



Script vs Playbook



- A script may seem rigid and inflexible.
- It doesn't allow us to take new turns if information pulls us in a new direction.

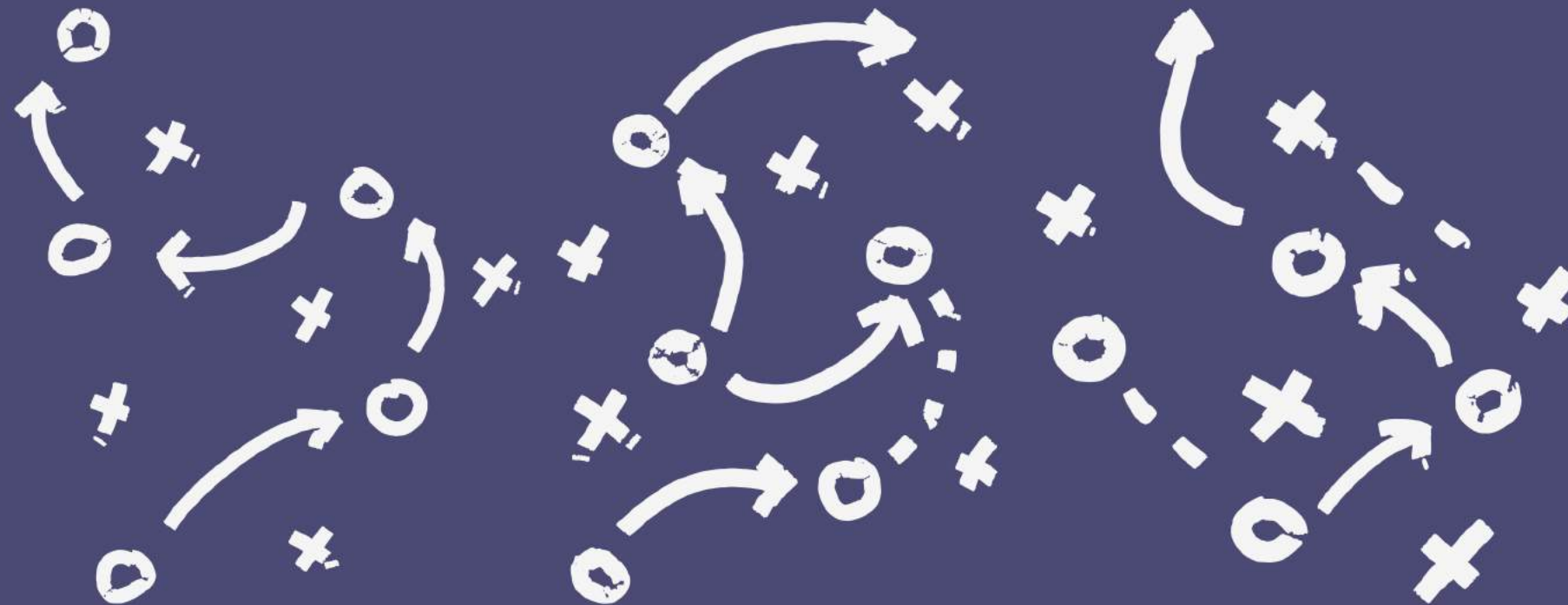


- Instead, let's think of a coach's playbook.
- A playbook consists of various options, plans, and contingencies should we need to mix things up mid-game.
- It allows us to react, adapt, and reassess frequently.

Interviews rarely look like this:



And more frequently look like this:





Our job as Title IX Investigators is to ask all of this:



Then pare the information collected down by fairly summarizing relevant evidence to this:

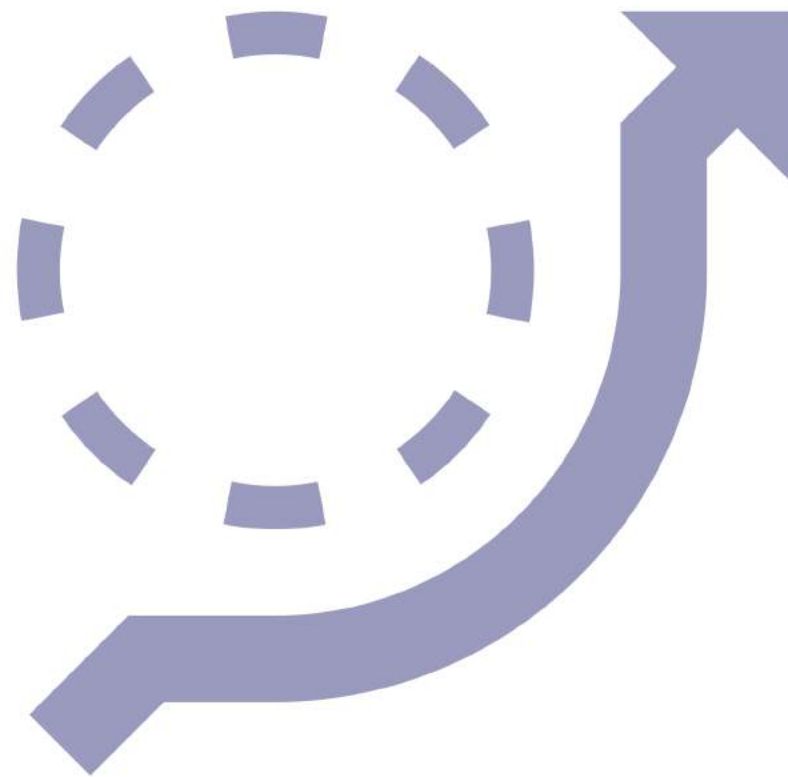


In hopes that, at the Title IX hearing, the Title IX Decision-Makers and Parties only have to focus on this:



Anticipating the Obstacles

Every interview will need to be tailored to the person we're speaking with. Knowing the potential for variation, it is likely we'll encounter obstacles. Let's think of how we might reduce challenges faced by coming up with a plan.



