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Title IX Investigator Training

November 4, 2021



Investigation Planning & Design

Speaker: Elizabeth Abdnour, JD

I. How must a school respond to allegations of sexual harassment?^{1,2}

1. Schools must “respond promptly in a manner that is not deliberately indifferent.”
2. The Title IX Coordinator or designee must promptly contact the complainant to discuss the availability of supportive measures, regardless of whether a formal complaint is filed, and to explain the process for filing a formal complaint.
3. In addition, if a formal complaint is filed, either by the complainant or the Title IX Coordinator, a school must:
 - a. Offer supportive measures to the respondent, and
 - b. Follow the Title IX grievance process specified by the 2020 amendments.
4. In addition to setting out these requirements, the Title IX regulations provide that a school is deliberately indifferent “only if its response to sexual harassment is clearly unreasonable in light of the known circumstances.”

II. Pre-investigation matters

1. Investigators must be impartial, unbiased, and free of conflict.
 - a. Conflict of Interest check: you will know the names of the Complainant and Respondent based on the Notice of Investigation.
2. Trauma-informed interviewing:
 - a. A school may use trauma-informed approaches to respond to a formal complaint of sexual harassment. The preamble clarifies that the 2020 amendments do not preclude a school “from applying trauma-informed techniques, practices, or approaches,” but notes that the use of such approaches must be consistent with the requirements of 34 C.F.R. § 106.45, particularly 34 C.F.R. § 106.45(b)(1)(iii).³
3. Presumption of non-responsibility:
 - a. The 2020 amendments require a school to include in its Title IX grievance process “a presumption that the respondent is not responsible for the alleged conduct until a determination regarding responsibility is made at the conclusion of the grievance process.”⁴
 - b. “The presumption does not imply that the alleged harassment did not occur,” or that the respondent is truthful, or a complainant is untruthful.⁵ Instead, the preamble says that the

¹ 34 C.F.R. § 106.44(a).

² <https://www2.ed.gov/about/offices/list/ocr/docs/202107-qa-titleix.pdf>

³ <https://www2.ed.gov/about/offices/list/ocr/docs/202107-qa-titleix.pdf>

⁴ 34 C.F.R. § 106.45(b)(1)(iv).

⁵ 85 Fed. Reg. at 30,259.

- presumption is designed to ensure that investigators and decision-makers serve impartially and do not prejudge that the respondent is responsible for the alleged harassment.
- c. Schools that have relied on this presumption to decline services to a complainant or to make assumptions about a complainant's credibility have done so in error.
4. Key Questions of the Title IX Grievance Process
 - a. What is the alleged conduct?
 - b. Does the evidence support a finding that it occurred (preponderance of the evidence or clear and convincing evidence – your policy will define standard)
 - c. If it occurred, was the conduct a policy violation?
 - d. You will ask the parties and identify information and evidence that answers these questions.
 5. Understand parties' rights and responsibilities in the process.
 - a. Neither party is required to participate in the investigation.
 - b. Parties have the right to an advisor during interviews.
 - c. Parties have the right to provide their account of the alleged misconduct and have that account be on the record.

III. Investigation

1. Receive formal complaint (process should be outlined in school policy)
2. Assess for conflict & notify Title IX Coordinator immediately in case of conflict.
3. Jurisdiction determination
4. Prompt notice to both parties of allegations
 - a. Provide updated notice if additional allegations come out during investigation.
5. Assess for supportive measures.
 - a. The school must contact the complainant to discuss the availability of, and to offer, supportive measures, regardless of whether a formal complaint is filed. A school must also consider the complainant's wishes with respect to supportive measures.⁶
 - b. Supportive measures “are designed to restore or preserve equal access to the [school's] education program or activity,” “protect the safety of all parties or the [school's] educational environment, or deter sexual harassment,” do not “unreasonably burden [] the other party.”⁷
 - c. Can include removal from campus or administrative leave.⁸
6. Investigation plan: Create a template with timelines for your entire team to start from.

⁶ 34 C.F.R. § 106.44(a).

⁷ 34 C.F.R. § 106.30(a).

⁸ 34 C.F.R. §§ 106.44(c)-(d).

