

TITLE IX INVESTIGATOR TRAINING

Saint Lawrence University



WELCOME

Session Speakers

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Abdnour

Advisor and Investigator,
Title IX Solutions, LLC



Tawny
Alonzo

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Training Agenda

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

8:45 a.m. - 9:45 a.m. | Understanding Title IX Policies and Procedures

9:45 a.m. - 10:30 a.m. | Establishing the Role of the Title IX Investigator

10:30 a.m. - 10:45 a.m. | Break

10:45 a.m. - 11:30 a.m. | Planning a Prompt, Thorough and Impartial Investigation

11:30 a.m. - 12:15 p.m. | Guidelines for Title IX Investigation Questions

Training Agenda

12:15 p.m. - 1:00 p.m. | Lunch Break

1:00 p.m. - 1:45 p.m. | Conducting Title IX Interviews- Part One

1:45 p.m. - 2:45 p.m. | Conducting Title IX Interviews- Part Two

2:45 p.m. - 3:00 p.m. | Break

3:00 p.m. - 4:00 p.m. | Formatting and Drafting the Investigation Report


4:00 p.m. - 4:30 p.m. | Creating an Organized, Accessible, and Secure Investigation File

4:30 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



ST. LAWRENCE
UNIVERSITY'S
RESPONSE TO
TITLE IX SEXUAL
HARASSMENT



TITLE IX
GRIEVANCE
PROCESS FOR
FORMAL
COMPLAINTS

Key Documents



2020 Title IX Regulations

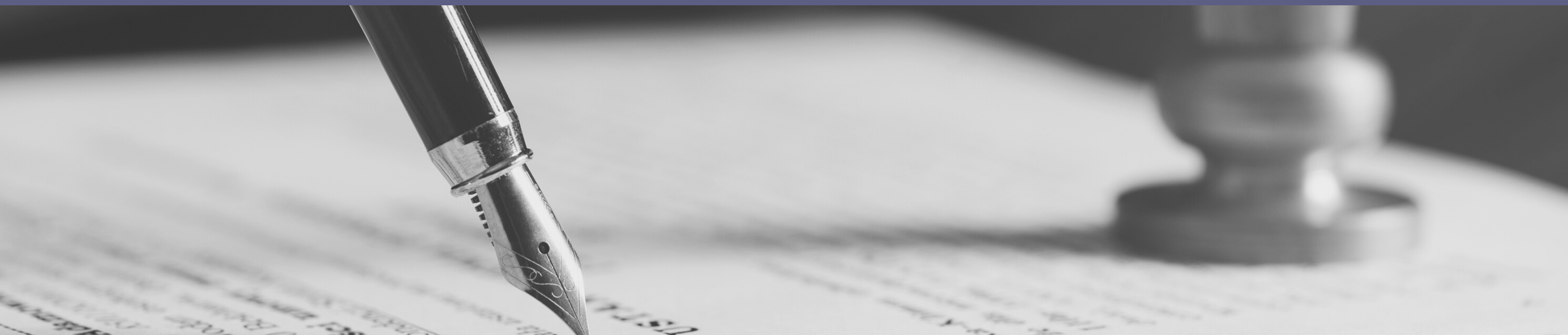


St. Lawrence University Combined Discrimination and Harassment Policy



St. Lawrence University Procedures Under the Nondiscrimination, Discriminatory Harassment or Sexual Misconduct Policies

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:

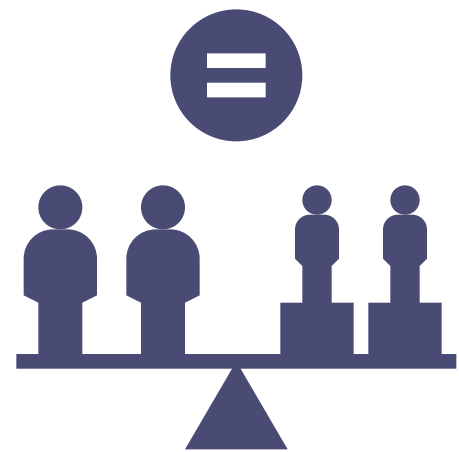
- Provide guidelines, policies or protocols through their codes of conduct beyond the scope of the regulations;

and/or

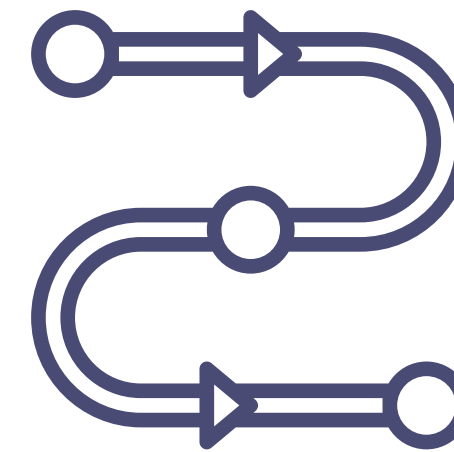
- Provide details regarding policies or procedures which are not addressed in the regulations

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:



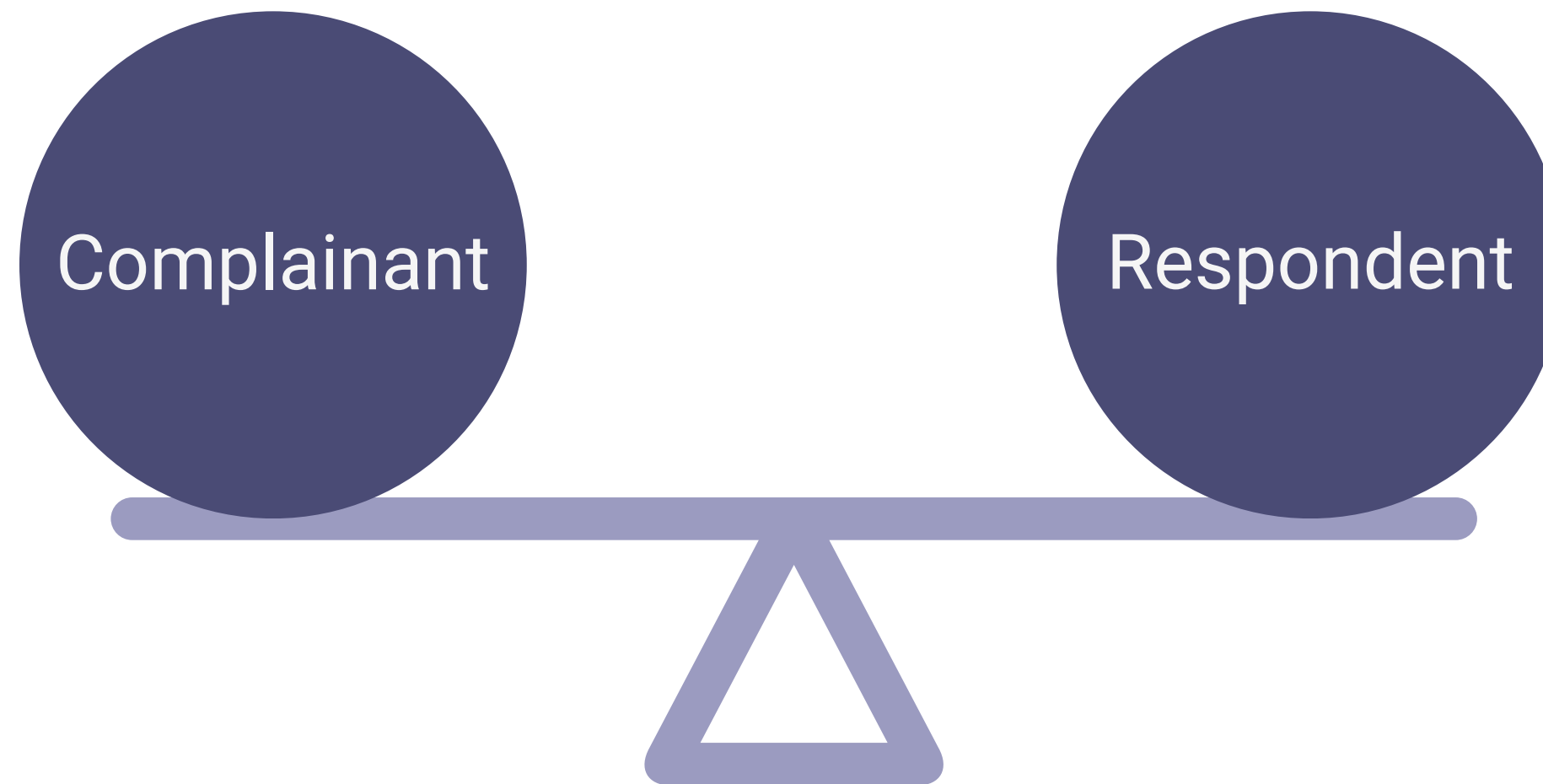
Gender identity or expression



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.

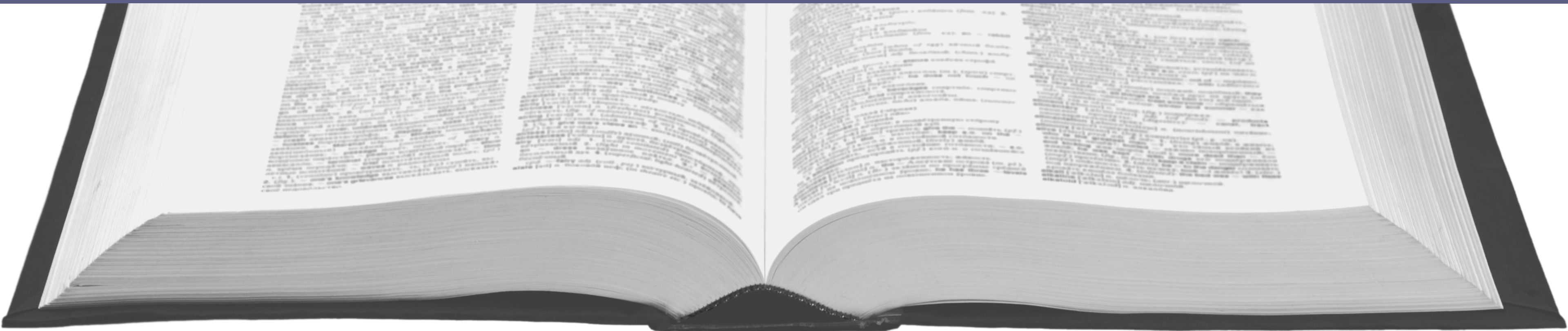


Bias and Conflict of Interest

§ 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 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 University conditioning the provision of an aid, benefit, or service of the University on an individual's participation in unwelcome sexual conduct"

St. Lawrence University Combined Discrimination and Harassment Policy

- 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 is 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')."

St. Lawrence University Combined Discrimination and Harassment Policy

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

"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. Sexual assault consists of the following specific acts:"

Rape

Fondling

Incest

Statutory
Rape

St. Lawrence University Combined Discrimination and Harassment Policy



The statutory age of consent in New York is 17.

Dating Violence

"Dating violence' means violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim. The existence of such a relationship shall be determined based on a consideration of the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship. For purposes of this Policy, verbal and/or emotional abuse will also be considered by the University to violate this Policy. For purposes of this Policy, the "intimate" relationship may be characterized as a series of sexual encounters, dating, 'hooking up', or similar interactions. Examples of abusive actions range from physical acts like hitting, shoving, or restraining to threats designed to control the victim's behavior."

St. Lawrence University Combined Discrimination and Harassment Policy

Domestic Violence

"Domestic violence' means violence committed by a current or former spouse or intimate partner of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction, 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."