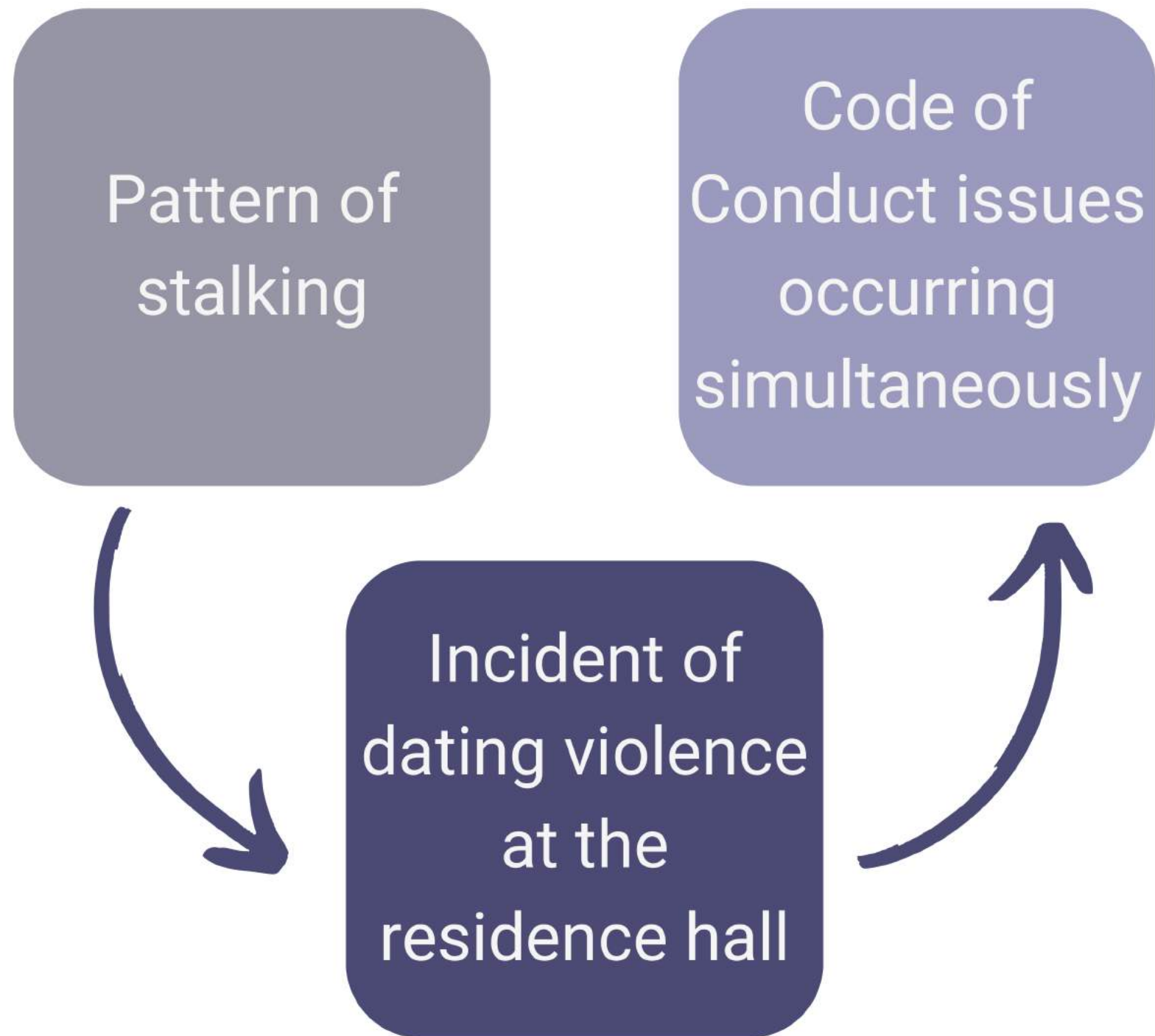
Ordering Your Questions

Option 1: Chronology-based Interview

- Conducted in the order of events



Ordering Your Questions



Allegation-based Interview

- Conducted according to themes or topics (allegations, locations, Parties, etc.)
- May jump from date to date
- Can allow for organization of the investigative report according to each allegation
- May help Parties think through each separate allegation
- May be helpful for incidents with multiple allegations over a long period of time (*For example- Quid Pro Quo harassment with an allegations of stalking in multiple locations*) or incidents with multiple Complainants and/or Respondents (*For example- Walking through allegations by each involved person*)

Quick Tips

- More information is always better
 - It is easier to pare down than to move forward with incomplete information
- Let your future investigative report be your guide
 - Think through the sections you need to complete and ensure you will have the information needed to do so
 - A thorough investigation means easier report writing
- Measure twice, cut once (prepare and be twice as thorough to reduce number of interviews)

Crafting Sound Title IX Interview Questions



Seek the most complete answers to these questions:

Who?

What?

When?

Where?

How?

Is why
important?



How can we uncover if the alleged conduct occurred or did not occur?



What questions will get the most complete set of facts to the Decision-Maker so they might make a determination regarding responsibility?



Who has this information?

Guidelines for Good Questions

Open-ended

Prompt the Party to share more broadly.

Non-leading

Do not guide the Parties to the answer you want to hear.

Singular

Avoid complicated, multi-part questions.

Clear

Ensure questions use the most clear, concise language aimed at arriving at the information needed.

Sensitive

Consider emotions that may be evoked by asking certain questions. Practice empathy.

Open-ended

Prompt the Party to share more broadly.

✘ Yes/No questions

✔ Tell me more about...

Walk me through your day...

Start from the beginning...

Non-leading

Do not guide the Parties to the answer you want to hear.

- ✘ That must have made you pretty mad, right?
- ✔ How did that make you feel?
- ✘ How drunk was she?
- ✔ What did you observe about her behavior?

Singular

Avoid
complicated,
multi-part
questions.

- ✘ How did that make you feel...and what impact did it have on your academics, your participation in band, and your friendships?
- ✔ How did that make you feel?
What impact did it have on your academics?
How did it impact your participation in the band?
How did it show up in your friendships?



Clear

Ensure questions use the most clear, concise language aimed at arriving at the information needed.

- ✘ Personal narratives
- ✘ Complex legal jargon



Sensitive

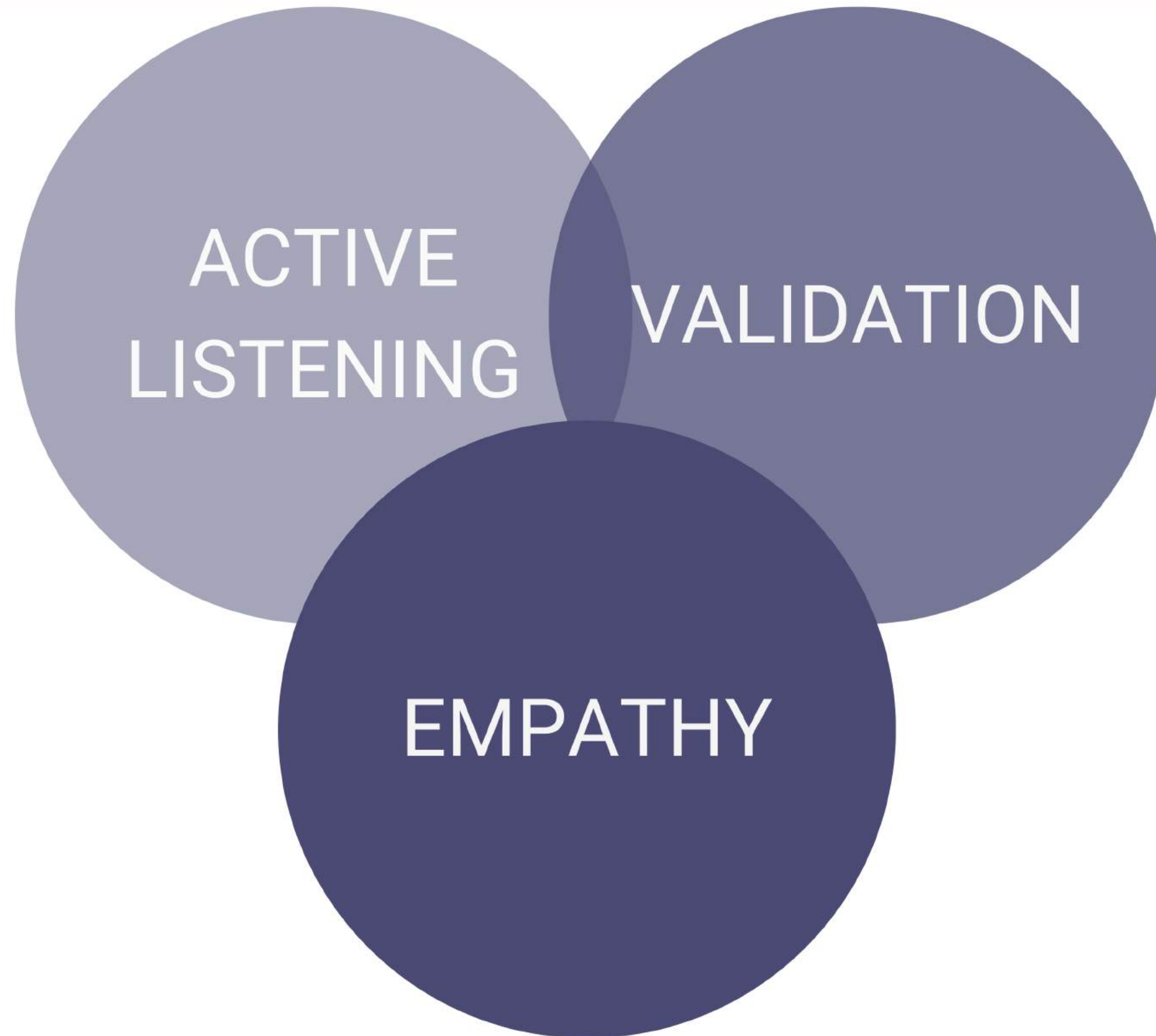
Consider emotions that may be evoked by asking certain questions. Practice empathy.

- ✘ Judging questions
- ✘ Trick questions

Understanding Emotions of the Parties



Foundations of a Trauma-Informed Approach



Empathy

- The ability to understand and share the feelings of another
 - Doesn't mean that you fully "get it" – because you don't
 - You can try to put yourself in your party's shoes

Communicating Empathy

“I can see how frustrating this is for you to talk about.”

“That sounds incredibly scary.”

“There are resources here on campus to support you through this.”

Validation

Recognition or affirmation that a person or their feelings, opinions, and experiences are real or worthwhile.

DO

Share your own similar reactions, if you have them:

"I would feel really angry too."

"It makes sense that you would feel that way."

DON'T

Tell someone how they should feel:

"You shouldn't let this bother you so much."

Question their responses:

"Are you sure that is what happened?"

