



Association of
Title IX Administrators

Investigation Skills and Report Writing for Higher Education

Training and Certification Course

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- The ATIXA Event Lobby can be accessed by scanning the QR code or by visiting **www.atixa.org/atixa-event-lobby**.
- You will be asked to enter your registration email to access the Event Lobby.
- Links for any applicable training evaluations and learning assessments are also provided in the ATIXA Event Lobby.
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Strategic Risk
Management Solutions



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

Content Advisory

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

ATIXA faculty members may offer examples that emulate the language and vocabulary that Title IX practitioners may encounter in their roles including slang, profanity, and other graphic or offensive language. It is not used gratuitously, and no offense is intended.

Introduction



This training focuses on refining interviewing techniques and post-interview tasks, including writing clear, comprehensive investigation reports.



Practitioners will learn how to use policy language as a starting point for generating interview questions and synthesizing the information collected during an investigation.



Our goal is to provide an in-depth exploration of each section of an investigation report and the skills necessary to complete each section.

2024 Title IX Regulations Litigation

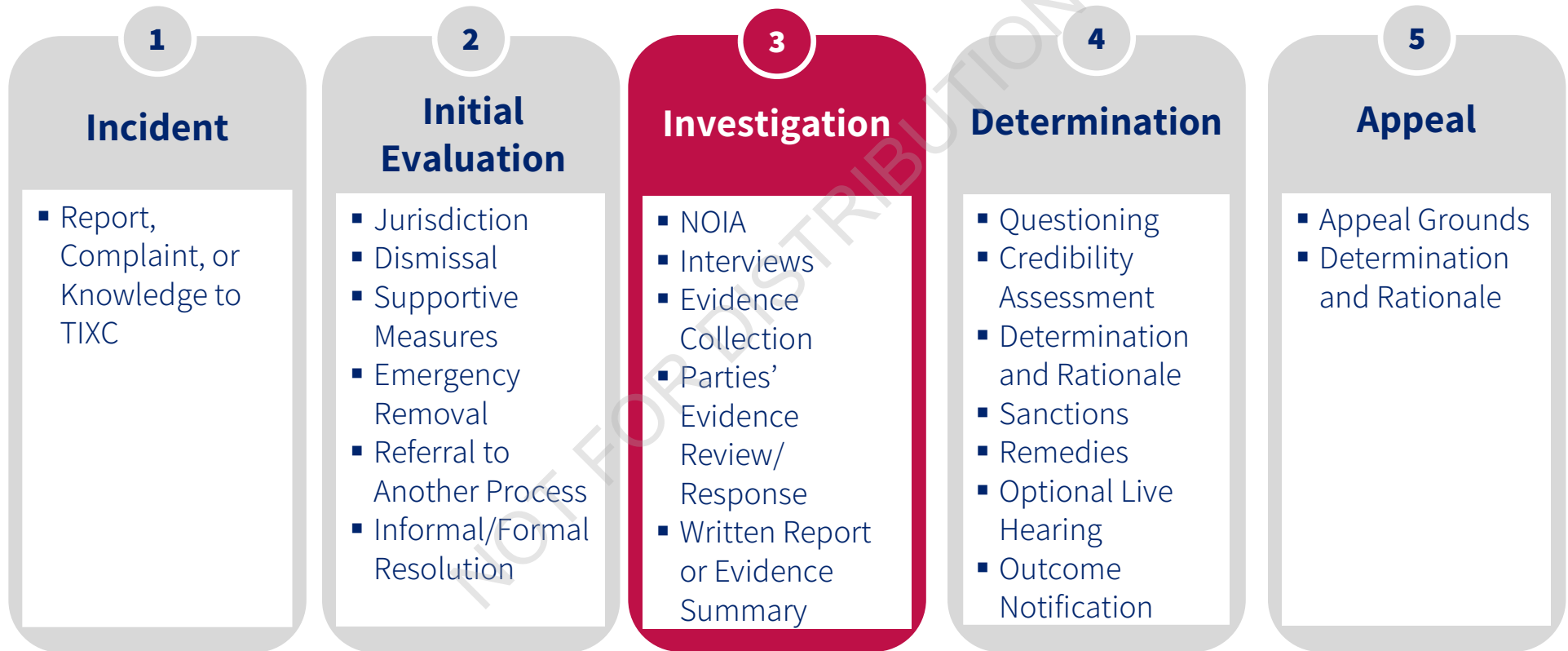
- Opponents of the 2024 Title IX Regulations sought, and were granted, **injunctions** to delay or halt implementation of the Regulations
 - **Injunction:** A court order requiring an individual or entity to either perform or stop performing a specific action
- Generally, courts granted injunctions based on questions around the validity of the gender identity provisions and the hostile environment definition
- If the 2024 Regulations are not enforceable as a result of an injunction, schools, districts, and institutions in those states should continue to follow the **2020 Regulations**
 - The 2024 Regulations also are not enforceable in some individual schools and institutions

