

SEXUAL MISCONDUCT INVESTIGATION MANUAL

This Sexual Misconduct Investigation Manual is designed to aid sexual misconduct investigators in understanding their role and responsibilities throughout the investigation process. This manual provides general guidelines and tips for conducting interviews with complainants, respondents, and witnesses. Additionally, the manual explains how investigators should take notes during interviews and outlines the expected work product that should be included in the Investigative Report, which will be submitted to the Title IX Coordinator, complainant, respondent and decision makers. In addition to interviewing involved parties, investigators must also collect and inventory evidence, which is highlighted in the manual as well.

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SEXUAL MISCONDUCT INVESTIGATION MANUAL

Once a complainant decides to file a formal complaint regarding an alleged incident of sexual misconduct, the complainant and respondent will be notified of the allegations, and a prompt, thorough, and impartial investigation of the incident will begin. Investigative and resolution procedures are intended to protect the rights of both the complainant and respondent, protect privacy, and prevent retaliation.

ROLE OF INVESTIGATORS

Investigators are responsible for interviewing and recording facts from the complainant, respondent, and witnesses regarding the alleged incident of sexual misconduct. Investigators also collect any relevant evidence including but not limited to emails, text messages, clothing, and photographs.

Sexual misconduct investigators must comply with the following criteria:

- Investigators must be trained and experienced.
- Investigators must remain **impartial, unbiased, fair, and able to objectively evaluate the credibility of the complainant, respondent, witnesses, evidence and relevance.**
- Investigators must remain unbiased as they generate and submit an impartial investigative report to the Title IX Coordinator who will present the investigative report to the complainant, respondent, and appropriate decision-maker. The decision-maker reviews the investigation report, conducts the hearing, makes a determination regarding the allegations raised in the formal complaint and, if the respondent is found to be responsible, imposes sanctions.
- The investigator cannot be the same person who acted as an advisor for the complainant or witness and cannot participate in the decision-maker role.

If at any point during the investigation the investigator becomes unable to remain impartial or unbiased, or has a conflict of interest, he or she must notify Title IX Coordinator and a new investigator will be assigned to the case.

RESPONSIBILITIES

While conducting interviews with the complainant, respondent, and witnesses, investigators are responsible for the following:

- Investigate the WHO, WHAT, WHERE, WHEN, WHY, and HOW of the alleged incident

- Investigators are to maintain an objective perspective and remain unbiased throughout the investigation. It is natural for investigators to develop certain opinions over the course of the investigation, but they must continue to test for the truth.
- While interviewing complainants, respondents, and witnesses, the role of the investigator is to record the facts, test for truth, and determine relevance. Credibility of statements should be based on the level of detail provided by the interviewed party. Investigators can test the facts of parties' statements through identifying the party's basis of knowledge, which consists of asking the party specific questions to understand how they know what they know (were they at the incident, did they hear about it from the complainant, etc.), why they are making the statement, and their relationship with the complainant or respondent. Ultimately, investigators are to question if an interview subject's account of events seems logical or plausible.
- Investigators must consider motivations for parties to lie to the investigator.
- Investigators are to collect all available facts and evidence. The decision-makers determine the outcome of the investigation and impose any sanctions and supportive measures for the involved parties.

Given the circumstances of an investigation, it may not be possible for investigators to definitively confirm that the alleged incident occurred or draw a conclusion. The most important task of investigators is to perform a prompt, impartial, and thorough investigation and provide documentation of every step of the investigation.

If investigators initiate the investigation promptly and conclude it within the allotted time, maintain an unbiased and objective perspective throughout the investigation, interview all related parties, examine all leads, collect all available evidence, and provide comprehensive documentation of the investigative process, the university has performed its obligation to investigate the alleged incident of sexual misconduct and compile information to allow the university's decision-maker to make a fully-informed determination.

GENERAL GUIDELINES

While conducting interviews with the complainant, respondent, or witnesses, investigators are encouraged to take into account the following guidelines:

Number of Investigators: Investigations may be carried out by a team of investigators (no more than two to three people), but one central investigator will be required to delegate tasks within the investigative team and report to the Title IX Coordinator.