Validation ≠ Agreement

Active Listening

Strategies for Active Listening

- Avoid distractions
 - Cell phones, emails, knocks on the door
- Use frequent brief paraphrases of what you heard
- Use nonverbal cues
 - Nodding, smiling or frowning, leaning forward
- Remain neutral and nonjudgmental
- Use phrases to communicate your desire to understand:
 - *“Did I understand that correctly?”*
 - *“I want to make sure I am hearing you.”*
- Ask open-ended questions:
 - *“Can you tell me more about...”*

Wrapping up the Interview

- Additional evidence
- Supplemental materials
- Support



Lunch Break



Conducting Title IX Interviews Part One

In This Session



BUILDING RAPPORT
AND TRUST



QUESTIONING THE
PARTIES

Building Rapport and Trust



Setting the Stage



Introductory email



Location



Supplies

Starting the Interview

- Explain the investigative process at the beginning of the interview
- Use non-threatening questions help to put the interviewee at ease

Important Reminders

- This is an interview not an interrogation!
- Respondents should be treated with the same respect as the Complainant
- School must presume that Respondent is not responsible for the alleged conduct unless and until a determination of responsibility for a violation of the sexual misconduct policy is made at the conclusion of the grievance process
 - This should be a guiding principle throughout the interview process (and beyond)
- Good cop/bad cop does not work

Embracing our Cultural Differences



- Be strong in your neutrality
- Don't be shy about asking questions
- Recognize and explore the witnesses' implicit biases and how that may be coloring their perceptions

Questioning the Parties

WHEN? WHY?
WHO? WHERE? WHAT? HOW?
WHAT? HOW? WHY?
WHERE? WHEN?
WHO? WHERE?
HOW? HOW?
WHERE? WHEN?
WHERE? WHICH? WHOSE? WHEN? WHY?
WHOSE? WHOSE?
WHY? WHOSE? WHEN?
WHERE? WHICH?
HOW? WHERE?
WHO? HOW?
WHERE? WHICH? WHOSE? WHEN? WHY?
WHERE? WHICH? WHOSE?
WHERE? WHEN?
WHEN? WHERE?

WHAT?

WHEN?

WHEN? WHERE?

Foundations of Interviewing

Seeking the Narrative

Controlling the Interview Flow

Asking Clarifying Questions

Providing Rationale for Questions

Gathering Information to Support Answers

Seeking the Narrative

- Your first broad question

"Tell me what happened on the night of August 15, 2022."

"Start at the beginning and tell me what's been going on."

- This may elicit a long-form response
 - Listen carefully to determine which clarifying questions you would like to ask
 - Allow the party to speak, uninterrupted
 - The party may go through a range of emotions
- Allow yourself a way to bring the conversation back

Controlling the Interview Flow

We discussed chronological vs. topic-based interviews, but you'll also want to think about:

- Pacing of questions
- Escalation of questions
- Length of interview
- Managing emotions
- Taking breaks or resetting the tone

Ask Clarifying Questions

Ask for specificity

- Encourage Parties to be as descriptive as possible
 - Sense questions
 - Feelings and emotions experienced
 - Physical actions
 - Full names of individuals mentioned, contact information, relationships
 - Locations, times, dates
 - Quantities of substances consumed



When in doubt, use the phrase, "Tell me more about that..."

This simple prompt allows the Party to dig deeper and recall on their own

Ask Clarifying Questions

Example

"We started the night at a bar downtown. I can't remember which one. And he started buying me drinks. I got really drunk."

Ask Clarifying Questions

"We started the night at a bar downtown. I can't remember which one. And he started buying me drinks. I got really drunk."

Example

What time did you arrive at the bar?

How did you get there?

Can you describe the area?

Had you been to this bar before?

What did the inside of the bar look like?

What types of drinks did he purchase for you?

How many total drinks did you consume?

Did you observe him drinking any alcoholic drinks?



Let's talk about the skill of discussing intimate details.

Ask Clarifying Questions

Example

"He was having sex with me."

Ask Clarifying Questions

Example

"When I woke up, he was doing stuff to me. I didn't want that to happen, and I never said it was ok. I barely even know him."

Ask Clarifying Questions

"When I woke up, he was doing stuff to me. I didn't want that to happen, and I never said it was ok. I barely even know him."

Example

I know this may be difficult or uncomfortable, but I need to understand the specifics of what he was doing to you. This will help me when I'm writing the report and we are providing your narrative of the events. You can use the terms you feel comfortable using. Can you tell me what he was doing?

Ask Clarifying Questions

"He was having sex with me."

Example

Sometimes sex has different definitions to different people. I just want to be sure I am understanding your definition of sex. Can you tell me exactly what acts he was engaging in?

Ask Clarifying Questions

Example

"Yes. First, he fingered me and then started going down on me. Then he penetrated me vaginally with his penis. I told him no, but he just kept going until he got off. I didn't want any of that. I never even wanted to kiss him."

Providing Rationale for Questions

- Some questions may sound as though they are victim-blaming or shaming without an explanation
 - Help the Party understand why you are seeking this information
- "Why" questions are seen as taboo, but there are times we may need to ask them
 - Explain the need to ask "why" questions



Providing Rationale for Questions

Instead of:

What were you wearing that night?

Which may be met with:

"Are you saying I deserved this because I was in a little dress? That's exactly what my friends said. I knew I shouldn't have worn that."

Example

Try:

The security system in Oakley Hall recorded a large group returning to the residence hall that night at 1:30 AM. The footage is a little grainy. Could you give me a description of what you were wearing so I can better identify you on the video? Could you describe what Tristan was wearing as well?

Providing Rationale for Questions

Instead of:

Why did you go into her room?

Which may be met with:

"See, I knew you would think I was stupid for going in there alone. I guess I just wasn't thinking."

Example

Try:

What was your mindset when she invited you into her room? Walk me through what you were thinking and feeling so I can understand your decision to accept her invitation.

Gathering Information to Support Answers

- Attempt to go one layer deeper
- Seek information that will support or refute certain elements of the allegations



Consent



Incapacitation
(Due to alcohol or
other substances)



Elements of
the potential
policy violation

Gathering Information to Support Answers

Example

Establishing Consent:

(To Respondent) What verbal or non-verbal cues did he give you to indicate he wanted to have sex?

"I don't know. He didn't say anything when I moved on top of him, so I figured he wanted it. He would have said no or moved away otherwise."

(To Complainant) What was your reaction when you woke up and discovered him on top of you?

"I completely froze. I tried to speak, but I couldn't. I wanted to push him off of me, but it is like my body wasn't listening to my brain. I think I was in shock. I didn't do anything."

Gathering Information to Support Answers

Intoxication/Incapacitation:

(To Respondent) Can you tell me about her how she was acting and what you observed that led you to believe she was not incapacitated?

Example

"She seemed completely normal. On the bus back from the event, she had a long conversation with my buddy Jace. She got off the bus without any help and was giving everyone hugs before we got in my car to go to the dorm. She sang to the radio and made TikToks the whole way home."

Gathering Information to Support Answers

Elements of a Policy Violation:

Policy Language

Stalking: Engaging in a course of conduct directed at a specific person that would cause a reasonable person to (1) fear for the person's safety or the safety of others; or (2) suffer substantial emotional distress.

Example

Can you tell me the number of times the Respondent came to your campus office uninvited during the month of March?

"She came to my office about three times a day, every single day. I didn't even know she knew where I worked. My supervisor finally told her to stop because she was starting to become a disruption."

Gathering Information to Support Answers

Example

Can you tell me the frequency and content of the text messages sent by the Respondent during that same week?