St. Lawrence University Combined Discrimination and Harassment Policy

Stalking

"Engaging in a course of conduct directed at a specific person on the basis of sex that would cause a reasonable person to:

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

St. Lawrence University Combined Discrimination and Harassment Policy

Stalking

"For the purposes of this definition, Course of conduct means two or more acts, including, but not limited to, acts in which the stalker directly, indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to or about a person, or interferes with a person's property. The term Reasonable person means a reasonable person under similar circumstances and with similar identities to the victim. The term Substantial emotional distress means significant mental suffering or anguish that may, but does not necessarily, require medical or other professional treatment or counseling. For purposes of this Policy, harm to physical, mental, or emotional health, employment status, or property of such person, a member of such person's immediate family, or a third party with whom the person is acquainted could, in the appropriate circumstances, give rise to substantial emotional distress."

St. Lawrence University Combined Discrimination and Harassment Policy

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.

Consent

However, Saint Lawrence University policy does...



“Affirmative consent is a knowing, voluntary, and mutual decision among all participants to engage in sexual activity. Consent can be given by words or actions, as long as those words or actions create clear permission regarding willingness to engage in the sexual activity. Silence or lack of resistance, in and of itself, does not demonstrate consent. The definition of consent does not vary based upon a participant's sex, sexual orientation, gender identity, or gender expression.”

St. Lawrence University Combined Discrimination and Harassment Policy



Key Phrases in Policy

"Consent to some sexual activity (e.g., kissing, fondling) cannot be presumed consent for other sexual activity (e.g., intercourse). Consent to engage in sexual activity with one person does not constitute consent to engage in sexual activity with another. Consent may be initially given but withdrawn at any time. When consent is withdrawn or can no longer be given, sexual activity must stop."


"In considering whether an individual is incapacitated due to drug or alcohol use, the University will look at a number of factors, including but not limited to the type/amount of alcohol and/or drugs used, as well as such outward signs as slurred or incoherent speech, impaired motor skills (e.g. walking, texting), vomiting, loss of consciousness, etc."

St. Lawrence University's 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"



At Saint Lawrence University- Reporting to Title IX Coordinator always constitutes actual knowledge. SLU has also designated 11 individuals (plus all security officers) as Responsible Administrator. Once they receive a report ,the school has 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 (also found in Saint Lawrence University's *Combined Discrimination and Harassment Policy*)
- Schools must make fact-specific determinations regarding substantial control over the respondent and the context

Adjudicating Under the Code of Conduct

Saint Lawrence University's *Combined Discrimination and Harassment Policy*

"The University prohibits the following behavior in any context even if the conduct occurs off-campus, outside the United States, if the Complainant is not participating or seeking to participate in the University's education program or activity, or otherwise in circumstances over which the University does not have influence or control, including but not limited to during the University's academic breaks. However, the University retains discretion to not respond to, investigate or adjudicate circumstances in which no University interest is implicated."

Avoiding Deliberate Indifference

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



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

Receipt of a Report of Title IX Sexual Harassment

The Title IX Coordinator must promptly contact the Complainant to:

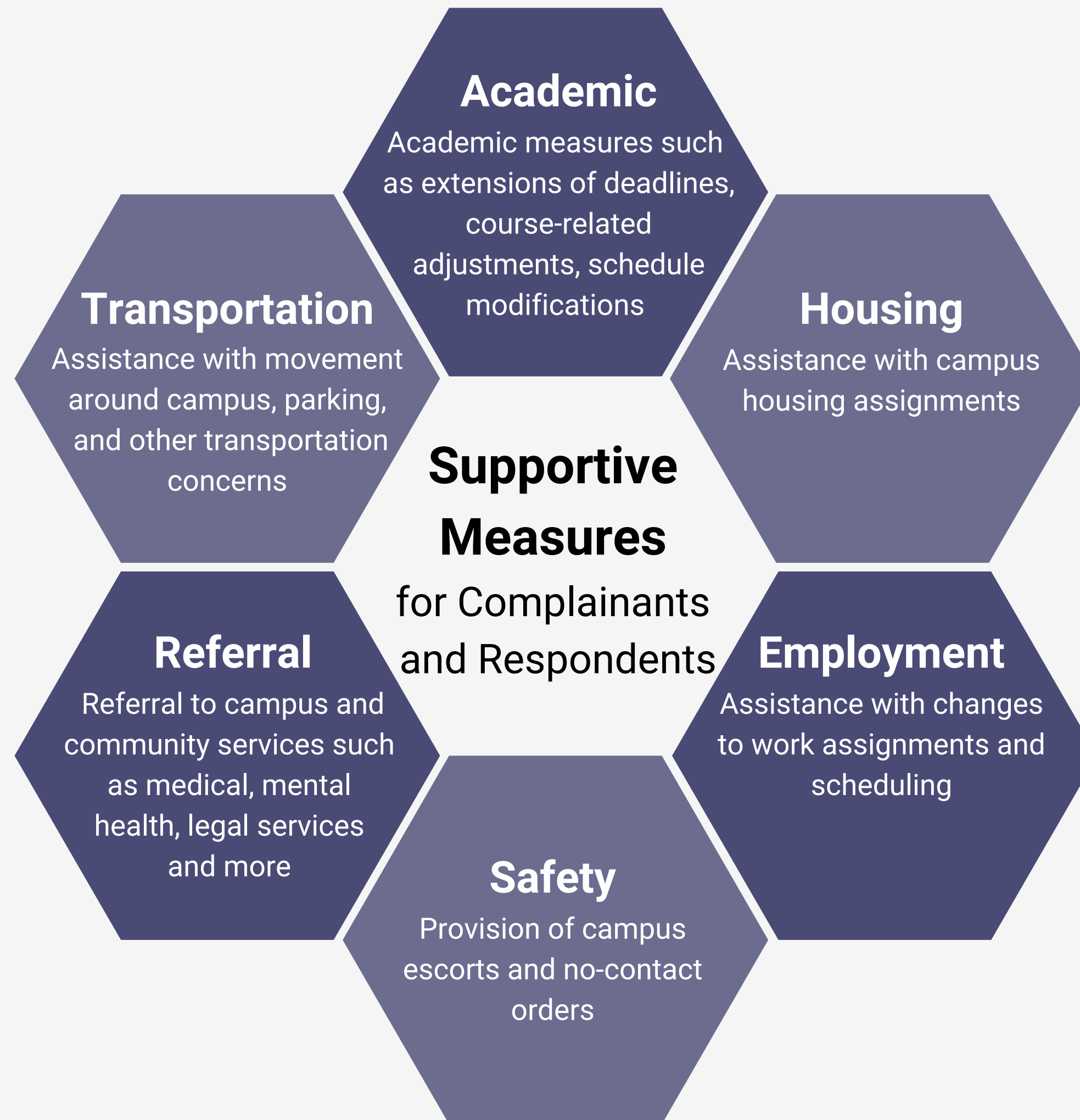
1. Discuss the availability of supportive measures as defined in §106.30;
2. Consider the Complainant's wishes with respect to supportive measures;
3. Inform the Complainant of the availability of supportive measures with or without the filing of a formal complaint;
4. Explain to the Complainant the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

- *"Supportive measures are intended to support the individual who experienced sexual misconduct to continue in their involvement in the University's program and activities."*
- *"Once the Respondent is informed of a report or a formal complaint under this policy, the Respondent will be contacted by the Title IX Coordinator and offered individualized support..."*



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 (*10 days under SLU policy*)

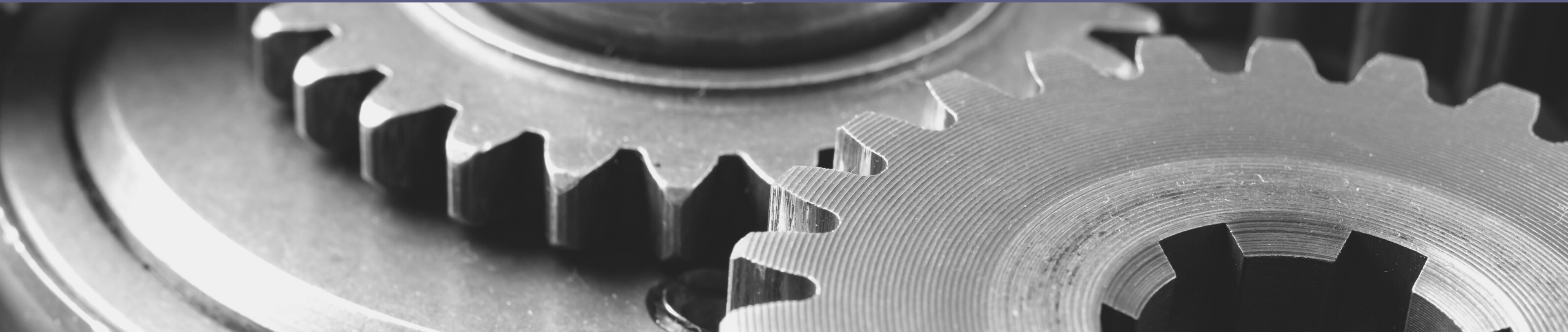


Administrative Leave

- ❖ Applies to non-student employees
- ❖ *"[University employees may be] subject to interim suspension in accordance with the University's employment policies and practices (including applicable collective bargaining agreements)."*



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"

- 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
- *"A formal complaint must be in written form and must be signed by the complainant."*
- 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.

Grievance Process

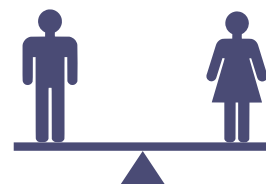
A recipients grievance process MUST:



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

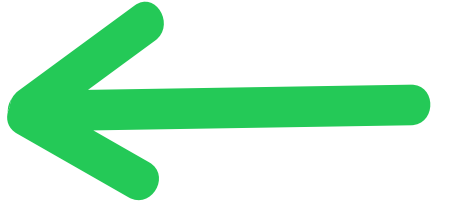
Notice of Allegations

Called a "Notice of Investigation" at Saint Lawrence University

- 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

Title IX Investigation

St. Lawrence University Procedures Under the Nondiscrimination, Discriminatory Harassment or Sexual Misconduct Policies

"The investigation will be fair and impartial and will usually involve interviews of witnesses and review of relevant documentation and other information. The Complainant and the Respondent will be given an equal opportunity to separately present information in the context of the investigation and may request the interview of specific witnesses. The investigator(s) retain(s) discretion to determine how to conduct the investigation and what information is necessary and relevant, subject to the direction of the Title IX Coordinator."

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 Investigation

St. Lawrence University Procedures Under the Nondiscrimination, Discriminatory Harassment or Sexual Misconduct Policies

The investigator(s) need not include information in the investigative report that the investigator(s) determine(s) not relevant or otherwise excludable.



We will speak to best practice during our session on Investigation Reports.

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)

Title IX Hearings

St. Lawrence University Procedures Under the Nondiscrimination, Discriminatory Harassment or Sexual Misconduct Policies

"Absent extraordinary circumstances as determined by the Chair of the RB, no party may seek to introduce at the hearing any evidence not previously made available in accordance with the preceding sentence, other than the investigative report itself and any responses to the investigative report submitted by the parties as described above."

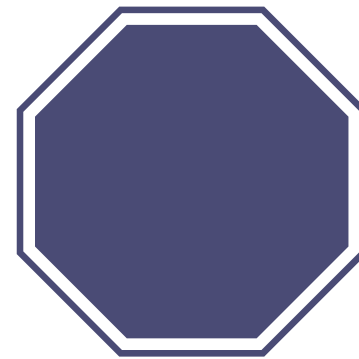
Written Determination Regarding Responsibility

- Determination reached by applying the preponderance of evidence standard at Saint Lawrence University
- 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
 - Saint Lawrence University has the added appeal basis for inappropriate sanction
- 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

Establishing the Role of the Title IX Investigator





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



"The Complainant and Respondent will be provided with notice of the name of the appointed investigator(s) and an opportunity of not more than three days after the notice to raise an objection to the investigator(s) based on any alleged conflict of interest known to the party. If an objection is raised, the Title IX Coordinator will determine whether a conflict of interest in fact exists and necessitates the replacement of the investigator."