Outside Investigators: For more complex cases in which trained, in-house sexual misconduct investigators are not adequately prepared to investigate, outside investigators may be called upon to either consult with or provide guidance to in-house investigators or conduct the investigation. Outside investigators should also be called when a majority of the in-house investigators have a bias or conflict of interest. Outside investigators should be properly licensed by appropriate authorities.

Number of Interviews: Typically, the investigator will interview each party once, but investigators are encouraged to meet with a party as many times as necessary if the party requests additional conversations with the investigator. Interview subjects may remember more information or specific details about the alleged incident over time, and the investigator should take advantage of the interview subject's willingness to participate in the investigation while still assessing the credibility of the information and interview subject.

Gender Balance: It is useful to have one man and one woman present while interviewing complainants, respondents, and witnesses. A gender-balanced team of investigators (or investigator and note-taker) permits the interviewed party to converse with the gender with which they feel most comfortable. This is especially important for interviewing complainants.

Note-taking: Ideally, the investigator will be accompanied by a note-taker (which may or may not be another investigator) during interviews so the lead investigator is able to focus on asking questions and reading body language while the note-taker documents statements and observations. All notes should be preserved, as part of the official record and made available to the complainant and respondent as part of the investigation file

Recording: It is always preferable to record an interview with a complainant, respondent, or witness so the investigator is able to freely converse with the other party. Recording the interview may also permit the investigator to focus more on the body language and expressions of the interviewed party, which should also be documented and included in the final report. Prior to recording, the investigator must obtain consent from the interviewed party. The investigator should authenticate the recording by including a preamble describing the date, time, purpose of recording, location, persons present and verbal consent of all persons participating. It is helpful to ask each person present to state their name for later voice identification during transcription. The time and date should be read onto the recording at the end of the recorded interview.

Using an HD recording app on a phone is the least intimidating option for the interviewed party while still ensuring a high-quality recording of the conversation. After the interview, the investigator should transcribe the interview.

Cell Phones: A phone should be purchased and used exclusively for each investigation, as it will be part of the investigation file. An investigator's personal cell phone should never be used in an investigation.

Scheduled breaks: If the investigator has multiple interviews scheduled with witnesses, a minimum one-hour break should be scheduled between each interview to better provide the investigator with time to note key findings and observations prior to initiating another interview.

Right to an advisor: Complainants and respondent have the right to an advisor, who may be an attorney, friend, family member, or social worker who may accompany them to the interview for emotional support. The advisor is not permitted to intervene or otherwise participate in the interview.

Tips for Interviewing Complainants and Respondents

Often complainants have experienced a traumatic event and therefore will require a trauma-informed approach to the interview. It is recommended that investigators take a class and watch the YouTube videos listed below, or similar to those, prior to interviewing complainants to recall trauma-informed interview techniques and better understand the neurobiology of trauma.

Sexual Assault: A Trauma Informed Approach to Law Enforcement First Response

[“Neurobiology of Trauma”, Dr. David Lisak Part 1 and 2](#)

Investigators are encouraged to consider the following tips while interviewing complainants:

1. *Make the Complainant Feel Comfortable:* First, **DO NO HARM**. The first 10-30 seconds of an interview with a complainant are crucial. In this short period of time, complainants develop perceptions of the investigator, which will ultimately impact how the complainant tells their story. Therefore, it is critical that the investigator develop rapport with the complainant as soon as possible to make them feel comfortable. In doing this, investigators may also avoid causing further harm to a traumatized victim.

Example statements include: “I’m so sorry that this has happened” “Can I get you anything?” “How can I help you” “Are you up for this interview?” “Has everything you need been provided?” These non-threatening questions help to put the complainant at ease and can help the investigator assess how to proceed with the interview as to not traumatize the victim further.

2. *Making the Respondent Feel Comfortable:* A similar approach should be taken when interviewing a respondent. Developing rapport with a respondent is often critical to a productive interview.

Respondents are not “guilty” or “responsible” until a final determination may reach that finding. Respondents should be treated with respect and investigators should approach a respondent’s interview as a matter of determining the facts related to the alleged incident, not building a case to prosecute and convict a criminal”.