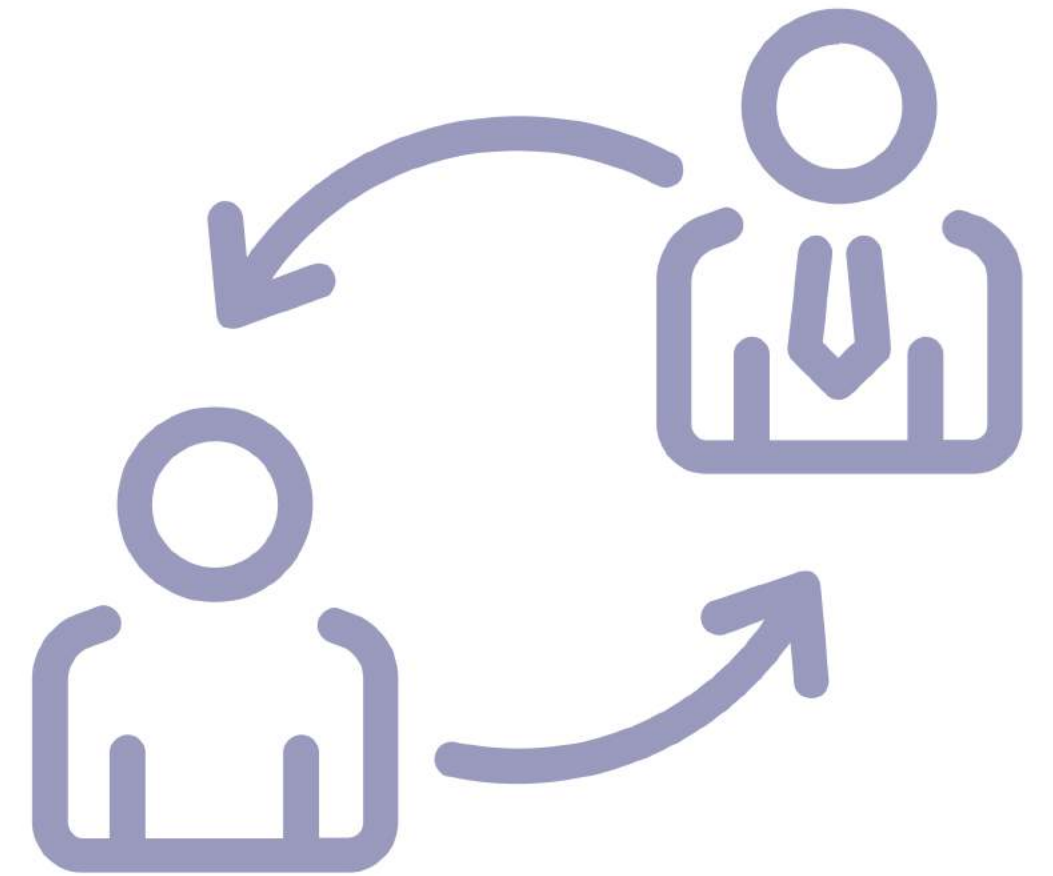
"I think I counted over 450 text messages from her. They came at all hours of the day, asking to meet up for sex and saying she would make sure my girlfriend was out of the picture. I eventually had to block her."

Policy Language

Stalking: Engaging in a course of conduct directed at a specific person that would cause a reasonable person to (1) fear for the person's safety or the safety of others; or (2) suffer substantial emotional distress.

Advisors

- As an Investigator, it is your job to maintain authority in the room
- The role of the Advisor is for emotional support and private consultation
- Do not allow the Advisor to speak on behalf of the Party as this is the Party's interview, and you need to hear their story from them



Closing



Thank Party for their participation and willingness to speak openly regarding the allegations



Ensure Parties have asked any questions they may have



Provide timeline or next steps, as well as contact information



Close any loops, so the party has a clear understanding of what is to come and what options are available to them at this point in the process

Conclusion of the Interview

This is much like preamble, but involves standard closing practices or statements

- "Is there anything else you think I should know?"
- "Let's review the information that you are going to send to me."
- "Are there any additional witnesses?"
- "Are there social media posts or messages?"
- "Is there any additional evidence you think could be relevant?"
- "Is there anything else that pops into your mind?"
- "We can meet again, or you may just email me."
- "I will try to keep you posted every couple of weeks."
- "I will do my best to wrap this up efficiently, but I do want to be thorough."
- "Feel free to reach out with questions, or contact the Title IX Coordinator."

Circling Back

- Do not be afraid to re-interview a party or witness if you require more information
- Make your contact information available to interviewees
- After completing your first round of interviews, you may become aware of new witnesses
- Promptly contact and schedule interviews with those witnesses
- Keep the parties updated, simultaneously

Conducting
Title IX
Interviews
Part Two





Let's role play with the
Complainant and Respondent



Let's take a break!



Preparing the Investigation Report and File

In This Session



ELEMENTS OF THE
INVESTIGATION
REPORT



SUMMARIZING
INTERVIEWS



SUMMARIZING
EVIDENCE



REVIEWING THE
REPORT



THE INVESTIGATION
FILE



SAMPLE REPORTS

Report Writing Preparation and Helpful Hints

- You might consider writing as you go
- You may see questions you forgot to ask or points that need clarification - go back and ask
- Carve out the necessary time

Elements of the Investigation Report



Investigation Report Requirements

At the conclusion of the investigation, the investigator will prepare a written report which will:

- ✓ Identify the allegations
- ✓ Identify relevant policies, guidelines, and other standards
- ✓ Explain the PROCEDURAL STEPS taken between receipt of the formal complaint and the conclusion of the investigation,
- ✓ Fairly summarize relevant evidence

Elements of the Investigation Report

Allegations Investigated

Allegations, if proved, that meet the definition of Sexual Misconduct

- *Should be roughly identified in the Formal Complaint*

Alleged form(s) of sexual misconduct

- *Sexual Harassment, Dating Violence, Domestic Violence, Sexual Assault, Stalking*
-
- *Many forms of prohibited conduct are also dependent upon factors such as consent, length or type of relationship between the Parties, number of alleged incidents, etc.*

Elements of the Investigation Report

Allegations Investigated

Allegations, if proved, that DO NOT meet the definition of Sexual Misconduct

- *Other policies implicated?*
- *Harassment not based on sex or gender*
- *Sexual misconduct that does not fall under Title IX's scope, but may need to be addressed under another policy*

Elements of the Investigation Report

Relevant Policies, Procedures, Guidelines and Standards



Sexual
Misconduct
Policy



Additional
Relevant
Institutional
Policies

Elements of the Investigation Report

Procedural Steps Taken Between Receipt of Formal Complaint and Conclusion of Investigation

Timeline

- The importance of documentation during the interviewing process presents here
- Investigator should utilize communication logs, activity logs, or other templates that document your information-gathering timeline
- The following should be provided:
 - Dates of notices
 - Interview dates
 - Date of provision of investigation file
 - Dates of responses to investigation file, etc.

Elements of the Investigation Report

Procedural Steps Taken Between Receipt of Formal Complaint and Conclusion of Investigation

- Thoroughness is key
- Document if a Party or Witness does not respond or declines to participate in the investigation
- Document communication with other departments or off-campus sources (i.e., local police)
- Document supportive measures in place during the investigation (Work with Title IX Coordinator to obtain this information)



Does your Title IX office utilize a case management system?

Elements of the Investigation Report

Summary of Relevant Evidence

Summary should include:

- Summaries of interviews with Complainant, Respondent, and witnesses
- Summaries of evidence, with exhibits attached
 - Reference the evidence log and appendix which should contain relevant information collected, including any evidence obtained or submitted as part of the investigation, electronic records, written statements, photographs, or other documentation

Elements of the Investigation Report

REMINDER

The written report shall not make findings of facts or conclusions regarding the application of facts to this policy.

This is the responsibility of the Decision-Maker.