Additional Factors to Consider

Gender Balance

- Investigators of different genders are present during Complainant, Respondent, and Witness interviews
- Interviewees can converse with the gender with which they feel most comfortable
- Regardless, Investigators must work to develop rapport with interviewee

Native Language of the Parties

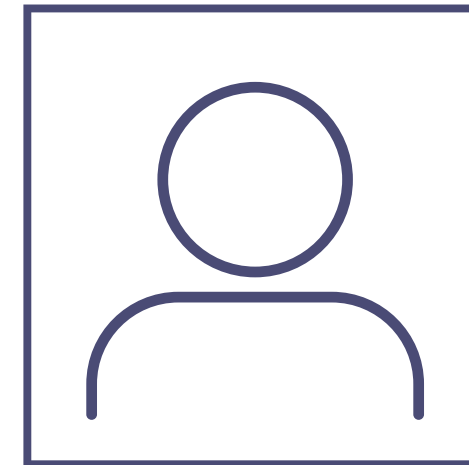
- Lead Investigator is a native speaker or very fluent in the interviewee's language
- If not possible, interviews may require a translator
 - The translator should be briefed on the Title IX process and relevant terms

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



Saint Lawrence University's Combined
Discrimination and Harassment Policy



Saint Lawrence University's Procedures
Under the Nondiscrimination, Discriminatory
Harassment or Sexual Misconduct Policies



Initial Report (if available)



Formal Complaint



Notice of Allegations (Notice of Investigation)



Internal Templates

Saint Lawrence University Policy and Procedures

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 Students' Bill of Rights
 - For example: "Describe the incident to as few institution representatives as practicable and not be required to unnecessarily repeat a description of the incident;"
- 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

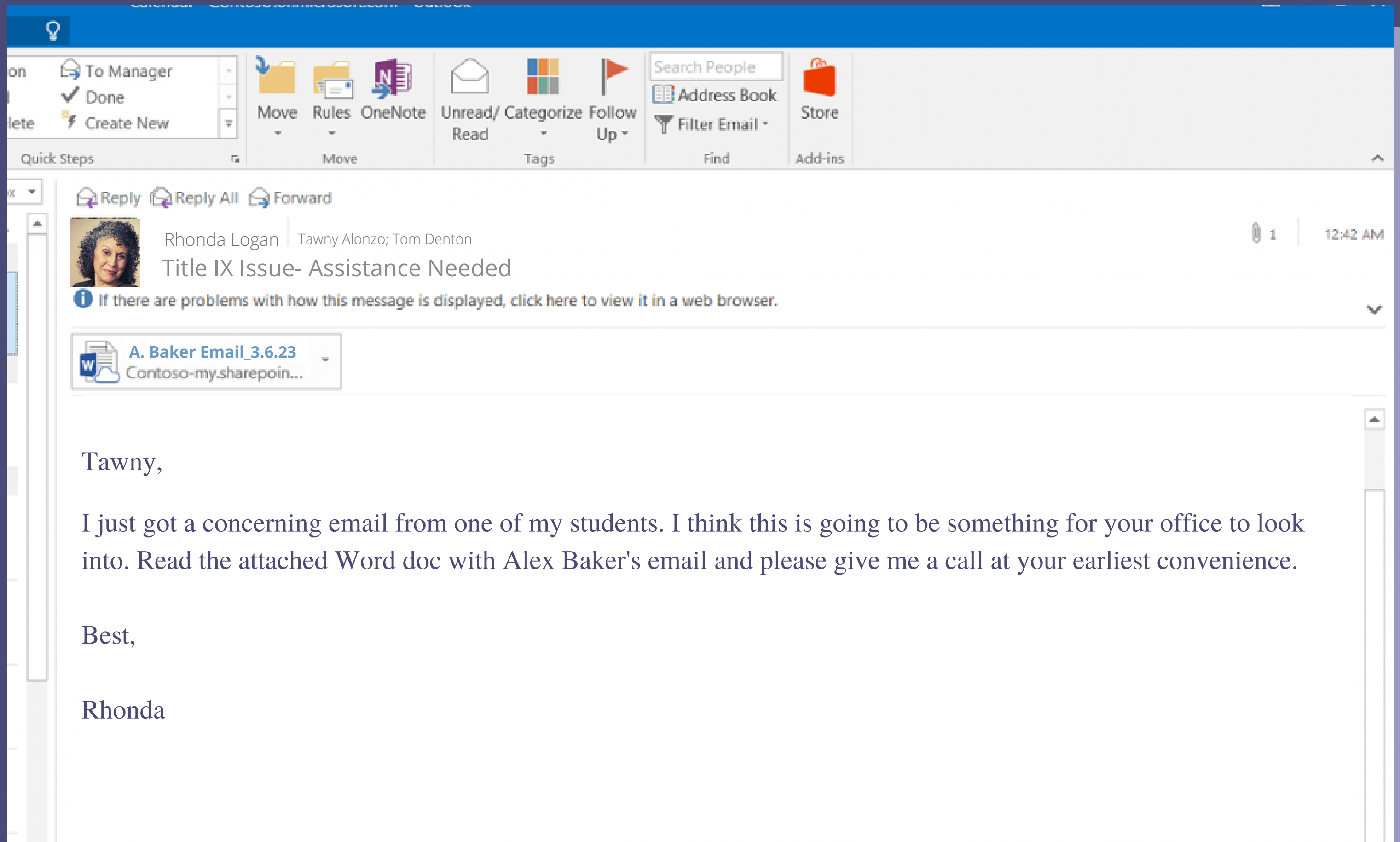
Incident Report

- 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 Report



Complainant



Issue Date: 8-1-2019



Alex Baker

SID: 6527411



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

Sample Notice of Allegations



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

- (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

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



PRIVACY

- Discrete area of campus with minimal foot traffic and exposure
- Off the “main path” in the building
- No large windows
- Thick walls to muffle sound



SAFETY

- Proximity to assistance, if needed
- Access to phone
- Mindful of exits
- Plan for various types of evacuation or lockdown according to school policy



COMFORT

- Soft-colored or muted-toned walls, carpeting, and furniture
- Couch or comfortable chair and multiple seating options
- Recording device should be out of view or discrete
- Investigator should be able to maneuver freely in response to the Complainant or Respondent
- Close to a bathroom
- Provide water, tissues, etc.



SPACE

- Imaginary barriers
- Chair location
- Eye level
- Line of sight
- Positioning of multiple individuals (parents/guardians, Advisor, etc.)

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
- 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

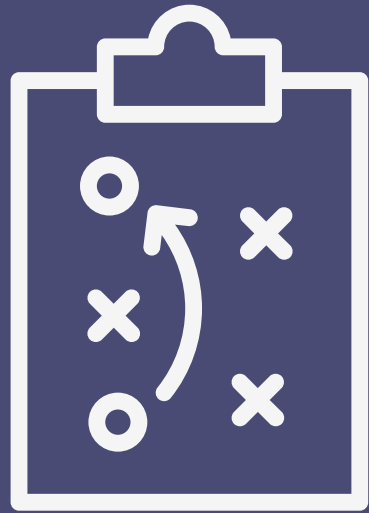
The Respondent is
leaving the country
for a semester-
long study abroad
experience

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



PREPARING THE
INTERVIEW
PLAYBOOK

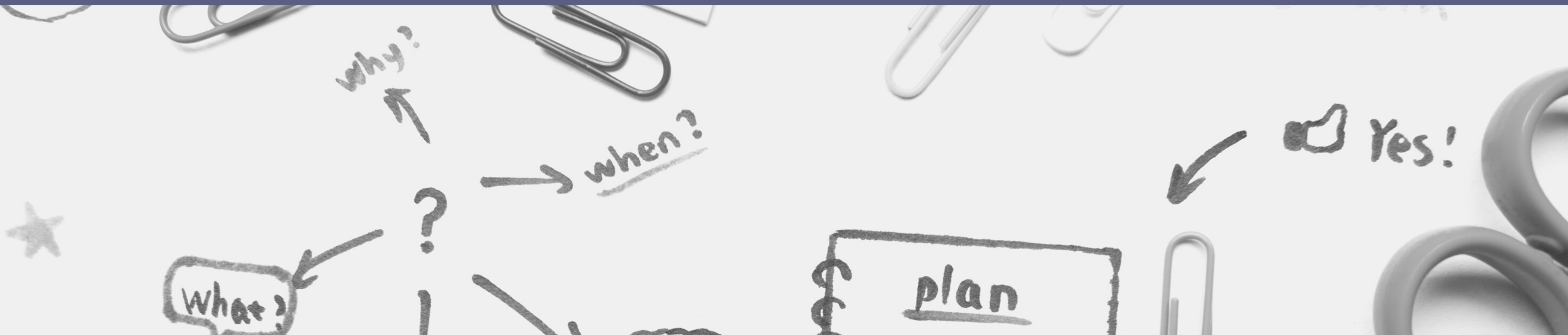


CRAFTING SOUND
TITLE IX INTERVIEW
QUESTIONS



UNDERSTANDING
EMOTIONS OF THE
PARTIES

Preparing the Interview Playbook

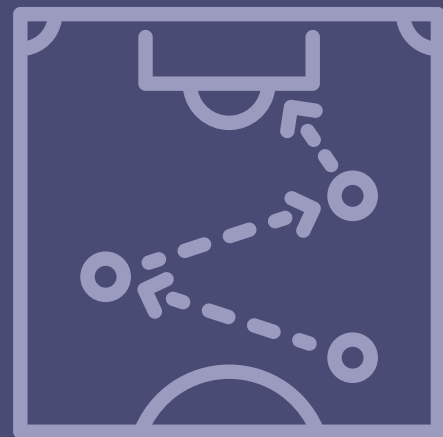




Let's unlearn the word script.



- 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:



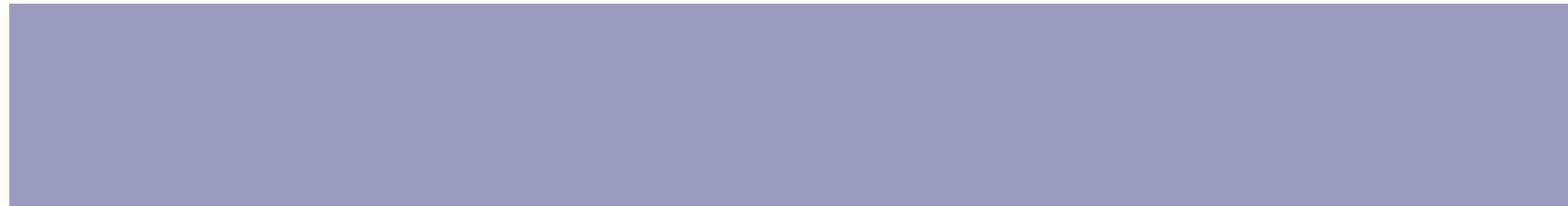
And more frequently look like this:



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

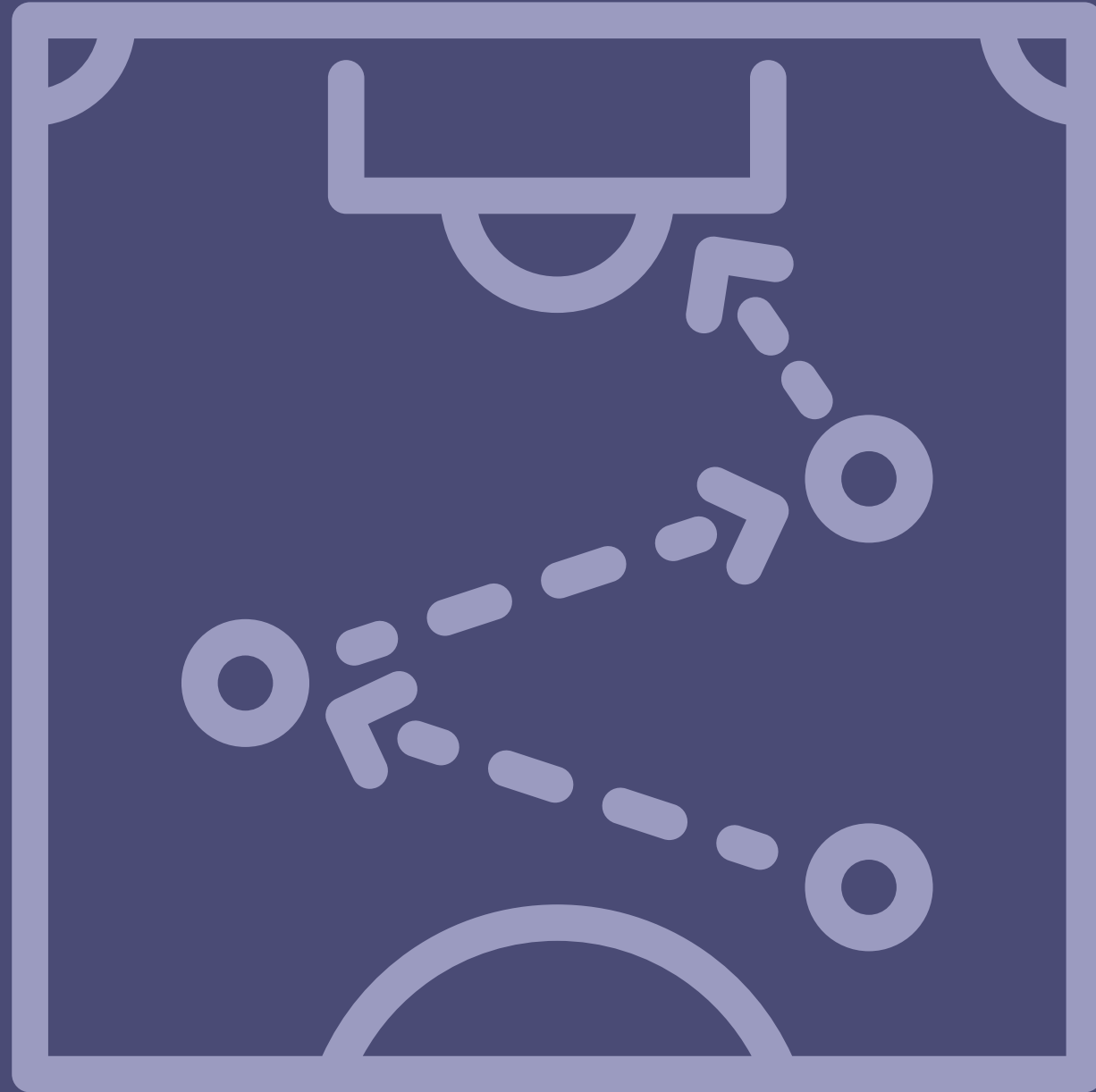


 Then pare the information collected down by fairly summarizing relevant evidence to this:



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





But how?

Let's establish a gameplan....

Gameplan for Each Interview

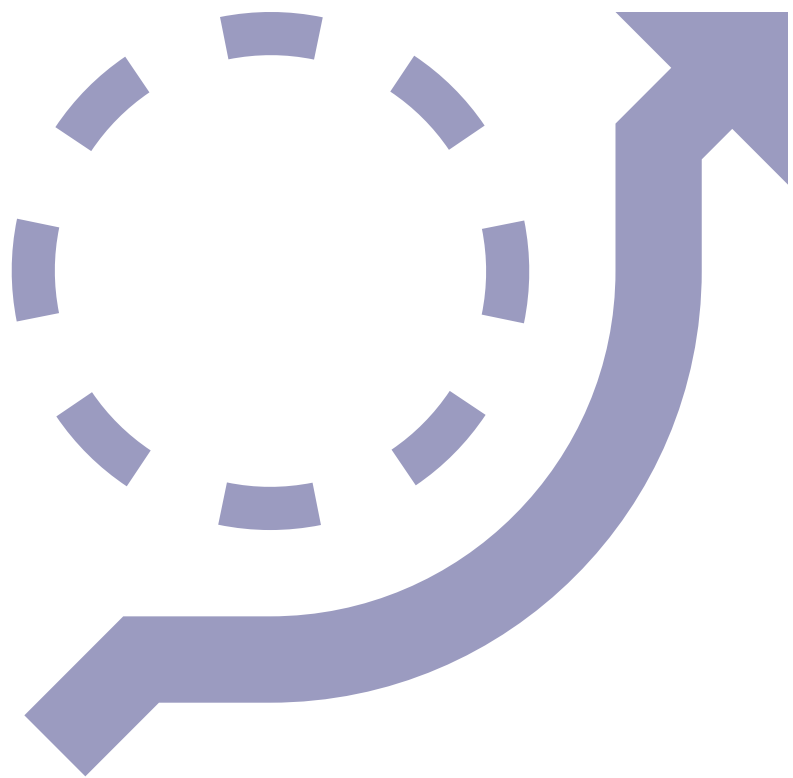
Just as a coach creates a gameplan for each opponent faced, you'll create a gameplan for each Party or witness interviewed.



Brainstorm the variables you will need to consider as you create a list of questions for each Party's or witness' interview.

Anticipating the Obstacles

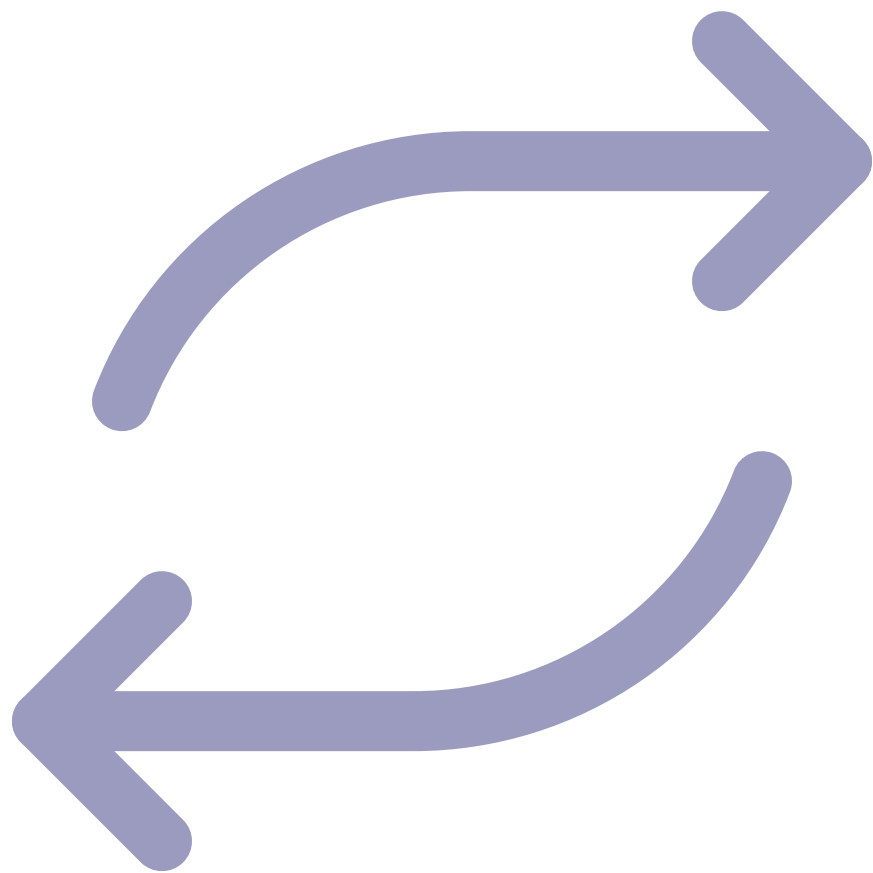
Every interview will need to be tailored to the person we're speaking with. Knowing the potential for variation, it is likely we'll encounter obstacles. Let's think of how we might reduce challenges faced by coming up with a plan.



Using the variables you thought of, how might you prepare in advance for potential obstacles?

Making In-Interview Adjustments

As much as we may prepare, we must also know that even the most solid gameplan should be thrown out the window if it isn't working.

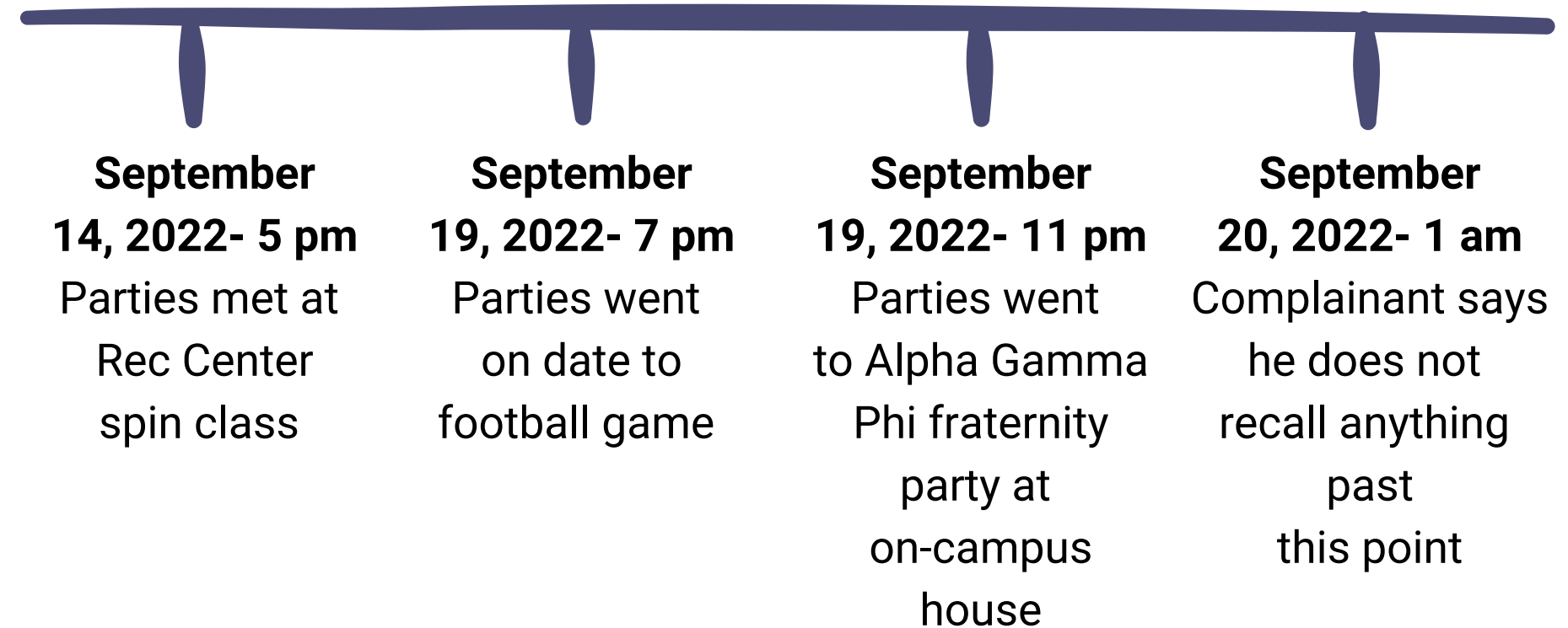


How can you call an audible a while you are actively conducting the interview?