3. *Understanding the Complainant’s/Respondent’s Rights:* The complainant is not required to participate in the investigation, but he or she will be given the option to participate in an interview with the investigator. The complainant’s and respondent’s statements may be considered credible sources of information regarding the alleged incident, but should be tested for truthfulness. This may be accomplished by considering the consistency of an interviewee’s statement, or confirming statements through third party interviews or other evidence.

If the complainant wishes to participate in the investigation process, the investigators should always interview the complainant before the respondent and witnesses.

If the complainant declines to participate in the investigation, the complainant's account of the alleged incident should still be assessed. If the account seems credible, the investigator must continue the investigation without the cooperation of the complainant and submit an investigation report to the Title IX Coordinator.

4. *Explain the Investigative Process:* Complainants and respondents in sexual assault cases often know little about the investigative process and may find the interview intimidating, confusing, or even frightening. Explain the investigative process to the complainant/respondent to create transparency and trust. This may also help to establish a sense of control for the interviewee.
5. *Develop Empathy for the Complainant/Respondent:* Empathy will impact the types of questions investigators ask the complainant/respondent and may aid the investigator in further developing a level of trust. The more trust a complainant/respondent has in the investigator, the more likely they are to share a greater level of detail of the alleged incident during the interview.
6. *While Conducting the Interview:* Trauma impacts victims of sexual assault in various ways, therefore complainants can have a wide range of demeanors and affects during the interview. Complainants may also experience memory fragmentation. Therefore, investigators should approach complainants with care.

Go slowly and use a reassuring voice. It is critical to listen carefully and watch for signs or indicators of post-traumatic stress. Questions should be open-ended and non-threatening. The complainant should be asked to describe his or her feelings, and the investigator should allow ample space and time for the complaint to talk. Questions designed to capture senses (sight, touch, smell, taste, and hearing) should also be asked. Investigators should have tissues readily available throughout the interview.

Investigators should listen to complainants and respondents without judgment. They must also refrain from assuming anything during the interview or judging the complainant or respondent based on dress, actions, inactions, omissions, etc. Investigators are to keep an open mind and remain objective. Investigators should always take the matter seriously. Title IX investigations can have life changing impacts on peoples lives.

7. *Timing:* The investigator should allow the complainant at least two sleep cycles after the alleged incident and should generally interview the complainant before the respondent or any witnesses. Investigators should allow ample time to interview the complainant and respondent (at least one hour) and have patience should the complainant or respondent need time to compose themselves or recall events.
8. *Setting:* The investigator should carefully structure the setting and environment for interviews. While interviewing the complainant/respondent, comfort is key. It is suggested to conduct the interview in a room with soft-colored or muted-toned walls, carpeting, and furniture. Ideally this room will have a couch or comfortable chair and multiple seating

options for the complainant/respondent. If used, the recording device should be out of view or discrete. The investigator should be able to maneuver freely in response to the complainant/respondent.

Techniques for Interviewing Parties

Investigators may use any or all of the following interview techniques during the investigation:

Funnel interviewing: Start asking the interviewed party broad questions and then narrow questions as the interview unfolds.

Circular interviewing: Ask numerous questions surrounding the topic of interest. Circle back a second time to the same topic of interest for clarity and consistency to test for truth. Repeat the question, and then ask it again later. Continue to “circle back” to the same question. For key issues, a different form of the same question may be asked three times.

Zigzag interviewing: Ask two to three linear, nondescript, and innocent questions. Then ask one stressful question that is about the key topic of interest.

INVESTIGATION NOTES

Investigators should take notes throughout the investigation process and are encouraged to use the **contemporaneous notes template**. Contemporaneous notes are notes taken at the time or shortly after an interview and represent the best recollection of the interview. Given the sensitive nature of investigative interviews, investigators and note-takers should take handwritten notes in ink during the interview, which may be typed up afterwards. Only the facts of the interview along with observations of the interview subject will be included in the final investigation report, but investigators should document as much as possible in their contemporaneous notes throughout the investigation process.

While still important for recorded interviews, if the interview is not recorded, taking contemporaneous notes is critical. Ideally notes are taken during the interview, which is why a note-taker is useful.