- a. Witness List & Order of Interviews for all Witnesses and Parties
 - b. Evidence List
 - c. Investigation Timeline
 - i. Per law/regulations, there is no set timeline – but timeline must be:⁹
 1. Defined in policy
 2. Reasonably prompt
 - ii. Best practices:
 1. Official TIX policy statement about overall timeline
 2. Internal policy or procedures outlining detailed timelines
 3. Emails to parties regularly with updates
 4. Notify parties immediately in case of delay beyond original timeline & include reason for delay
7. Teams of two or more investigators:
 - a. Communicate with your co-investigator & delegate tasks.
8. Brainstorm interview questions based on policy violations.
 - a. Do not be shy about asking personal and intimate questions. Details are important!
 - b. If you feel like the interviewee may perceive the question as harsh or biased, it may be helpful to explain WHY you are asking a specific question.
9. Interview parties and witnesses.
 - a. General order of interviews: Complainant → Respondent → Witnesses
 - b. Interview anyone named (or who you discover in your investigation) who may have relevant information.
 - c. Ask all questions requested by parties unless clearly not relevant. Relevance should be defined in your policy.
 - d. Know your policy – this will guide what facts you need to gather.
10. Prepare the report.

IV. Important tips:

1. Be Flexible!
 - a. You will likely have to modify/update your investigation plan and timeline as the investigation goes on – communicate with parties so their expectations are realistic.
2. Understand the time commitment.
3. You must be impartial, unbiased, and free of conflict, but there is no requirement of “neutrality.”
 - a. You can and should be empathetic to both parties and provide resources, support information, flexibility, etc.
 - b. You cannot favor one party over the other.

⁹ 34 C.F.R. § 106.45(b)(1)(v).

- c. If a party feels heard and respected by you, there is a higher chance of satisfaction with the process even if they disagree with the outcome.
4. Investigations are stressful and require you to listen carefully to, process, and rehash over and over very difficult and painful facts about rape, sexual abuse, harassment, stalking, and/or relationship violence.
 - a. Self-care is crucial!
 - b. Community care is also crucial.

The background of the slide is a photograph of a stack of brown paper folders, likely manila folders, stacked on a desk. To the left, a portion of a laptop keyboard is visible. The overall scene is dimly lit, with a dark blue overlay on the left side where the text is placed.

Investigative Report Writing

Speaker: Susanna Murphy, JD

Overview

Drafting the Investigative Report

Investigative Report vs. Investigative File

Sample Report- Not a master template

Drafting the Investigative Report

Elements to include

How to summarize interviews

How to summarize evidence

Final review

What should be included?

Allegations being investigated

Relevant Policies and Procedures

Standard of Proof

Procedural steps

Summary of relevant evidence, including interviews

Summary of Interviews

How to Summarize Interviews

Introduction

Logical sequence-
chronology vs breakdown
by allegation

Consider undisputed facts

Opinions vs Observations

- Statement vs fact
- Observations- discuss as an institution

Evidence and Exhibits

- Can be a list
- May need to explain
- Share who provided or how obtained

Essential review

- Review with the 5 W's
 - May need to go back
- Pronouns
- Proofread/print
- Formatting

Investigation File

Directly Related

Vs.

Relevant

Never Relevant

- Complainant's sexual predisposition
- Complainant's prior sexual behavior (with exceptions)
- Prohibited evidence