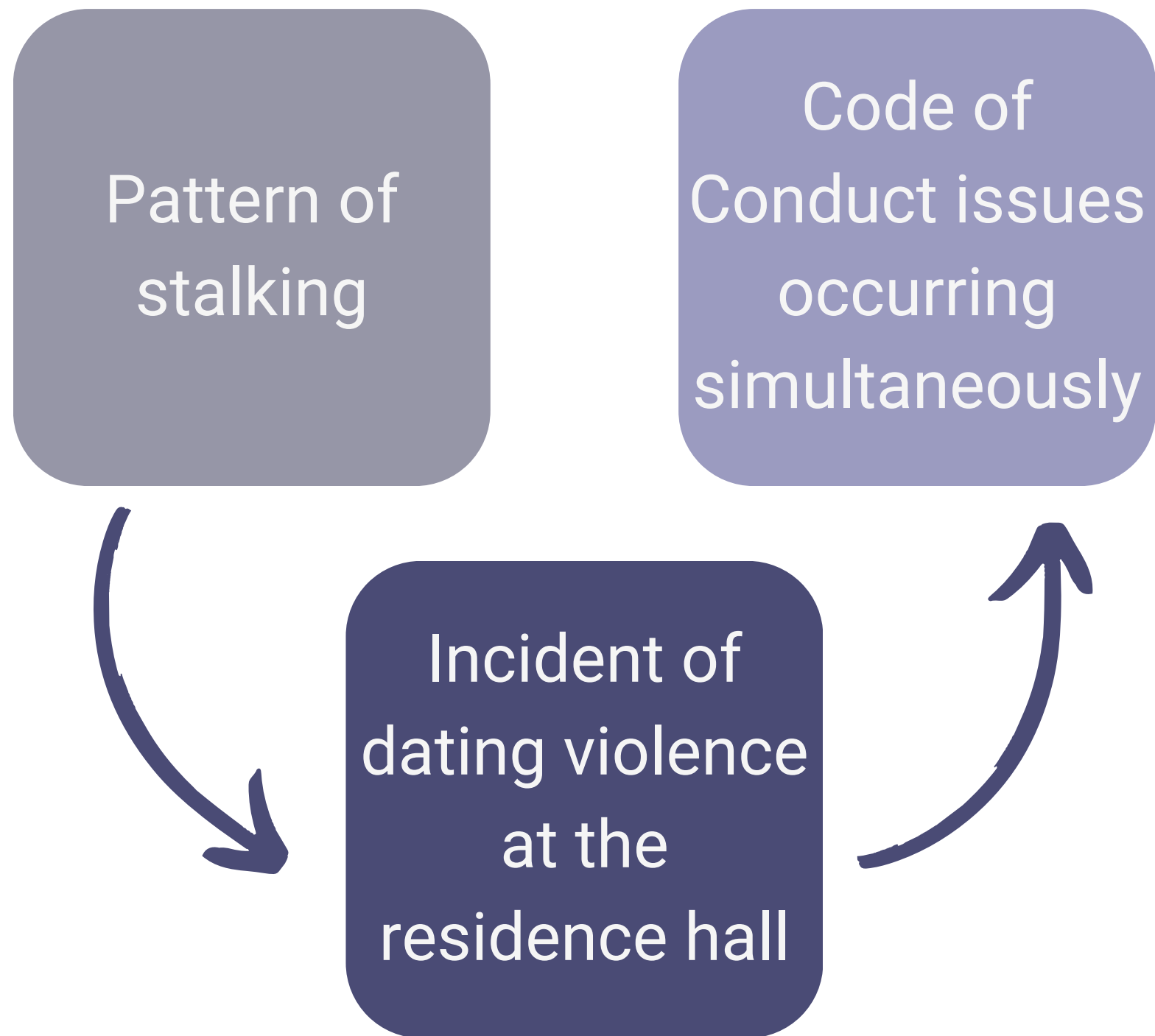
Ordering Your Questions

Chronology-based Interview

- Conducted in the order of events
- May start with the first relevant interaction between the Parties
- Can allow for easy organization of the investigative report
- Allows Parties to recall events in a meaningful order
- Has a clear stopping-point
- May be helpful for incidents with only one allegation or type of policy violation (*For example- an alleged sexual assault taking place in the duration of one-evening*)



Ordering Your Questions



Topic-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?



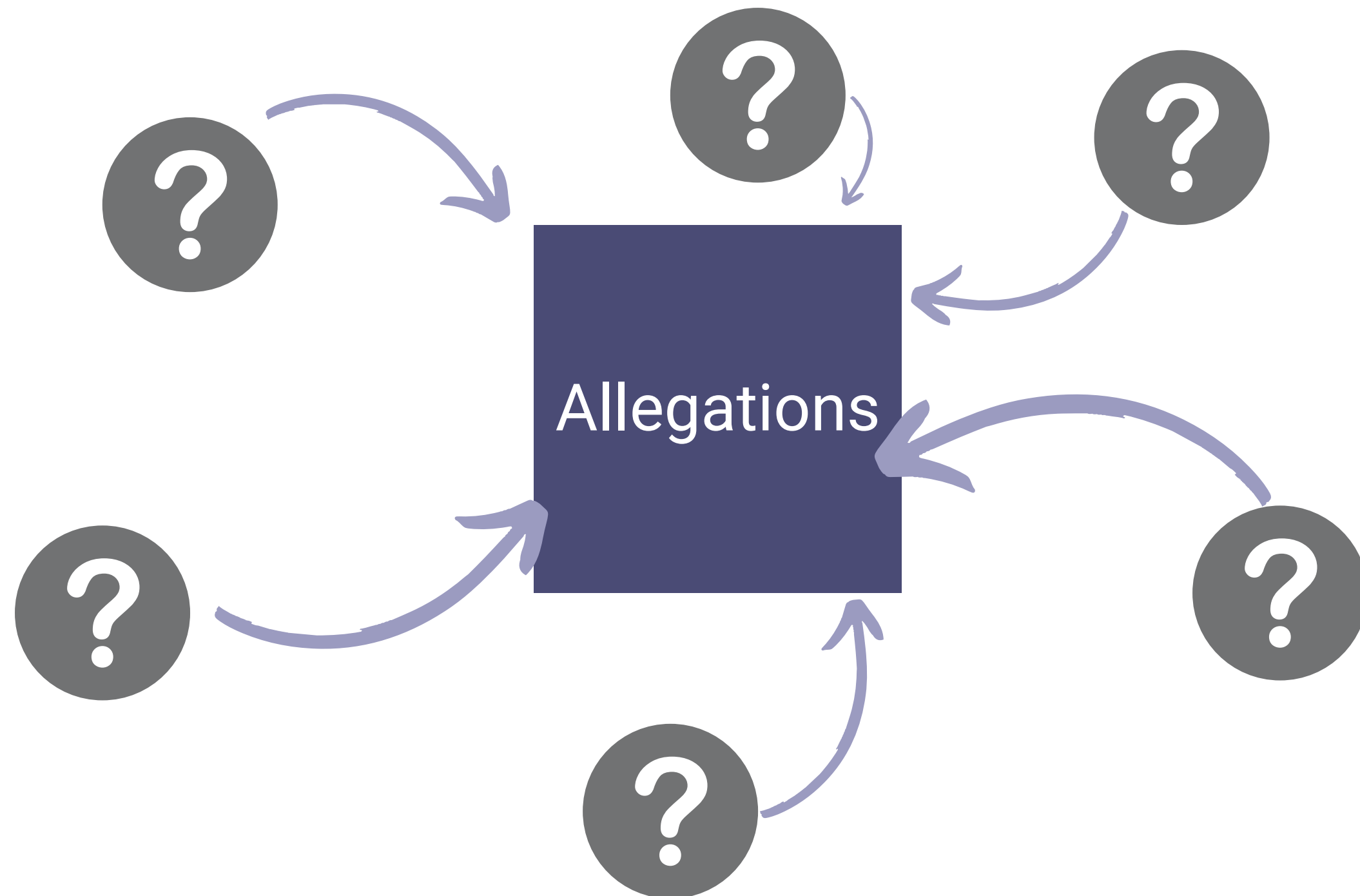
What questions will get the most complete set of facts to the Decision-Maker so they might make a determination regarding responsibility?



Who has this information?

The Goal of Questioning

Questions should be at least directly related, and ideally 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: A receipt from a movie the Complainant and Respondent attended on the night of an alleged sexual assault.

Relevant

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

Example: A receipt from a bar the parties attended after the movie showing the Complainant consumed seven mixed alcoholic drinks.

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?

"Riley has dated, and slept with like half of the ultimate frisbee team. The whole campus knows. They'll all tell you Riley 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

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

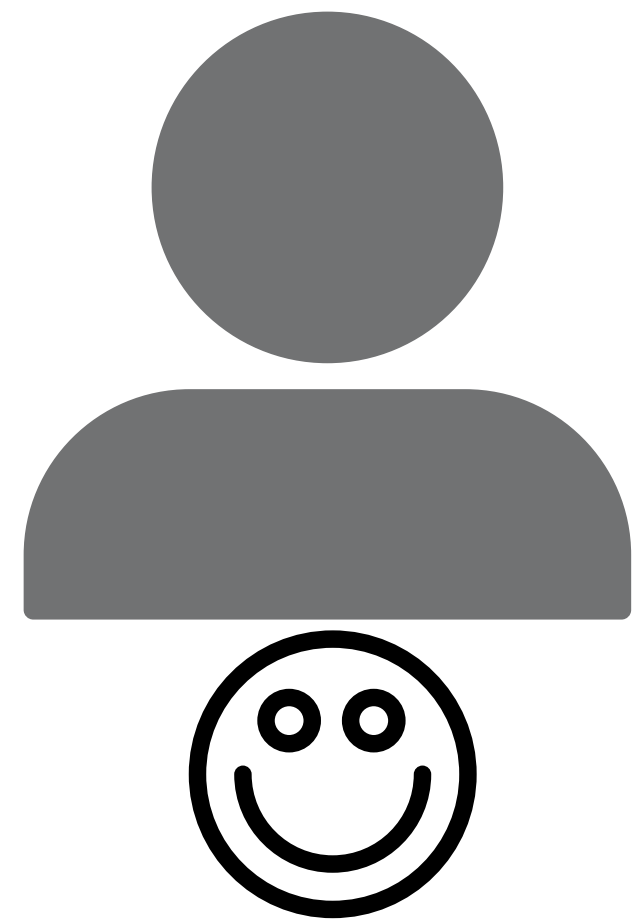
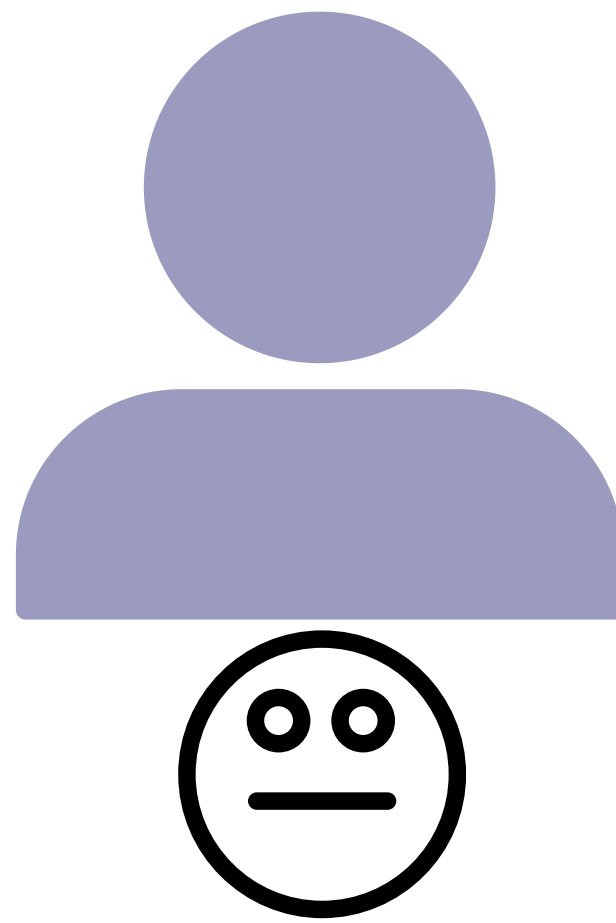
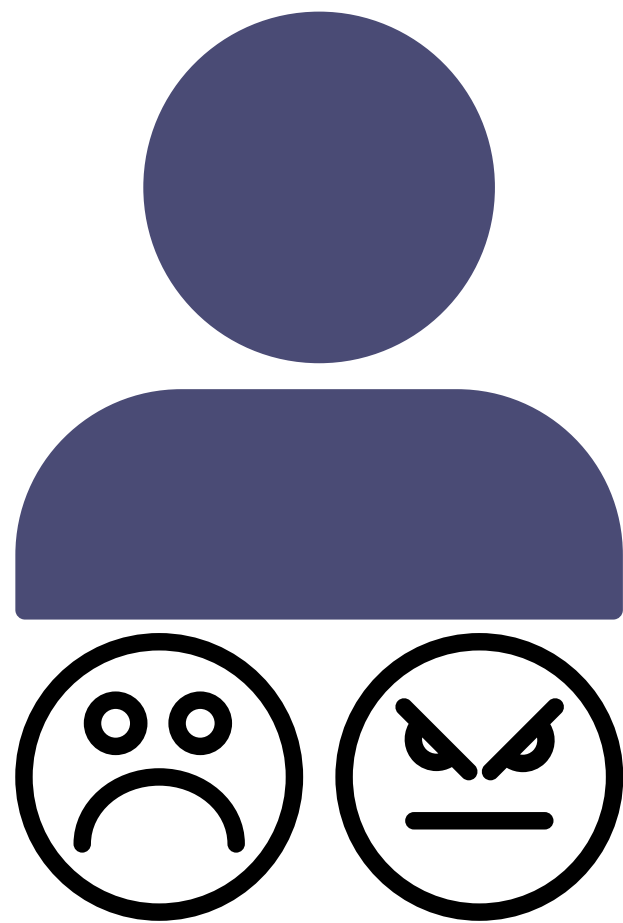
Consider emotions that
may be evoked by asking
certain questions.
Practice empathy.