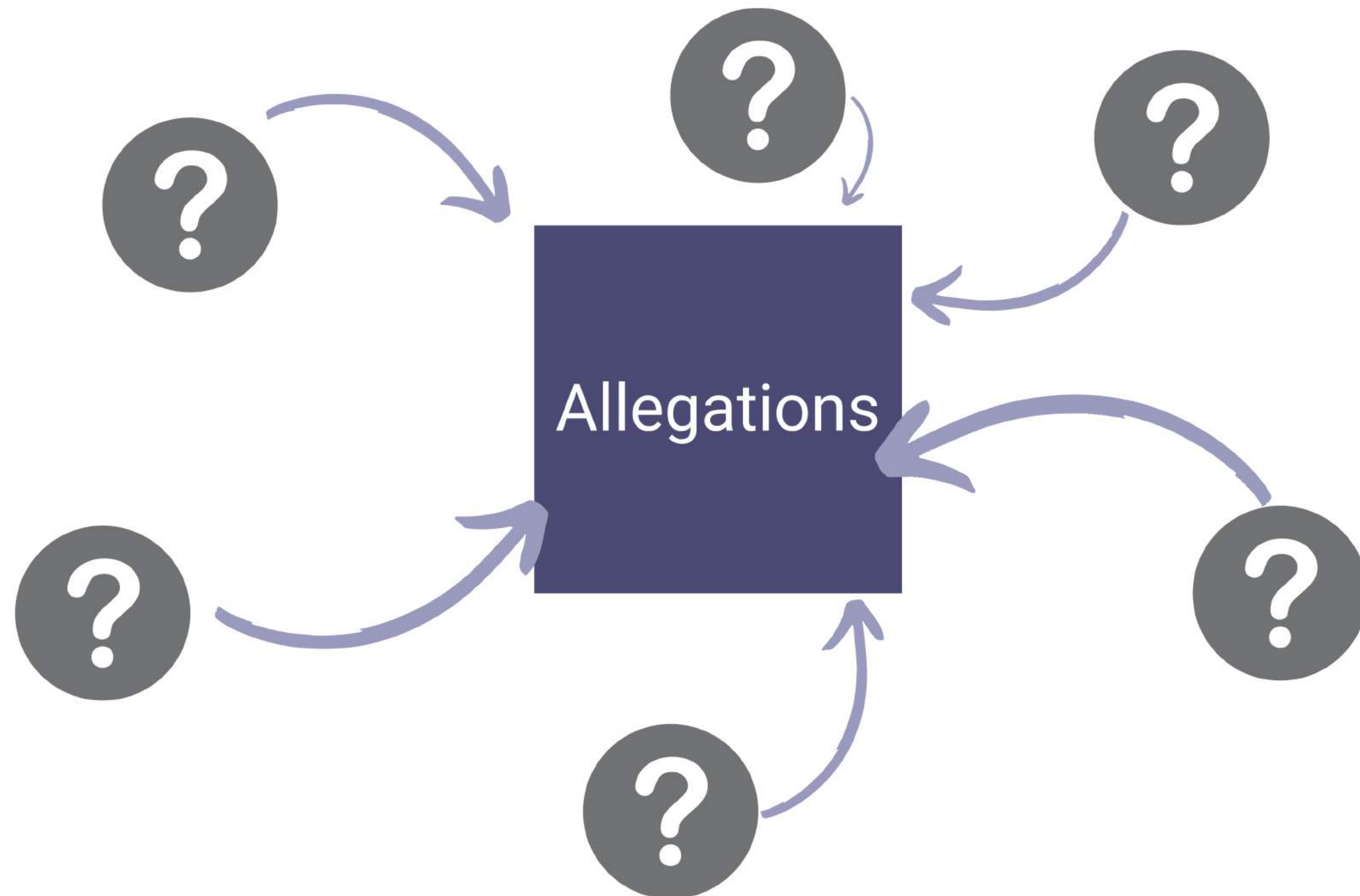
Elements of the Investigation Report

A presentation of facts and analysis of consistencies and inconsistencies in the information collected

**Optional to Include*

Interview summaries

Information in the summaries must be relevant:



Directly Related vs. Relevant

Neither term is explicitly defined in the Title IX Regulations.

Directly Related

Evidence that is connected to the complaint but **does not** tend to prove or tend to disprove the complaint or allegations.

Example: The flyer announcing the celebratory dinner the night of the encounter

Relevant

Evidence that is connected to the complaint or allegations that would make a disputed fact more or less probable.

Example: Video from the hallway outside the main office showing Alex as she left.

Not directly related or relevant: Learning the Complainant purchased popcorn, while the Respondent opted for candy.

What is Never Relevant Under Title IX?

As outlined in the Title IX Regulations, the following evidence is NEVER relevant:

- "Evidence about a Complainant's prior sexual behavior, except when:
 - Questions and evidence are offered to prove someone other than Respondent committed alleged conduct;" or

CAN WE GO DOWN THIS PATH?

"Alex has dated, and slept with like half of the string ensemble. The whole campus knows. They'll all tell you Alex is a slut."

What is Never Relevant Under Title IX?

As outlined in the Title IX Regulations, the following evidence is NEVER relevant:

- "Evidence about a Complainant's prior sexual behavior, except when:
 - Questions and evidence concerning specific incidents of the Complainant's prior sexual behavior **with respect to the Respondent are offered to prove consent.**"

CAN WE GO DOWN THIS PATH?

"We have a safe word during sex. I have an entire email thread about it. We agreed that if we weren't comfortable with something, we would say the word. They never said the word that night and they have every single time we've engaged in something they're not comfortable with. How else would I know that wasn't ok?"

Note: The same rules do not apply to the sexual predisposition or history of the Respondent

What is Never Relevant Under Title IX?

Additionally, "a school's grievance process must not use, rely on, or seek disclosure of information protected under a legally recognized privilege, unless the person holding such privilege has waived the privilege."

EXAMPLES:

- Medical records
- Academic records protected under FERPA
- Conversations with privileged individuals such as counselors or clergy

Your report will contain only

RELEVANT

information.

Summarizing Interviews



Summarizing Interviews

Stay FOCUSED when summarizing interviews.

- Key questions for the Title IX grievance process:
 - Did the alleged incident occur?
 - Is the alleged incident a policy violation?

STEP

1

Identities and Dates

Note time, date, location of interview, and if an Advisor was present

- Explain the interviewee's relation to the case
 - Complainant, Respondent
 - If a witness, who are they?
 - Example: *“Joshua Kaplan was the person working the front door of Briggs Hall on the night of March 3.”*

STEP

2

Summary
of
Responses

Tell the Story

Transform the individual's responses into
a coherent narrative

STEP

2

Summary
of
Responses

Include direct quotes from the individuals

- Direct quotes are extremely powerful and useful for those reading the report
- Cite direct quotes either from the specific line in the transcript or timing of the recording (annotate footnotes or endnotes)

STEP

2

Summary
of
Responses

Organize interviews into sub-sections when dealing with multiple allegations

- If a formal complaint alleges multiple policy violations or forms of sexual misconduct, consider organizing the interview into sub-sections related to each policy violation



Example: Relationship with a history of dating violence and sexual assault

STEP

3

Interview
Observations

OPTIONAL (But be consistent across parties)

- Did the individual ask for a break?
 - Note how many breaks
- Was the individual accompanied by an Advisor?
- Did the Advisor attempt to speak on the individual's behalf?
 - What occurred?
 - Only include if noteworthy
- Did the individual bring any evidence to the interview?
 - What was brought?
 - How was it presented?

STEP

4

Share
Interview
Summary?

- Summaries of interviews are a presentation of the individual's statements and do not include the Investigator's analysis, assessments, etc.
- Some Investigators share the summary of interview with the individual as soon as available to ensure accuracy of note-taking or transcription

Summarizing Evidence



Examples of Summarizing Evidence

May simply be a list of all evidence, referencing its Appendix Number.

VIII. Table of Appendices

Documents and evidence obtained during the course of the investigation such as the formal complaints and Notices of Investigation can be found in the attached Appendices.

Additionally, each investigative interview was recorded by Investigator Chapman with the consent of the interviewee. The transcripts of each interview can also be found in the attached Appendices.

A list of Appendices is as follows:

Appendix No.	Description	Date Received
Appendix A	Jacob Smith Formal Complaint to the Title IX Coordinator	January 3, 2022
Appendix B	Amanda Parsons Formal Complaint to the Title IX Coordinator	January 4, 2022
Appendix C	Jacob Smith Email to the Title IX Coordinator with additional allegations	January 6, 2022
Appendix D	Notice of Allegations to Smith - Complainant	January 7, 2022
Appendix E	Notice of Allegations to Parsons - Complainant	January 7, 2022
Appendix F	Notice of Allegations to Thompson – Respondent	January 7, 2022
Appendix G	Smith Interview Transcript	January 9, 2022
Appendix G-1	Smith Interview Recording	January 9, 2022

Examples of Summarizing Evidence

You may also decide that specific pieces of evidence require an explanation.