Important information to note through an interview and an investigation include:

- Investigator’s observations, opinions, impressions, inconsistencies, red flags
 - This information will be used to aid the investigator in writing up the Executive Summary. Not all observations, impressions, etc. may be included in the Executive Summary, but any written notes will be part of the investigation file.
- Ongoing list of pointers and leads
 - These highlight available opportunities for next steps in the investigation. For example, if an interview subject mentions a location, the investigator may note that investigators should go to this location to check for video cameras
- Key things learned
 - This may include information about the alleged incident or improved personal investigation techniques that may be implemented during the next interview or

investigation. Investigators should think critically about the best investigation tactics for the case and evaluate their effectiveness

- Statements investigators have made to the complainant or respondent
 - It is critical to note the statements made to the complainant or respondent (promises, etc.) so expectations are clear among all parties.

****If interviews are recorded, after contemporaneous notes are used to craft the Executive Summary and Memoranda of Interviews and the investigator extracts effective techniques for personal use, all contemporaneous notes and the recording must be preserved.**

The investigator may also solicit a written or typed (and signed) statement of the account from the complainant/respondent or witnesses.

These documents must be preserved and must be included in the investigation file as evidence.

FINAL PRODUCT: INVESTIGATIVE REPORT

- Under Title IX regulations the complainant, respondent and their advisors will be given the opportunity to inspect and review all evidence gathered in the investigation directly related to the allegations raised in the complaint and respond to that information before the investigative report is written.
- To maintain transparency throughout the investigation process and comply with Title IX regulations, the complainant and respondent will be permitted to read the investigative report before it is submitted to the decision-maker. The complainant and respondent will have the opportunity to respond to the report during any formal hearing.

The Investigative Report is the final product of the investigation. Upon completion, the investigator should submit the Investigative Report (which includes collected evidence) to the Title IX Coordinator. The complainant and respondent will be given the opportunity to respond to the report during the hearing in front of the decision-makers.

INVESTIGATION REPORT:

The Investigative Report consists of:

- 1) Executive summary of investigation
- 2) Factual report of investigation
- 3) Memoranda of interviews
- 4) Interview recordings and transcripts
- 5) Evidence Inventory & Receipt
- 6) Collected Evidence (including consent forms)

Executive Summary: This document acts as a cover letter for the Investigative Report. It contains the investigator's overall assessment and narrative of the investigation. Although it is not the role of the investigator to determine if the alleged incident occurred, in the executive summary the

investigator may state if they find the complainant, respondent, or witnesses truthful and credible. The executive summary may also theories or motivations of the parties, including possible motives for lying to investigators, if applicable.

Factual Report of Investigation: This report states the facts and tested truth of the investigation. It is free of personal opinion and judgment. In addition to facts obtained from evidence and interviews, it should include observations from the interviews (i.e. the number of restroom breaks an interview subject took, if the interview subject was offered soda or coffee, if he or she accepted soda or coffee, the duration of the interview, etc.).

Memoranda of Interviews: Following each interview, the investigator should produce a Memorandum of Interview to state the basic facts of the interview (date, time, duration, parties involved, etc.), the interview subject's background, a summary of the interview subject's statements, and observations. This document is based on the facts of the interview and the investigator's observations and perceptions of the interview subject's credibility.

Interview Recordings and Transcripts: If the interview subject consents to being recorded, the recording and transcript should be included in the investigation file.

Collected Items Inventory & Receipt: This document contains an itemized list of collected items, the date the evidence was found, and a list of recipients. Evidence Inventory & Receipt organizes and acts as a table of contents for collected evidence. The list of recipients acts as a chain of custody form to track and document each person (investigator, Title IX Coordinator, etc.) who has had custody and control of the evidence throughout the investigation and decision-making process. Investigators should use the Evidence Inventory & Receipt form.

Collected Items: All collected items should be included in the investigation file. This may include screenshots of text messages, photographs, videos, clothing, etc. In addition to the physical or electronic evidence, signed consent to remove and search forms should be included with evidence collected. It is recommended that such consent forms be utilized if and when investigators seize and search electronic devices belonging to parties involved in the investigation (complainant, respondent, witnesses).