- ✗ Judging questions
- ✗ Trick questions

Understanding Emotions of the Parties



Each party will bring with them a set of experiences and emotions



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, either:
 - Prior to the incident (childhood experiences, family history, collective memory, etc.)
 - During the incident
 - As a result of being accused of the alleged incident
 - 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
- 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
- Important for voluntary movement

Neurobiology of Trauma

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

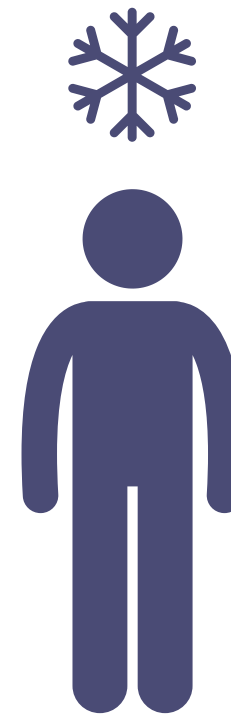
Human Stress Response



FIGHT



FLIGHT



FREEZE



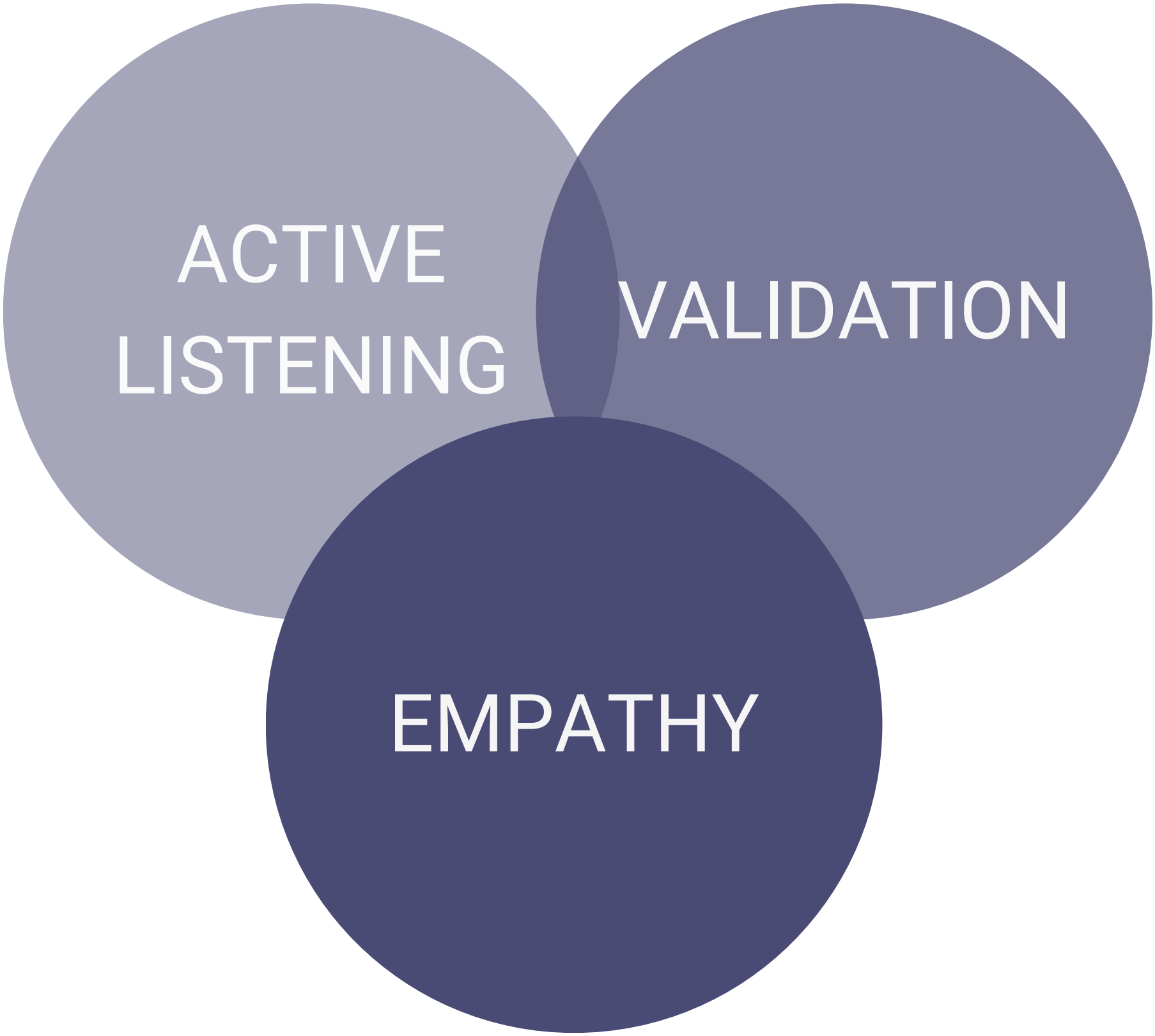
FAWN

What does this mean for Title IX Processes?

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

Let's talk about
trauma-informed
care...

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
- 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 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

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

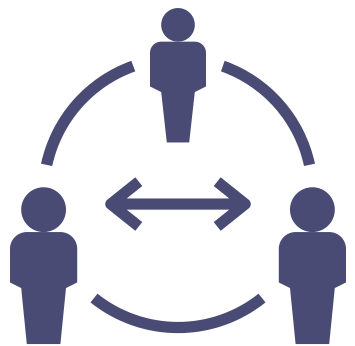
- Avoid distractions
 - Cell phones, emails, knocks on the door
- Use frequent brief paraphrases of what you heard
- Use nonverbal cues
 - Nodding, smiling or frowning, leaning forward
- Remain neutral and nonjudgmental
- Use phrases to communicate your desire to understand:
 - *"Did I understand that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

Additional Strategies



Focus on each party and 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 or their Advisor

Strategies for de-escalation

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

Empowerment

Empowerment = Voice and Choice



What could empowerment look like for each Party?



How can you, as an administrator in the Title IX process, identify resources to help empower a Party?

- You need to be neutral and objective, but you can refer each Party to other sources of support or 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?



Remember the foundations of empathy, validation, and listening.
How can you best support each Party and address their needs?



Conducting Title IX Interviews Part One

IN THIS CHAPTER



PREPARING A
PREAMBLE



RECORDING
INTERVIEWS



BUILDING RAPPORT
AND TRUST



QUESTIONING THE
PARTIES

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?

- Provides Consistency throughout interviews
- 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.

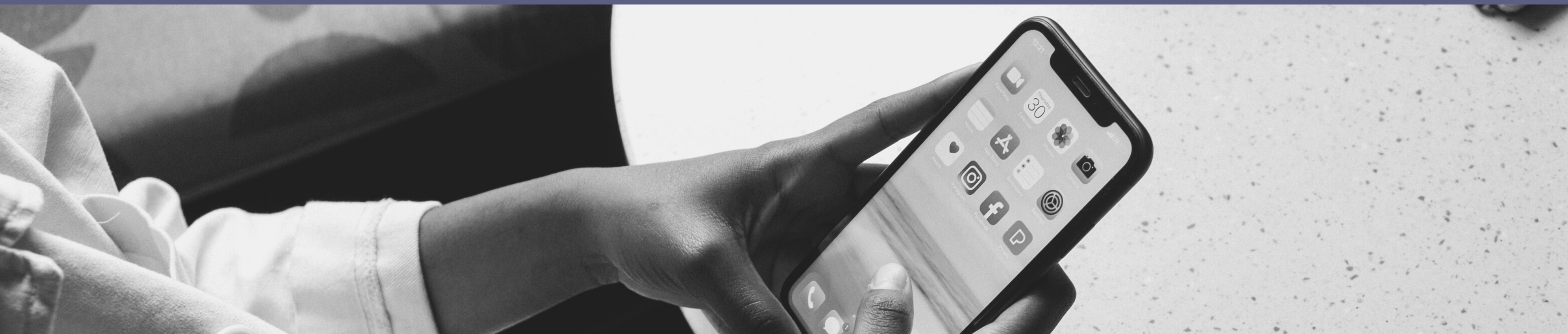
Other Elements to Include

- 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.)
- Share Investigator's comfort with difficult topics