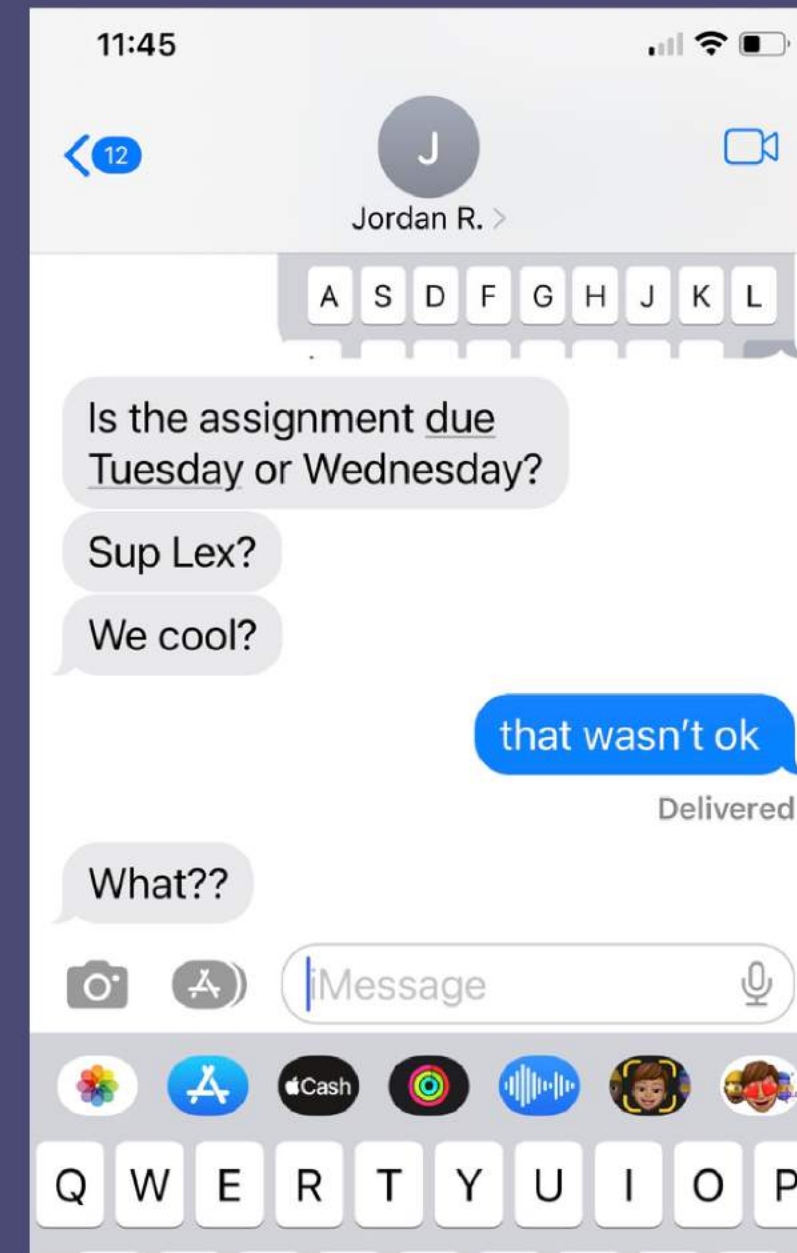


Example: Security camera video recording from Briggs Hall timestamped from March 3, 2023 at 6:45 PM to March 3, 2023 at 11:59 pm..

Security camera video recording was obtained from Sample University Police Department (SUPD)

Saved as SUPD_Evidence_2.mp4 in Investigation File

Still image from 00:18:14 Attached to Investigation Report as Appendix K



Example: Screenshot of text message received by Complainant Alex Baker timestamped on March 4, 2023 alleged to have been sent by Respondent Jordan Reynolds. Screenshot was provided by Complainant Baker.

Saved as Baker_Evidence_1.png in Investigation File

Attached to Investigation Report as Appendix H

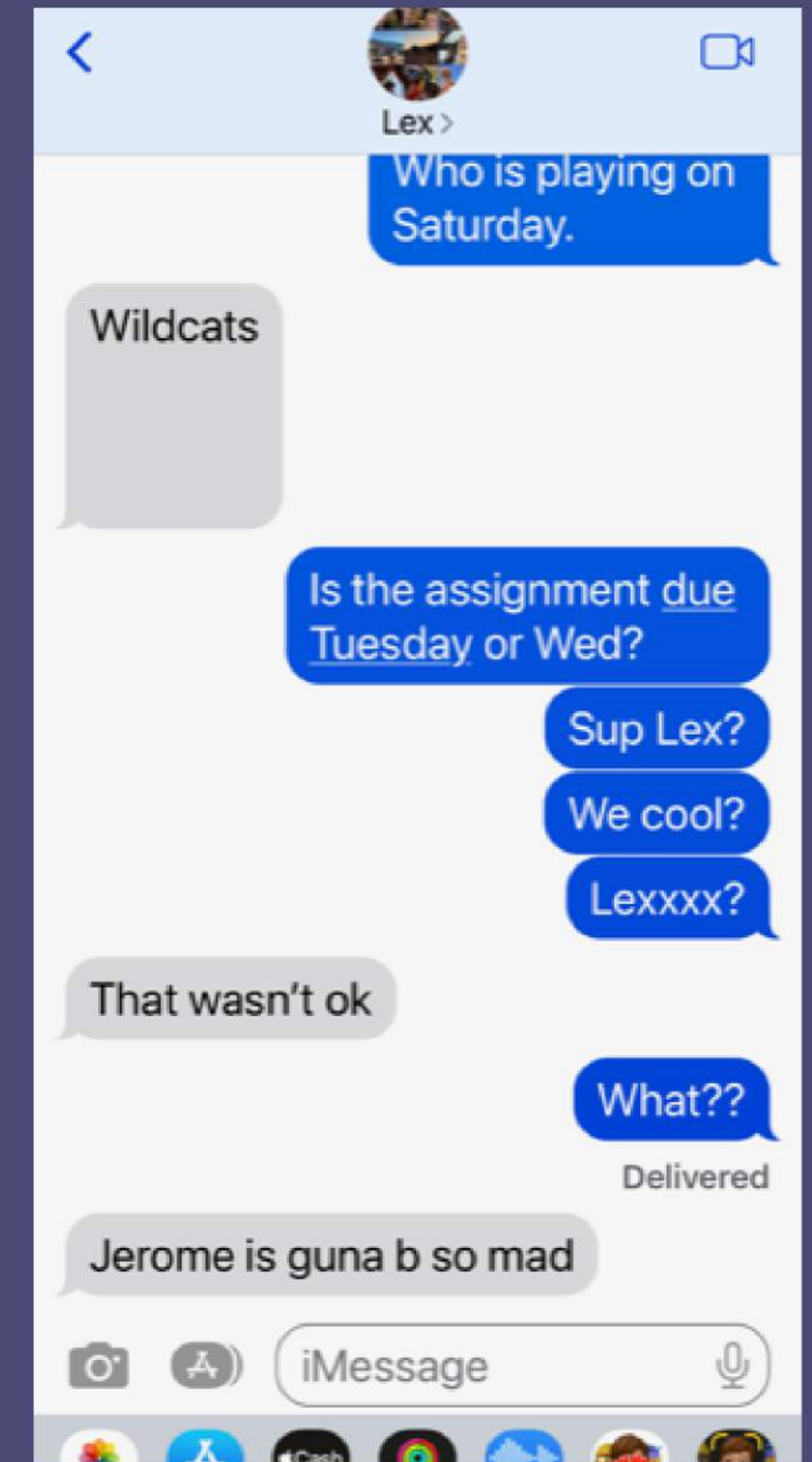
Examples of Summarizing Evidence

Noting Inconsistencies

Example: Screenshot of text message exchange alleged to be between Complainant Alex Baker and Respondent Jordan Reynolds on March 4, 2023 timestamped at 8:07 AM. This screenshot was provided by Jordan.

NOTE: There are inconsistencies between the messages displayed on the screenshot of the exchange provided by Alex (Appendix F) and the screenshot provided by Jordan. (Appendix K)

The screenshot provided by Alex contains the same initial text messages between the two but does not include the final text message from the Alex stating, "Jerome is going to be so mad."



Reviewing the Report



Keep in Mind

Who, What, When, Where, Why, and How

- As you review your investigation report, ask yourself if your investigation answers these questions
- Your summaries of interview and evidence should address these questions:

Who was involved?

What are the allegations?

Where and when did the incident occur?

Why and how did the incident occur?

Keep in Mind

It may not be possible to definitively answer the questions, but you should provide the individuals' responses to the questions.