Elements of Investigation file

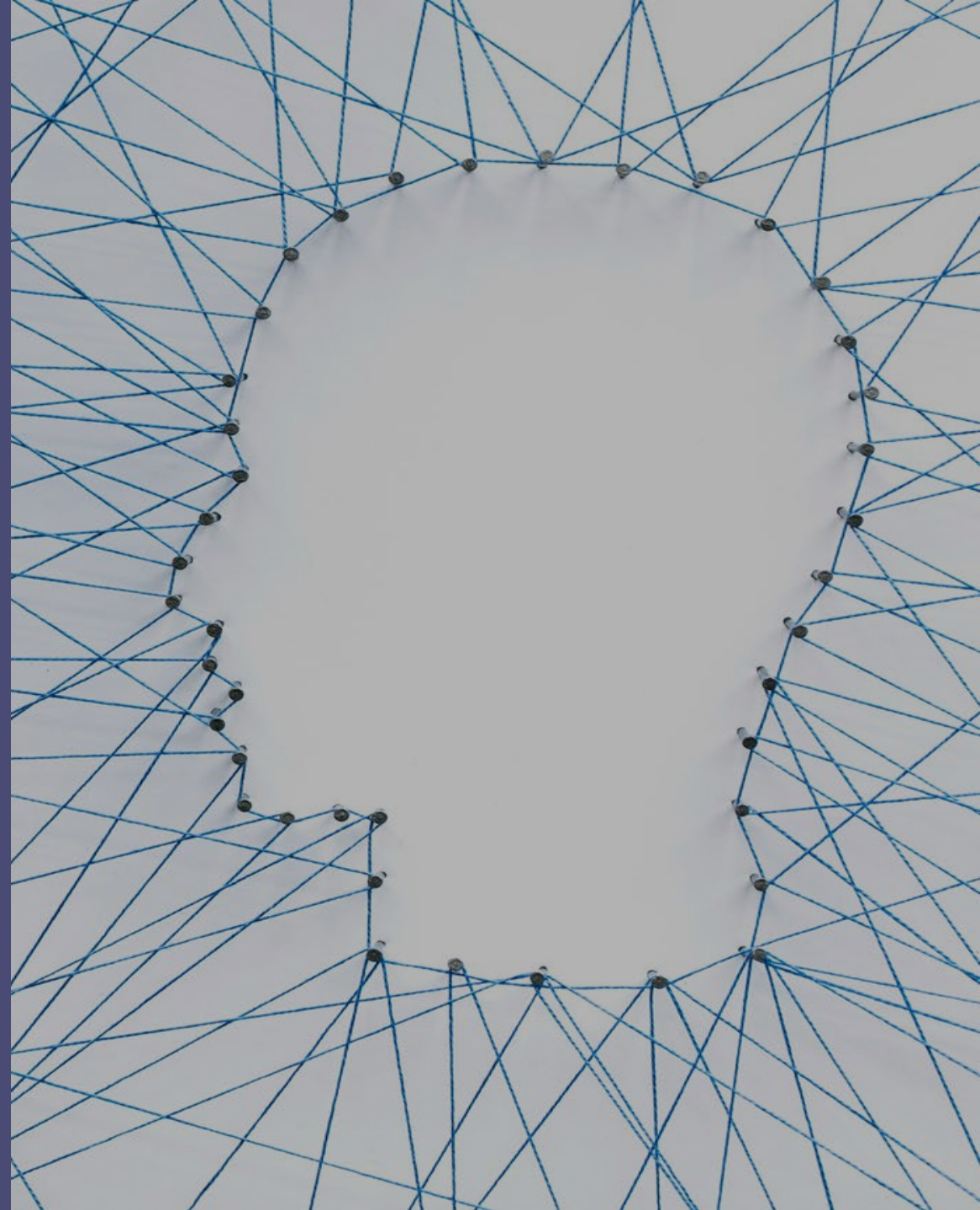
- Table of contents
- Investigation Report
- All allegations, policies, procedures
- Procedural steps
- Standard of Proof
- Summary of evidence: interviews and evidence
- List of all interviewed/submitted evidence
- Communications Log
- Evidence log
- Witness interviews (recordings/transcripts if applicable)
- Appendix of evidence

Sample Report

- Not a one size fits all institutions
- Be consistent

Understanding Trauma: Conducting a Trauma-Informed Title IX Investigation

Speaker: Dr. Jessica Groleau



Introduction

Jessica Groleau, Ph.D.

Davidson College, Licensed Psychologist, Coordinator of Clinical Services & Training

Dr. Groleau earned a Ph.D. in Clinical Health Psychology from the University of North Carolina at Charlotte, and joined the Center for Student Health and Well-Being at Davidson College in the fall of 2019. She has conducted research on the impact of trauma in college students, with an emphasis on positive psychology and post-traumatic growth. Her clinical interests include young adult development, working with survivors of sexual abuse and intimate partner violence, LGBTQ issues, relationship concerns, and anxiety.

Session Overview

Why is trauma-informed support important for Title IX Investigators to understand?

- Being part of a Title IX process is inherently traumatic for all parties
- Understanding trauma will facilitate a more accurate and fair investigative process, and help you avoid errors

Topics

- Introduction to Trauma
- Recognizing Personal Bias
- Trauma-Informed Communication
- Promoting Empowerment
- Scenarios & Commonly Asked Questions



Introduction to Trauma

What is Trauma?