2024 Title IX Regulations Litigation

- Implementation will be unsettled for the foreseeable future
 - Appeals will continue and, eventually, trials
 - Consult legal counsel to determine implementation plans and risk strategy
- **Note:** Some states also have “Do Not Implement” directives from state officials
 - Independent from any federal lawsuits or injunctions
- Track developments on ATIXA’s Regulations website, www.atixa.org/regs
 - State-by-state information on injunctions and Do Not Implement directives
 - Lists of individual schools or institutions impacted by the Kansas injunction

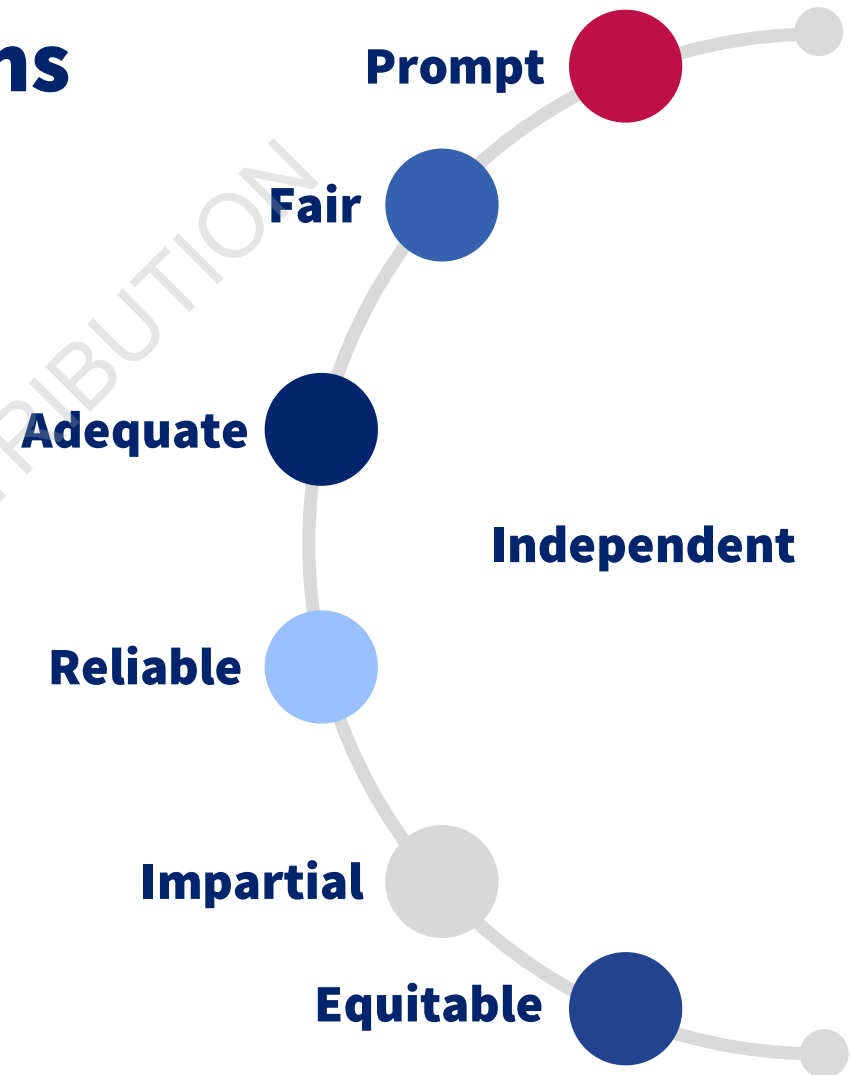
Investigation Process Review

Investigation



Civil Rights Investigations Overview

- Investigations focus on gathering all available and relevant information
- The institution is responsible for gathering evidence—not the parties