- Complainant states that the incident occurred at 10:15 PM on Friday, March 3
- Respondent states that the incident occurred at 9:00 pm on Friday March 3
- Access logs to the campus building where the incident occurred show that the Complainant swiped in to access the Music Dept office at 8:55 PM

Next Steps



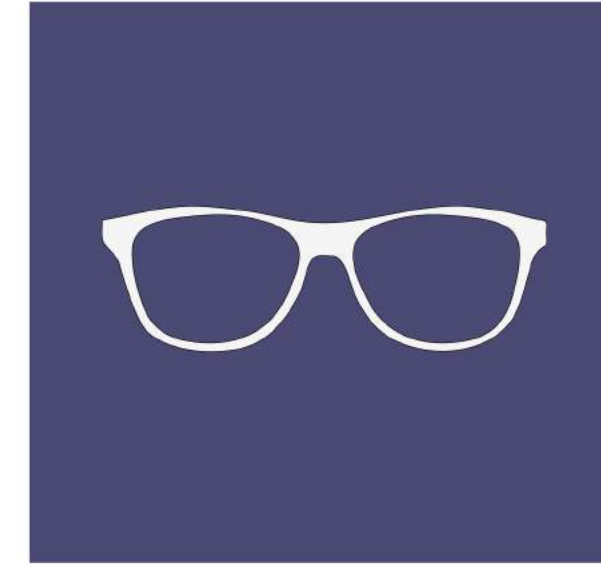
EDIT



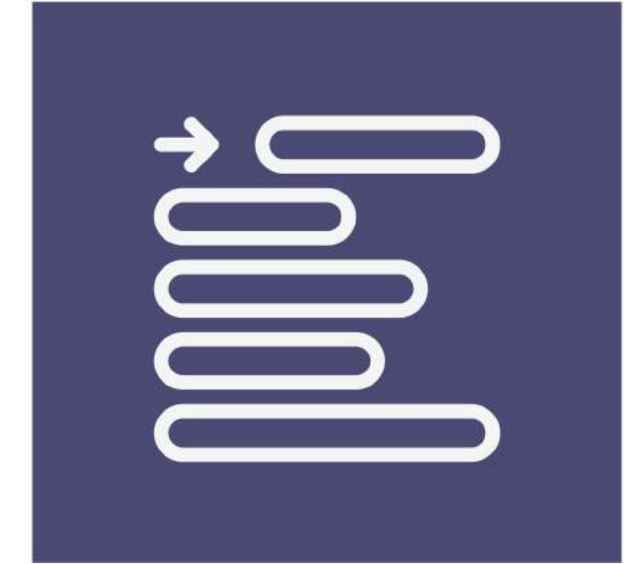
PROOFREAD



PRINT



PROOFREAD
AGAIN

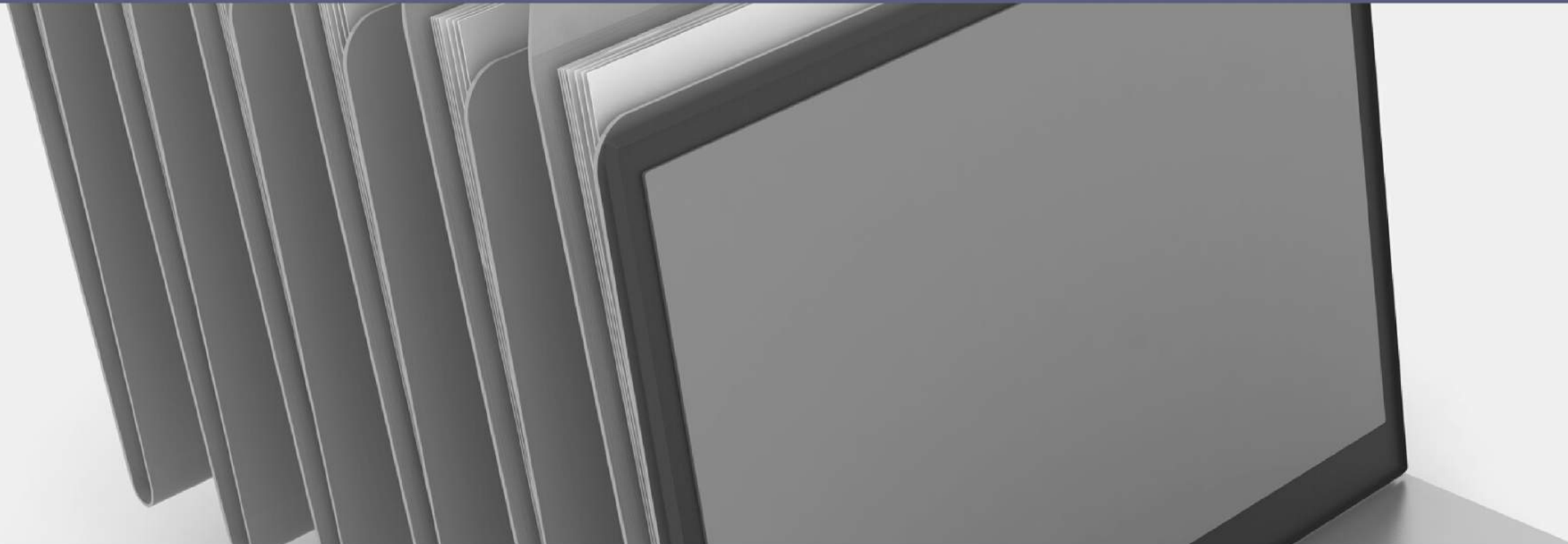


FORMAT



Pronouns - Use as few as possible, but ensure the ones you use are accurate. Too many "he", "she", and "they" pronouns can become confusing to the reader.

The Investigation File



What is the Investigation File?

At the conclusion of the investigation, prepare what we refer to as an investigation file:

- May also be referred to as a case file or case binder
- May be a hard copy or digital

What does the Investigation File contain?

ALL EVIDENCE obtained as part of the investigation that is directly related to the allegations raised in a formal complaint to the Complainant and Respondent

- Do not filter out any information from the file at this point unless completely unrelated
- Parties must have an equal opportunity to inspect and review all of the directly related evidence
 - Investigators may also send evidence to Advisors, with consent
- Includes evidence that tends to prove and disprove the allegations (inculpatory and exculpatory), whether obtained from a party or witness

What does the Investigation File contain?

- Includes evidence that is directly related to the allegations but upon which the institution does not intend to rely in reaching a determination regarding responsibility
 - For instance, where evidence is directly related to the allegations, but the investigator does not believe the evidence to be credible and thus does not intend to rely on it
- All evidence must be made available to the parties, but not all evidence may be “relevant”
 - Reviewing the investigation file provides the Advisor and the party the opportunity to argue whether certain evidence is relevant or not

Relevant vs. Directly Related

Directly related evidence is a broader term than relevant evidence. All directly related evidence is included in the investigation file. Only relevant evidence, however, is summarized in the investigation report.

Directly
related

Relevant

What is never relevant under Title IX?

As written into the Title IX Regulations, the following evidence is NEVER relevant:

- Evidence about a Complainant's sexual predisposition
- Evidence about a Complainant's prior sexual behavior, except when:
 - Questions and evidence are offered to prove someone other than Respondent committed alleged conduct; or
 - Questions and evidence concern specific incidents of the Complainant's prior sexual behavior with respect to the Respondent are offered to prove consent.

EXAMPLE: "He and his ex-girlfriend were into some weird stuff, so it is no surprise that he did this."

Once the Investigation File is Prepared

- Title IX Coordinator will provide the file to the Complainant, Respondent, and Advisors
- School must provide at least 10 calendar days for the Parties to respond to the evidence
- Investigators will share any written response with the other Party and will consider any written response prior to completing the investigation report



The audience for the Investigation File is the Complainant, Respondent, Advisors, and Review Board.

After Parties Review the Investigation File

Create the final investigation report:

- Incorporate relevant elements of the Parties' written responses (or absence thereof) into the investigation report
- Include any additional relevant evidence
- Make any necessary revisions
- Finalize the report
- Document all rationales for changes made after the review and comment period

Elements of the Investigation File



First, check to see if your school has a template or predetermined method of organizing the investigation file.