Definition of Trauma

- Subjective
- Real or perceived threat
- Manifests differently in each person

Consider each Party's Experiences

- One or both parties have likely already experienced trauma
 - Prior to the incident (childhood experiences, family history, collective memory, etc.);
 - During the incident;
 - As a result of being accused of the alleged incident; or
 - Through a combination of these experiences.
- One or both parties may be currently experiencing trauma during the Title IX grievance process

Neurobiology of Trauma

Brain Stem ("Reptilian Brain")

- Involuntary survival processes (heartbeat, breathing, etc.)

Limbic System ("Emotional Brain")

- Regulates the body's stress response
- Also plays an important role in memory and learning

Frontal Lobes ("Executive Brain")

- Responsible for cognitive skills including ability to rationalize, plan, self-monitor, and control one's responses
- Also important for voluntary movement

Human Stress Response

Limbic System Response

- Amygdala ("fear center") is activated
 - All resources are re-directed toward survival

Disconnection of Frontal Lobes

- Executive functioning goes "offline"
 - Interferes with cognition, voluntary muscle movement, and ability to process the experience later on
- *This is functional and protective!

Human Stress Response

Fight

Flight

Freeze

Fawn ("Appease")

What does this mean for a Title IX Investigation?

Fragmented/incomplete memories are common

Emotional Dysregulation is expected

- Can appear in a variety of ways: inappropriate affect (laughter), extreme anxiety, numbing/disconnection

The Fawn or Freeze responses may appear to be consent!

Discussing the event is re-traumatizing

- Try to limit the number of interviews, questions, etc.



Recognizing Personal Bias

Personal Bias

A tendency, inclination, or prejudice toward or against something or someone.

- Biases are universal
 - We are all products of our own personal histories, cultures, and many other factors that shape the ways in which we see the world
 - Biases are automatic and often outside of conscious control
- Biases are not always bad!
 - i.e. an inclination toward healthy lifestyle behaviors
- Biases can be based on stereotypes or inaccurate information
- It is crucial that you understand your biases in order to be most effective in your role

Recognizing Personal Bias

Bias vs. Conflict of Interest

Bias

- Having a personal history with sexual misconduct
- Holding stereotyped gender beliefs about sexual violence (i.e. perpetrators are males)
- Internalization of rape culture (often leads to skepticism or blaming of the complainant/survivor)

Conflict of Interest

- Having a personal relationship with one or more parties
- Holding multiple relationships with one or more parties
- There is any way in which you could benefit (or be harmed) from the outcome of the investigation