Sample Preamble



Recording Interviews



Recording Best Practices

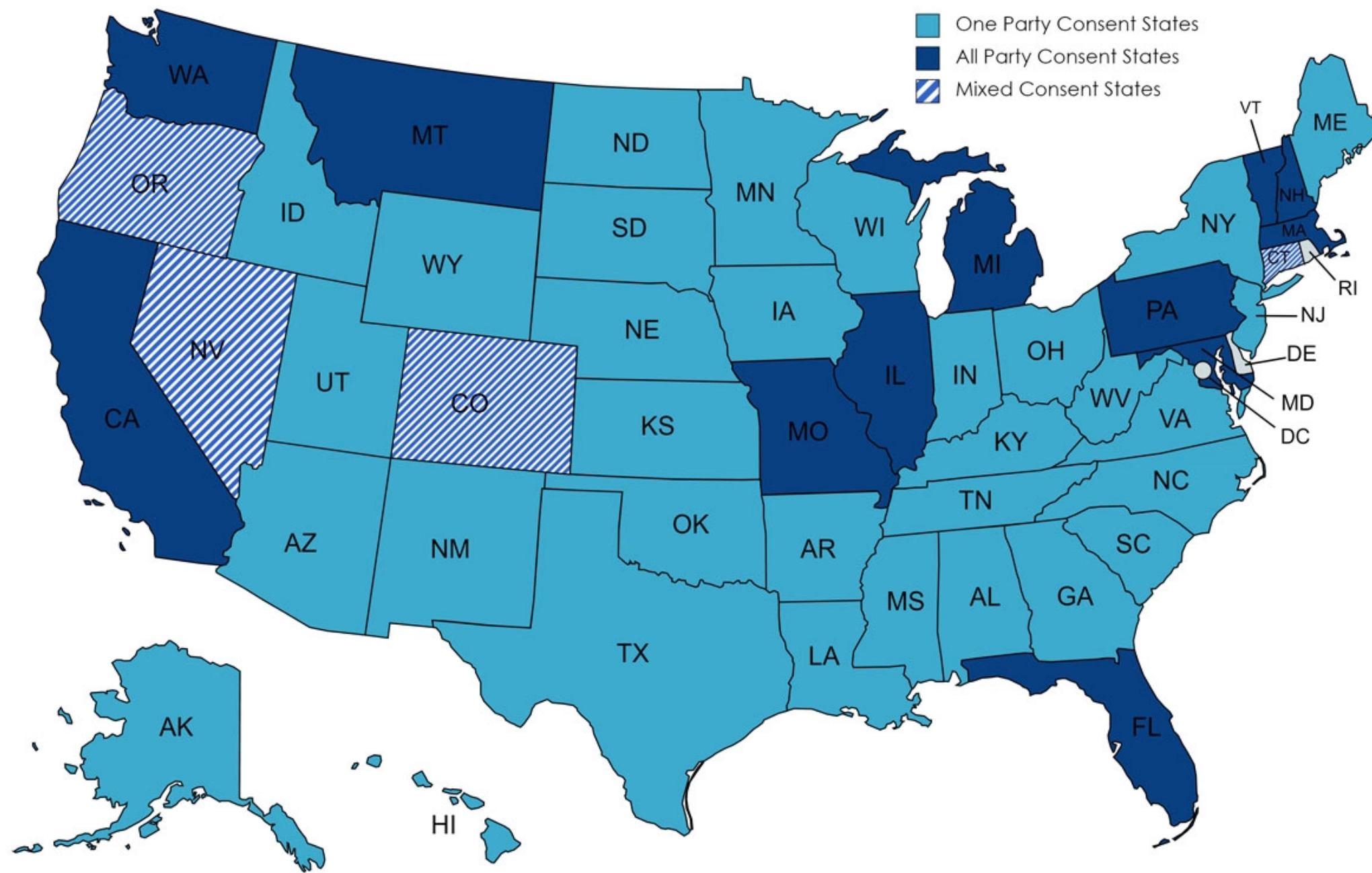
The Investigator may only record interviews. Best practices include:

- ☑ Obtain consent from the interviewed party
- ☑ Use HD recording application on a phone for the least intimidating in-person option
- ☑ 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



Recording frees up the Investigator to focus on the interview and interviewee.

Obtaining Consent



- Review state and local law, as well as school policy
- New York is a one party consent state
- 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 reviewed and approved by parties for accuracy before including in the investigation report

Transcription by a service vs. self-transcription



Cost



Accuracy



Efficiency

Building Rapport and Trust



Starting the Interview

- Visualize conducting a successful interview before walking into the room
- Consider how the interviewee perceives the Investigator
- Make the interviewee feel comfortable
- DO NO HARM
- 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

Goop/bad cop does not work...with a small caveat.



In 2016, a U.S. Government task force called the High-Value Detainee Interrogation Group (HIG) to research best practices.

Here is their list:

- The interrogation is a team effort.
- The interrogation team prepares for an interrogation by systematically organizing, and making visually available, facts, intelligence, and inferences regarding the detainee and his or her needs and motivations.
- The interrogation team uses models to build and gauge rapport.
- The interrogation team employs strategies to encourage conversation and to target specific objectives.
- The interrogation team uses evidence strategically.
- The interrogation team primarily relies on verbal cues for deception detection.
- The interrogation team concludes each interrogation session with an intentional, planned strategy.

<https://www.fbi.gov/file-repository/hig-report-august-2016.pdf/view>

We are NOT interrogators, but there is much to learn from this list.

Questioning the Parties

WHAT

WHEN

WHY

WHERE

WHO

HOW

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 (see, smell, hear, taste, touch)
 - Feelings and emotions experienced
 - Full names of individuals mentioned, contact information, relationships
 - Locations, times, dates
 - Quantities of substances consumed
- When in doubt, use, "Tell me more about that..."
 - Allows the Party to dig deeper and recall on their own
- Now is not the time to be shy
 - Explicit details must be shared in many instances

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?

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

Example

"He was having sex with me."

Ask Clarifying Questions

Example

"He was having sex with me."

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

Example

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."

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

Example

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."

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

Example

Intoxication/Incapacitation:

(To Respondent) Can you tell me about her mental and physical faculties that led you to believe she was not incapacitated?

"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.

Gathering Information to Support Answers

Example

How did the office visits and text messages make you feel?

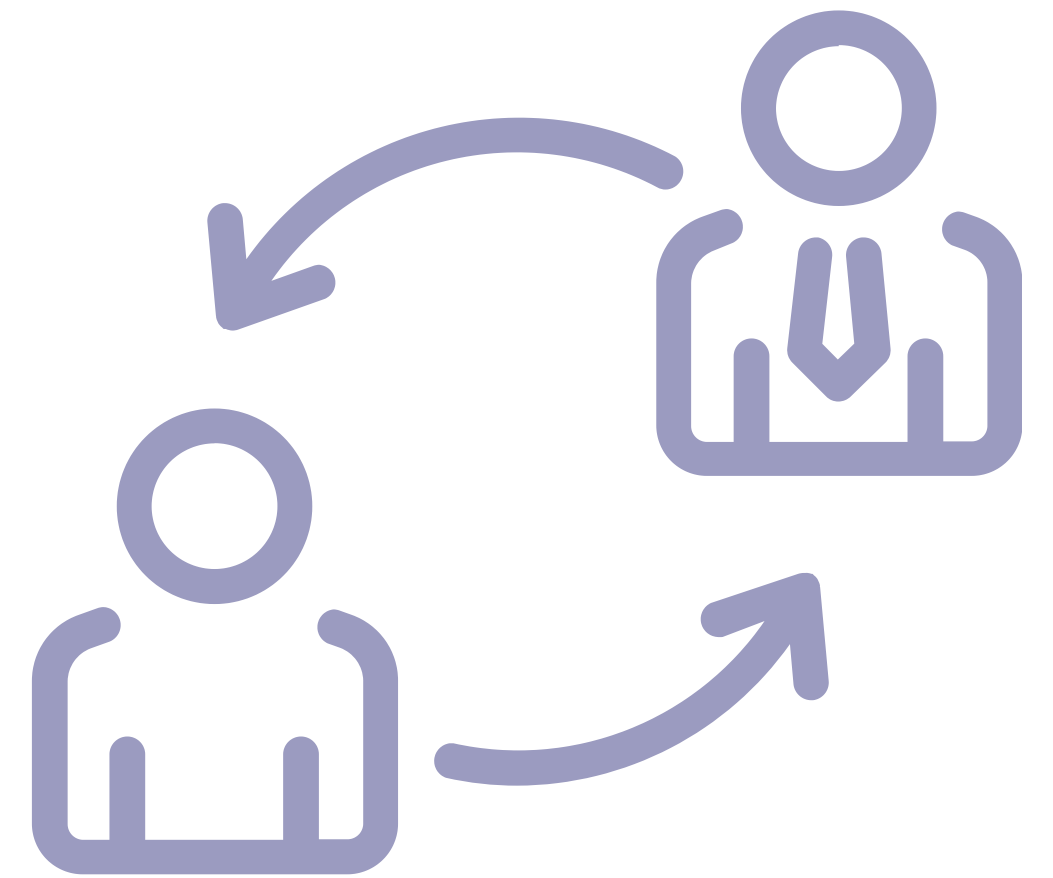
"It got to the point where I was scared to go to work. I didn't know if she'd corner me in the hall or what. I stopped sleeping at night because I figured her next step might be finding out where I lived. I was also afraid for my girlfriend. What did she mean by 'making sure she was out of the picture?' I was terrified she was going to hurt her. All of it is really unsettling and I can't go about my normal day without the worry that she'll be there."

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

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

Investigative Report Writing

In This Session



ELEMENTS OF THE
INVESTIGATION
REPORT



SUMMARIZING
INTERVIEWS



SUMMARIZING
EVIDENCE



REVIEWING THE
REPORT

Elements of the Investigation Report



Report Writing Preparation

- This may be the area where you feel exposed
 - Parties will have the chance to observe your work
- Preparation can be your safety net
- As you're interviewing:
 - Interview back and forth
 - Write up each interview or transcribe immediately following or as soon as possible
 - Write in large blocks of time
- You may see questions you forgot to ask or points that need clarification - go back and ask

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, including all notifications to the Parties, interviews with the Parties, interviews with other Witnesses, dates of all interviews, any site visits, and the methods used to gather evidence
- ✓ 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*
- *Copy full definitions from policy*
- *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

The “meat” of the Investigation Report which 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



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*

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 Myers Hall on the night of November 28.”*

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

2

Summary of Responses

Do not conflate an individual's statements with fact.

- If a Complainant says the incident occurred at 9:00 pm, your summary should read: *"NAME OF COMPLAINANT stated that the incident occurred at 9:00 pm"* rather than *"The incident occurred at 9:00 pm."*
 - Start a longer narrative section with: *"The following is what Sam recalled:"*
- **CONSIDER:** Note at the conclusion of your interview summary if evidence (photographs, text messages, surveillance footage, etc.) support or refute the interviewee's statements
- **DO NOT INCLUDE YOUR OPINIONS**

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.

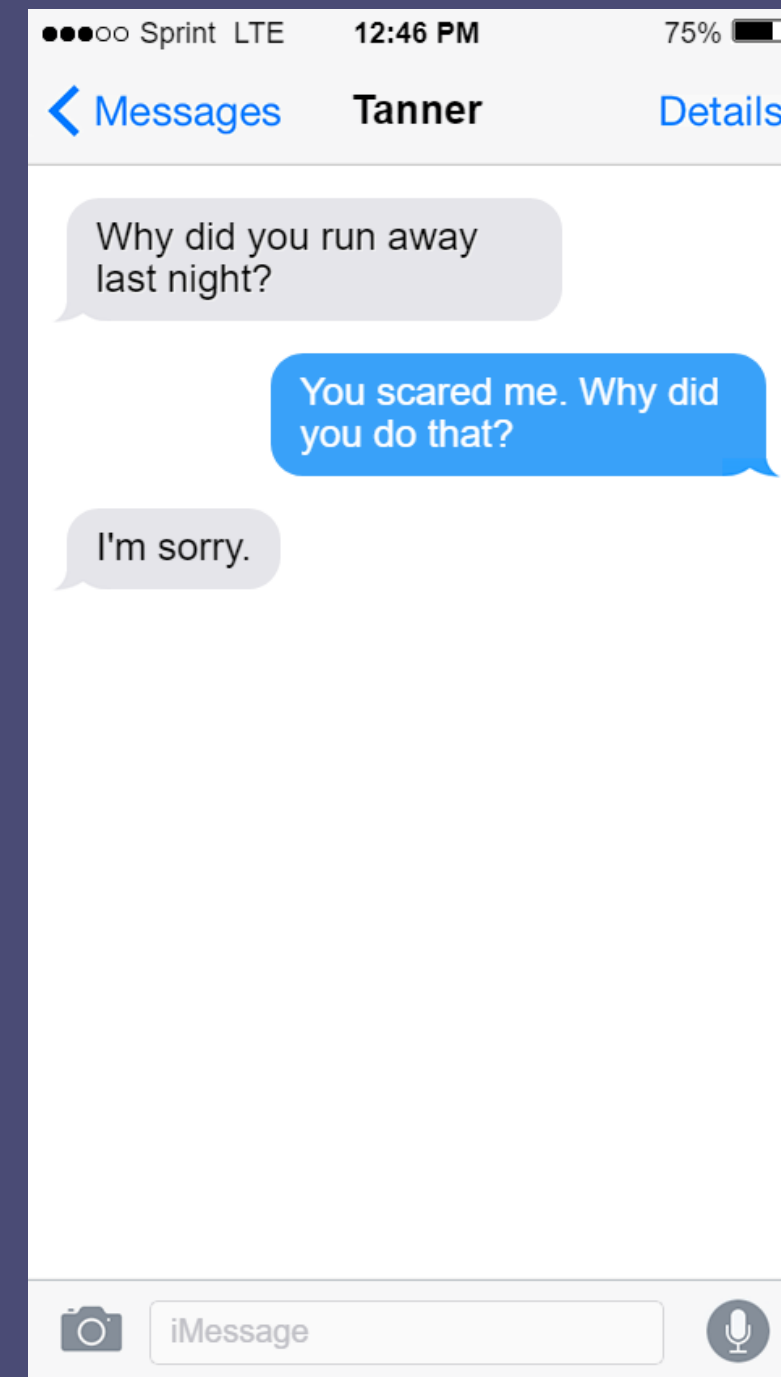


Example: Security camera video recording from Sentry Hall timestamped from January 1, 2022 at 9:00 PM to January 2, 2022 at 6:00 AM.