Generally, it should contain the following elements:

Table of Contents

1

- Organized for quick reference as the files can become large
- Separated into major sections and even subsections, if necessary, to help parties, Advisors, and Decision-Maker locate key information

Investigation Report



- Will not be finalized until the Parties and Advisors review and respond within the required 10 day review period
- Includes allegations, relevant policies/guidelines and other standards, procedural steps; and
- Fairly summarizes relevant evidence
 - Summaries of Interview (summary for every interview conducted)
 - Summaries of Evidence

List of Parties Interviewed and Evidence Submitted



- Communications log
- Evidence log

Witness Interviews



- If interviews are recorded, each interview should have the following documentation:
 - Transcript of interview
 - Recording of interview (if available)

Appendices

5

- Contains relevant documentary and physical evidence
 - Examples: electronic records, written statements, photographs, surveillance video, copies of text messages or emails, snapchats, restraining orders, or other documentation
- Evidence should be catalogued and organized into appendices with numbers or letters corresponding to the line in the evidence log
 - Save for the final task

Sample Reports



Contents

I. ALLEGATIONS

II. IMPLICATED POLICY

III. STANDARD OF PROOF

IV. PRESUMPTION OF NON-RESPONSIBILITY

V. PROCEDURAL STEPS AND INVESTIGATION
TIMELINE

A. CASE PROGRESSION

B. LIST OF INTERVIEWS

VI. SUMMARY

VII. EVIDENCE

VIII. APPENDIX

I. ALLEGATIONS:

The following was alleged in the Sample University Notice of Investigation and Allegation (NOAI) (Appendix A):

“The alleged actions include Respondent Jordan Reynolds engaging in unwanted sexual contact through putting their hand inside the Complainant’s Alex Baker’s underwear without Alex’s consent. Respondent also allegedly kissed Complainant’s neck without Alex’s consent while holding Alex’s arms down to Alex’s side. This allegedly occurred while in the Music Department Office located in Briggs Hall.

This is alleged to have occurred on the evening of March 3, 2023 following a Sample University Music Department sponsored event.

II. IMPLICATED POLICY

The Complaint was filed alleging the following 2020 Sexual Discrimination and Sexual Misconduct Policy “Title IX Policy” (hereinafter referred to as “the Policy”), and section was violated:

Then cite to the specific policy and sections and definitions.

PROHIBITED CONDUCT:

- Allegation/Incident 1: Section B. Sexual Misconduct
- Sexual Assault- Sexual assault defined in 20 U.S.C. 1092(f)(6)(A)(v), is an offense classified as a forcible or non-forcible sex offense

Sections III(A) and III(C) of The Policy provides its definition and examples of consent, as follows:

Consent: Lack of consent ...

III. STANDARD OF PROOF

The Hearing Panel shall employ the Preponderance of Evidence/Clear and Convincing Standard in evaluating the facts and circumstances of this matter, according to the Sample University 2020 Title IX Sexual Harassment Complaint Resolution Procedures. (Sec.6b)

IV. PRESUMPTION OF NOT RESPONSIBLE

Pursuant to the Sample University Sex Discrimination and Sexual Misconduct Policy there is a presumption that the Respondent is not responsible for the alleged conduct until a determination regarding responsibility is made at the conclusion of the investigation and resolution process.

V. PROCEDURAL STEPS AND INVESTIGATION TIMELINE

a. Case Progression

Pre-Formal Complaint

On Tuesday, March 7, 2023, Chair of the Sample University Music Department, Dr. Rhonda Logan, contacted student Alex Baker about an unexcused absence. In response, Alex informed Dr. Logan that she had been sexually assaulted by student Jordan Reynolds. Alex gave a detailed description of the events to Dr. Logan. (Appendix A)

On March 8, 2023 at 12:32 am Dr. Logan emailed Title IX Coordinator Anita Suarez alerting her to Alex's allegations. (Appendix B)

On March 8, 2023, Coordinator Suarez emailed Alex asking her if she would want to meet with her that day. Alex replied that same day that she was unavaialble to meet that day but owuld like to meet on Marcdh 9.

On March 9, 2023 Alex met with coordinator Suarez at the Title IX office. Coordinator Suarez explained to Alex her reporting options and her rights pursuant to University Policy and Title IX. Alex said she wanted to think about wheether to file a formal complaint.

On March 10, 2023, Alex submitted a formal, written and signed complaint to Coordinator Suarez.

Formal Investigation

On March 10, 2023, Alex filed a formal, written and signed Complaint with the Title IX Office. That Complaint alleged “Sexual Assault” and “Unwelcome Sexual Contact”.
(Appendix C)

On March 14, 2023, a Notice of Investigation and Allegation was sent to the ...
(Appendices D and E)

DATE	ACTION
x/x/2021	Formal written complaint filed by Complainant via email and acknowledged by Title IX Office x/x/21
x/x/2021	Title IX Coordinator held follow up with meeting with Complainant post formal written complaint to clarify and questions about the process, rights or options shared at time of initial reporting
xxxx	Notice letter issued to Complainant and Respondent via email
xxxx	Title IX Coordinator email to External Investigator with instruction to begin investigation process
xxxx	Title IX Coordinator Informed Respondent they have the right to meet to discuss rights and options
xxxx	Investigator reached out to Complainant to establish initial contact to begin scheduling initial interviews

DATE	ACTION
xxxx	Informed Parties the name of the external Investigator, Martha Collins
xxxx	Title IX Coordinator met with Respondent to share rights, options and procedural steps
xxxx	Process Delay-Investigation due to campus spring recess; Parties and Investigator Notified by Title IX Coordinator
xxxx	Title IX Coordinator informed Respondent, Complainant, and Investigator that the process (investigation phase) will continue effective this date.
xxxx	Investigator shared Draft Investigation Report with Complainant and Respondent
xxxx	Respondent emailed Investigator Response to Draft Report
xxxx	Complainant emailed Investigator Response to Draft Report

b. List of Interviews

- On March 29, 2023 and April 23, 2023 Alex Baker was interviewed via Zoom. Alex did not choose to have an Advisor present. Both interviews were recorded with Alex's consent. (Appendices D and E)
- Dr. Logan was interviewed via Zoom on March 31, 2023. The interview was recorded with Dr. Logan's consent. (Appendix H)
- Lucy Chen was interviewed via Zoom on April 8, 2023. The interview was recorded with Lucy's consent. (Appendix J)
- Etc.

VI. SUMMARY

All relevant information that was shared during the interviews of the Parties and Witnesses are contained in this report. Other information that is directly related but not deemed relevant, remain in the Investigation File but were not incorporated herein.

The following is a summary of undisputed facts:

Alex Baker is a student at Sample University. Alex is a senior, expected to graduate in December of 2023. Alex is a violinist who is a member of the honors String Quintet. Alex has known Jordan Reynolds, a senior who had been expecting to graduate in June 2023, since Fall of their Freshman year. Jordan is a percussionist and the parties have participated in several classes and numerous performances together during the four years they have known one another...

INTERVIEW OF ALEX BAKER

The following is a summary of the relevant portions of Alex's interview:

Alex was not drinking on the night of March 4, 2023, as she does not drink alcohol as a rule. In general, Alex does not mind when others drink but she noted Jordan's inebriated stated at the event because they were being "rude and inappropriate" (Appendix D, at pg 11.) When asked what she meant by "rude and inappropriate" Alex replied, "It was a formal event, sort of the culmination and recognition of all that we had accomplished. There were a lot of prestigious performers and professors at the event and it was, not exactly serious, but formal. This wasn't a cast party where everyone kind of lets loose. I don't know why J thought it was the right time to get wasted but apparently he did and he just was making dumb, sexual jokes towards me in front of Dr. Logan and being kind of loud..."

...

VII. EVIDENCE

Alex provided the following items:

- Word document description of what occurred including most of her texts with Jordan
- Messages between herself and Lucy Chen (Appendix C)
- Messages between herself and Jordan

Jordan provided the following items:

- Snapchat screenshot (Appendix H)

Dr. Logan provided the following items:

- Email between herself and Alex

Lucy Chen provided the following items:

- Messages between herself and Alex

Sam Montgomery did not provide any physical evidence

VIII. RESPONSES TO DRAFT REPORT

On May 21, 2023 Jordan submitted a response to the Draft Report (Appendix J) requesting the investigator include the description they provided in their interview of Alex's skirt being "very tight". This was incorporated into the report.

On May 22, 2023 Alex submitted a response to the Draft Report, which suggested a number of edits. The following changes were made in response to her submission:

- The labelling of Appendix H was corrected from G to H;
- Alex first arrived on campus after Spring break, before the rest of the student body, for violin rehearsal.

IX.	Appendix
A.	Notice of Investigation and Allegations
B.	Email from Alex to Title IX Office, first reporting the allegation
C.	Formal Written Complaint of Alex attached to email to TIX Office
D.	Case Report
E.	Floor Plan of Music Office in Briggs Hall
F.	Messages between Alex and Lucy provided by Alex
G.	Messages between JaAlex and Lucy provided by Lucy
H.	Messages between Jordan and Sam provided by Jordan
I.	Respondent's Response to Draft Report
J.	Complainant's Response to Draft Report



Questions?

THANK YOU!

TITLE  SOLUTIONS, LLC