Recognizing Personal Bias

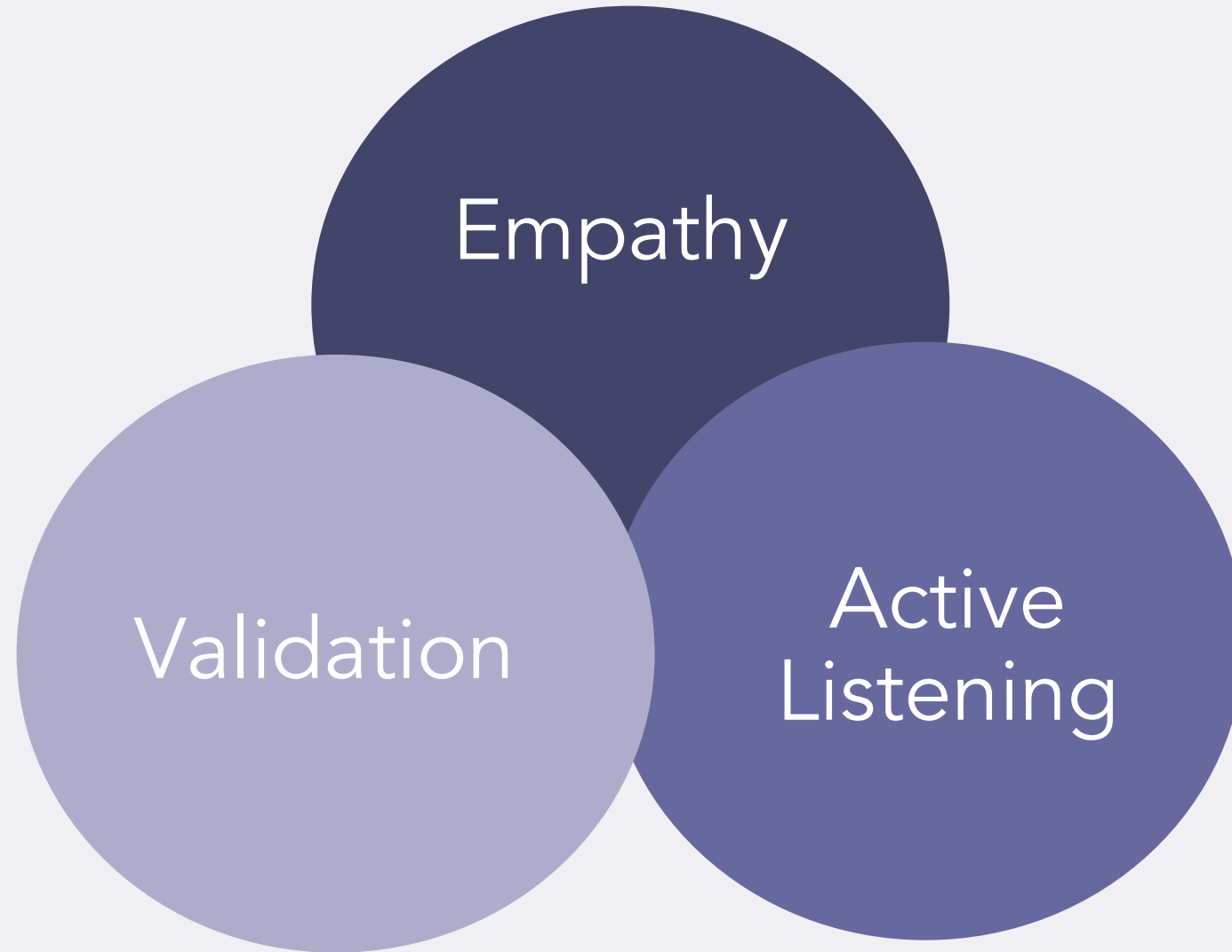
Is personal bias affecting your ability to be objective?

- Introspection
 - Implicit Bias Tests
<https://implicit.harvard.edu/implicit/selectatest.html>
- Having implicit bias does **not** make you a bad person (we all have it!)
 - Managing your implicit biases will make you a better investigator
- Questions to ask yourself:
 - What does the information at hand cause you to believe about those involved? Why?
 - When should you recuse yourself from a case because you are unable to overcome personal bias?

A network diagram consisting of several gold-colored pins of varying heights connected by thin, light-colored lines. The pins are arranged in a roughly circular pattern, with some lines crossing over others, creating a complex web of connections. The background is a soft, out-of-focus blue. The text 'Trauma Informed Communication' is overlaid on the left side of the image in white, sans-serif font, enclosed in a dark blue rectangular box.

Trauma Informed Communication

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. But you can try to put yourself in your party's shoes
- Not the same as sympathy!
 - Sympathy is rarely helpful in these situations, most trauma survivors report that sympathy exacerbates feelings of shame/embarrassment

Communicating Empathy

- "I can see how painful 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's

- 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's

- Tell someone how they should feel: "You shouldn't let this bother you so much."
- Question their responses: "Are you sure that's what happened?"

Active Listening

A communication technique that serves the following purposes:

1. Ensures that you understand what the other person is saying accurately
2. Communicates to the other person that you are 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..."

Additional Strategies

Consider the Environment

- Allow each party to choose the meeting place (empowerment!)
- Consider comfortable seating, tissues, water, privacy, etc.

Focus on each Party & their Needs

- Refrain from sharing own stories & experiences
- Create an open space for them to talk (no judgement)
- Aim to understand each party's perspective

Keep a Healthy Emotional Distance

- Self-care is crucial
- Boundaries are okay (and even healing!)
- Direct each party to campus resources that can provide support

De-Escalation

Confrontation is Possible

- Title IX processes may be intense, and emotions may run high
- Confrontation may occur between you and either party

Strategies for De-escalation

- Keep personal emotions in check
- Create physical space
- Allow for silence & patience for decisions
- Practice validation, active listening & empathy

Promoting Empowerment



Empowerment

Empowerment = Voice and Choice

- What could empowerment look like for each party?