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 Jacob Smith timestamped on January 2, 2022 at 8:07 AM. Alleged to be sent by Respondent Tanner Thompson. Screenshot was provided by Complainant Smith.

Saved as Smith_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 Jacob Smith and Respondent Tanner Thompson on January 2, 2022 timestamped at 8:07 AM. Screenshot was provided by Respondent Thompson.

NOTE: There are inconsistencies between the messages displayed on the screenshot of the exchange provided by Complainant Smith and the screenshot provided by Respondent Thompson.

The screenshot provided by Respondent Thompson contains a text message from the Respondent stating, "My bad. I just wanted to play a prank and jump out with that Halloween mask on. You always say how much you like scary movies. I saw how much it upset you and then you just ran back to your dorm room. I didn't mean to scare you that badly."

The text reply from Complainant Smith states, "It's totally ok. I just didn't know what was going on!"

These messages are absent from the image provided by Complainant Smith.



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 1:00 PM on Tuesday, June 15th
- Respondent states that the incident occurred at 11:30 AM on Tuesday, June 15th
- Access logs to the campus building where the incident occurred show that the Complainant swiped in to access the building at 11:00 AM, and the Respondent swiped in to access the building at 12:00 PM

Next Steps



EDIT



PROOFREAD



PRINT



PROOFREAD
AGAIN

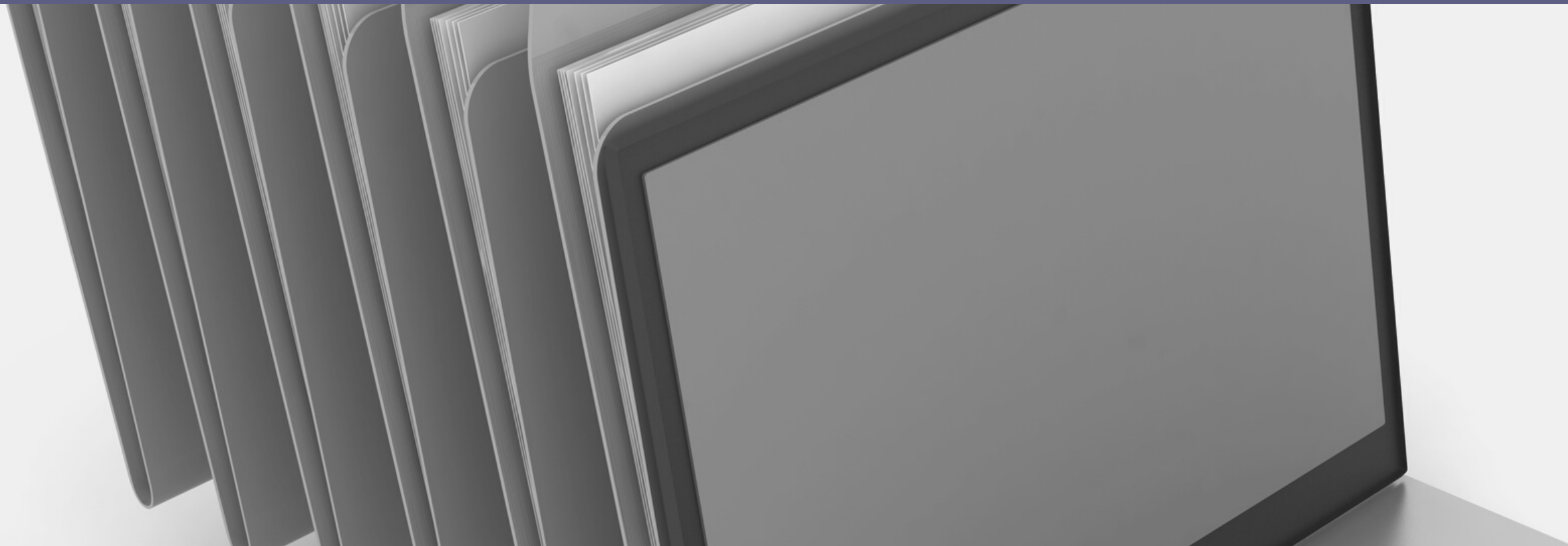


FORMAT



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."

Prohibited Evidence

As written into the Title IX Regulations, the following evidence is PROHIBITED:

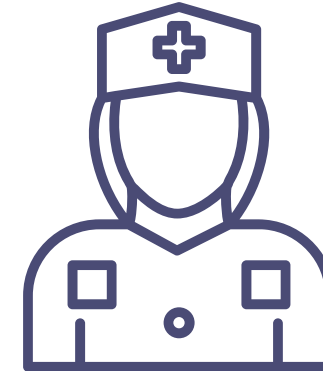
- The school cannot access, consider, disclose, or otherwise use a Party's records protected under a legally recognized privilege such as those that are made or maintained by:



A physician



A psychiatrist or psychologist



Other recognized professional or paraprofessional acting in the professional's or paraprofessional's capacity, or assisting in that capacity



Schools must obtain that party's voluntary, written consent to include this evidence in the Title IX grievance process.

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 ABC College Notice of Investigation and Allegation (NOAI) (Appendix A):

“The alleged actions include Respondent John Doe engaging in unwanted sexual contact through touching the Complainant’s [Jane Smith’s] buttocks under her underwear. Respondent also allegedly placed hands on Complainant’s face and leaned in and tried to kiss the Complainant prior to her turning their head and verbally refused. This allegedly occurred while in the bathroom at the XX Eating Club Fall formal.”

This is alleged to have occurred on or about January 25, 2021 at the Madison Performing Arts Halls on ABC College’s campus.

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 ABC College 2020 Title IX Sexual Harassment Complaint Resolution Procedures. (Sec.6b)

IV. PRESUMPTION OF NOT RESPONSIBLE

Pursuant to the ABC College 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

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- 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:

Jane Doe is a student at ABC College and lives in Smithson Hall on the Burlington Campus with a roommate. As of the date of the alleged incident Jane was dating Witness 1 who also is a student at ABC.

INTERVIEW OF JANE SMITH

The following is an account of Jane's interview:

Jane was planning to attend the Fall Formal with Witness 1 after attending an off-campus "pre-gaming party.....

Interview of John Doe:

...

Interview of Witness 1:

...

VII. EVIDENCE

Jane provided the following items:

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- Messages between herself and John

John provided the following items:

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Witness 1 provided the following items:

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Witness 2 provided the following items:

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Witness 3 did not provide any physical evidence

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Creating an Organized, Accessible, and Secure Investigation File



In This Session

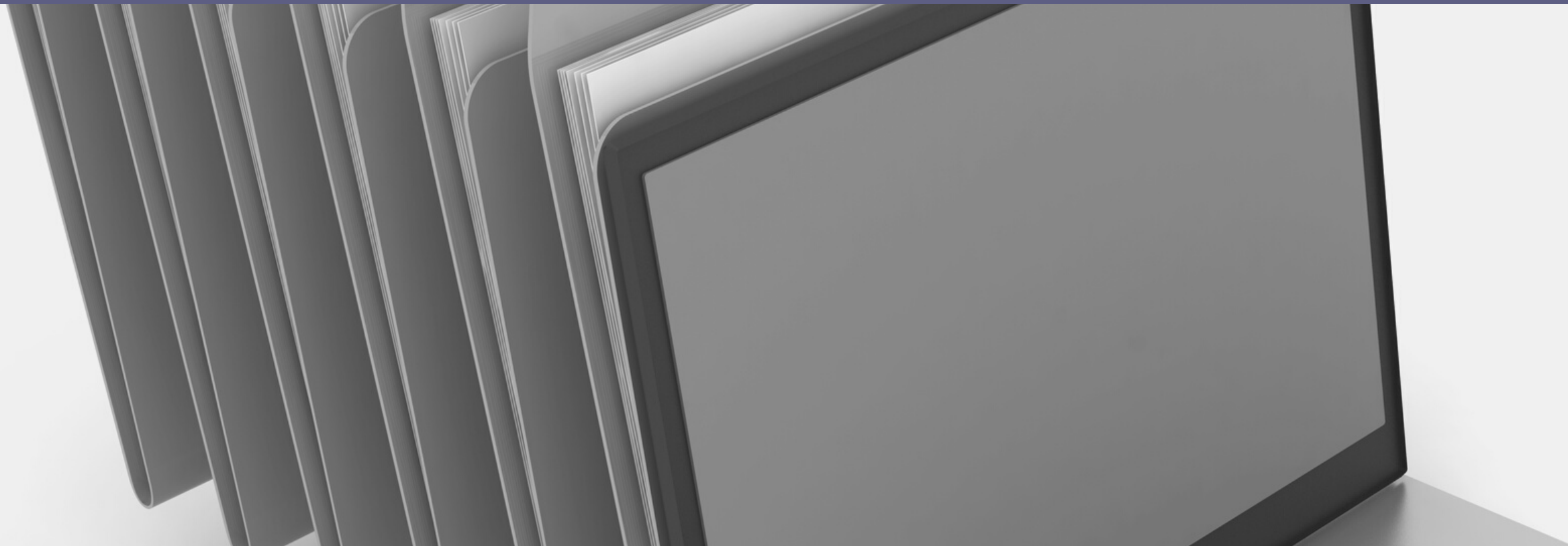


THE INVESTIGATION
FILE



SAMPLE REPORTS

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."

Prohibited Evidence

As written into the Title IX Regulations, the following evidence is PROHIBITED:

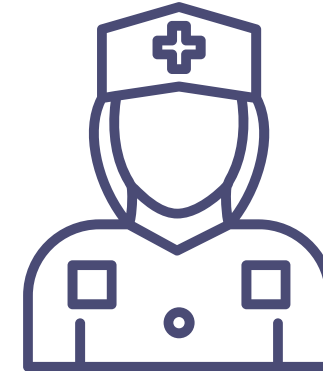
- The school cannot access, consider, disclose, or otherwise use a Party's records protected under a legally recognized privilege such as those that are made or maintained by:



A physician



A psychiatrist or psychologist



Other recognized professional or paraprofessional acting in the professional's or paraprofessional's capacity, or assisting in that capacity



Schools must obtain that party's voluntary, written consent to include this evidence in the Title IX grievance process.

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 ABC College Notice of Investigation and Allegation (NOAI) (Appendix A):

“The alleged actions include Respondent John Doe engaging in unwanted sexual contact through touching the Complainant’s [Jane Smith’s] buttocks under her underwear. Respondent also allegedly placed hands on Complainant’s face and leaned in and tried to kiss the Complainant prior to her turning their head and verbally refused. This allegedly occurred while in the bathroom at the XX Eating Club Fall formal.”

This is alleged to have occurred on or about January 25, 2021 at the Madison Performing Arts Halls on ABC College’s campus.

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 ...

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Let's take a look at another
sample investigation report...