Investigation Process

10 Steps of Investigations:

1. Receive Notice/Complaint
2. Initial Evaluation and Jurisdiction Determination
3. Determine Basis for Investigation
4. Notice of Investigation and Allegations (NOIA)
5. Establish Investigation Strategy
6. Adequate, Reliable, Impartial Investigation
7. Draft Relevant Evidence Summary/Investigation Report
8. TIXC Reviews Evidence
9. Parties Review and Respond to Summary/Investigation Report or Relevant Evidence
10. Final Investigation Report

Investigation File

- Investigator is responsible for developing and maintaining an **investigation file** throughout the duration of the investigation
 - Copies of the policies and procedures in place at the time of the incident(s) and at the time of the investigation
 - Original NOIA and any subsequent NOIA updates
 - For each party and witness include:
 - Verified interview transcripts
 - Associated evidence (e.g., screenshots, written statements)
 - Correspondence with the Investigator(s)
 - Collected evidence and evidence log

Investigation File

- Background information (education, employment, etc.)
 - Witness flowcharts
 - Contact Log
 - Investigator notes
 - Timelines for incident and investigation
 - Investigation Report
- Investigation file becomes part of the **comprehensive complaint file**
 - Title IX-related records must be maintained for a minimum of **seven years**

Comprehensive Complaint File

Title IX Coordinator should maintain:

- Supportive measures and interim action correspondence and documents
- Emergency Removal or Administrative Leave documents (if applicable)
- Communication regarding Informal Resolution (if applicable)
- Signed releases of information for Advisors
- Advisor Non-Disclosure Agreements (NDAs) (if applicable)
- Dismissal information (if applicable)
- Allegations of bias or conflict of interest and response

Information Gathering and Recordkeeping

Keeping Information

- Keep **investigation file** in a secure location
- Compile a timeline of the investigation steps, including dates of all meetings and interviews
- Records of all contacts, including emails and phone calls with all parties and witnesses
- Documenting interviews:
 - Take specific notes or record
 - Recording is becoming industry standard
 - Handwritten vs. typed notes
 - **Interviewee verification is industry standard practice**

Notetaking and Recording

IF IT ISN'T WRITTEN DOWN, IT DIDN'T HAPPEN

- Date all records and identify who was present
- Number pages
- Keep notes describing any information shared with parties or witnesses
- Clarify anything that is unclear
- Document any refusal to answer, evasion, or refusal to participate
- Review and finalize notes immediately upon interview completion

Notetaking

- Notetaking should occur throughout the entire interview
- Taking notes may slow down the interview
- Use pre-prepared, numbered questions
 - Remain flexible for follow-ups
- Summarize perceptions of credibility

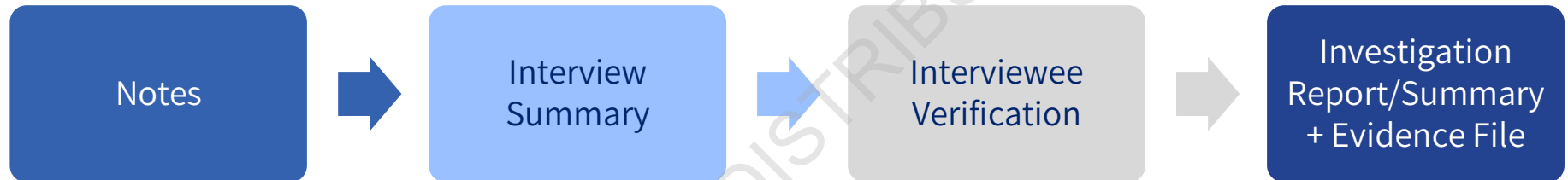
Notetaking

- Don't want interviewees to feel **S.O.L.D.** out;
Avoid:
 - **S**tereotypes
 - **O**pinions
 - **L**abels
 - **D**iagnoses
- Avoid conclusions or determinations
- Interview notes may be subject to “inspection” rights under FERPA
 - “Sole Possession notes” exception is very limited