How can you, as a Title IX Investigator, identify resources to help empower each party?

- You need to be neutral/objective, but you can refer each party to other sources of support/advocacy

What may each party consider to be possible obstacles to empowerment? How may you address them?

Tools for Empowering a Party



Ask the party:

- How are you feeling?
- Do you feel safe?
- How can I help you feel safer?
- What do you need right now?
- What do you need throughout the duration of the Title IX process?
- How do you feel about participating in the Title IX process?
- What steps of the Title IX process concern you?



As the investigator, remember:

- Validation, Empathy, and Active Listening
- How can you best support each party & address their needs?

Building Rapport and Optimizing Interviews

Tom Denton

Co-Founder & Director of
Investigations
Title IX Solutions



Preparing for the Interview

Preparing for Interviews



After planning the investigation, you know:

- Who needs to be interviewed (at least in the 1st round of interviews)
- What specific allegations are you investigating?

Each party must be sent a Notice of Interview

- Also known as invitation to interview- schools may have different names
- Date, time, location, expected attendees, and purpose of the interview
- Reminder regarding role of the Advisor
- Confirm with Title IX Coordinator

Planning Interviews

Participating in an Interview

- Generally, interview the complainant before the respondent or any witnesses
- Typically 1-2 interviews per person
- Allow at least 1 hour for each interview
- Be patient

How many
Investigators?

Participating in an Interview



Ideally two investigators

- Lead Investigator:
 - Coordinates with the Title IX Coordinator & the Parties
 - Drafts the investigative report & prepares the Investigation File/Binder
- Other investigator
 - Takes notes during the interview, note questions, & ask questions during the interview if prompted by the Lead Investigator
- Note Taker
- Importance of gender balance
 - Try to have people of different genders present

What about the Interview Setting?



Carefully structure the setting and environment for interviews

- Often overlooked!
- Comfort
- Privacy
- Spatial Positioning

Interview Setting



Virtual investigations

- Much harder to control the setting
- Tell the party/witness exactly how to join the meeting
- The appropriate setting for this interview (if possible)
 - Private space, comfortable seating, etc.
- What should they bring?
- Control your own setting
 - Successful eye-contact, appropriate lighting, privacy, etc.

Preparing a Preamble

What is a Preamble?



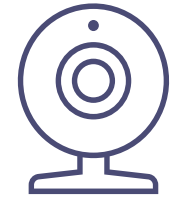
- Read by investigator at the beginning of the interview
- State date, time, purpose of the interview, location, persons present & verbal consent of all persons participating
- Ask each person to state their name for later voice identification during transcription
- Time & date should be read onto the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

Why are Preambles Important in Title IX cases?

- Consistency throughout interviews
- Consent, policy violations in question, relevant sections of the policy in question are on the record
- Helpful should you be called as a witness during the hearing or litigation
- Helps put the party or witness at ease – they become used to your voice, your presence, etc.

Recording Interviews

Recording



- Only investigator may record interviews
- Transcript & recording of interview is shared with the parties & advisors
- Frees up the investigator to focus on the interview & interviewee
- Obtain consent from the interviewed party!
- Least intimidating option in-person: HD recording app on a phone
- Have the interview transcribed
 - Transcription & audio recording will be included in the investigative report

Starting the Interview

Starting the interview



- Before walking in the room, visualize yourself conducting a successful interview
- Consider how the interviewee perceives you
- Making the interviewee feel comfortable
 - DO NO HARM
- Explain the investigative process at the beginning of the interview
- Start with non-threatening questions help to put the interviewee at ease

Empathy- Based Interviewing

Empathy Based Techniques

This is an Interview not an interrogation!

- Respondents are not presumed “guilty” or “responsible”
- Respondents should be treated with respect
- 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
- Good cop/bad cop DOES NOT WORK

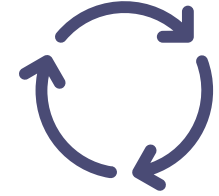
Title IX Advisors

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. This is the party's interview, and you need to hear their story from them!

Circling Back After Interviews

Circling Back After Interviews



- 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!

Conclusion

Conclusion

- Search for truth, NOT a confession
- Maintain control over yourself
 - Keep calm, remain objective, professional, unbiased and non-judgmental
- You are a neutral, unbiased fact finder

Thank you!

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