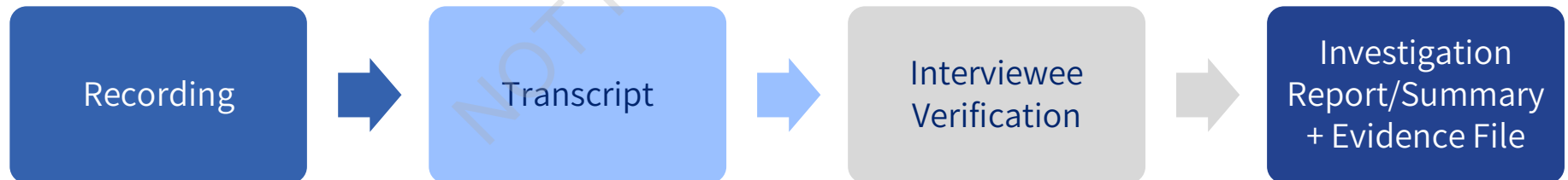


Information Flow

Option 1: Notetaking



Option 2: Recording



Recordkeeping

- Certain records must be maintained for at least **seven years**
 - Comprehensive complaint file
- Electronic database preferred over paper files
- TIXC is responsible for managing record retention
 - Follow applicable Title IX and/or institutional practice for record destruction, maintenance, access, expungement, etc.

Collecting and Managing Evidence

Evidence Preservation

- Discuss the need to preserve evidence with parties and witnesses as soon as feasible
 - Ask parties to record names of witnesses and contact information
 - Save relevant communications in a secure location, not just on a phone/tablet/etc.
Screenshots
 - Date stamps
 - Photograph/videorecord physical evidence
 - Clothing
 - Damaged property
 - Injuries
- Also consider preservation for evidence in the institution's possession

Evidence Management

- Electronic databases are becoming an industry standard
- Properly record and categorize evidence provided to Investigator or TIXC
 - Quick access (indexed, digitized)
 - Organized
 - Redacted versions and/or descriptions of graphic content
 - Unredacted version available for viewing
- Ensure the evidence is not compromised
 - Establishing/maintaining chain of custody
 - Do not modify evidence in any way, unless you clearly indicate doing so
 - Example: renaming an electronic file

Managing Sensitive Information

Store information in secure locations:

- Electronic
 - Password protection or encryption; multi-factor authentication
 - Limited access, deadline for access, auditable storage
 - View or save information on appropriate devices
- Physical
 - Locked; limited access
- Remove personally identifiable information
- Communicate information storage practices to parties

Law Enforcement Evidence

- Obtaining law enforcement evidence may not be possible if a case is active
- Establishing an MOU is beneficial
 - Build relationships
 - Understand their process
 - Clarify level of access to law enforcement evidence
- Obtain documentation about chain of custody
 - Authentication efforts
 - Source of evidence
- Obtain officer statement or testimony about evidence
- Be aware of implications for sharing/releasing law enforcement evidence

Applying Policy in Investigations

Applying Policy in Investigations

- Know what to look for
- **Models of Proof:** the specific elements of each violation
- Investigators collect information and evidence specific to the alleged policy violations
- Policy language informs appropriate questions
 - Policy provisions, definitions, jurisdiction
- Decision-makers (DM) use the information gathered in the investigation to determine whether all necessary elements are met for each alleged policy violation
 - DMs rely upon Investigators to collect all of the relevant and available evidence

Activity: Applying Policy to Investigations

Definition: Fondling

The touching of the private body parts of the Complainant, for the purpose of sexual gratification, without the consent of the Complainant, including instances where the Complainant is incapable of giving consent because of their age or because of a temporary or permanent mental incapacity

Activity:

Applying Policy to Investigations

- Determine the policy elements for the **fondling** definition
- Use the elements to develop:
 - Initial questions for parties
 - Potential sources of evidence

Model of Proof: Fondling

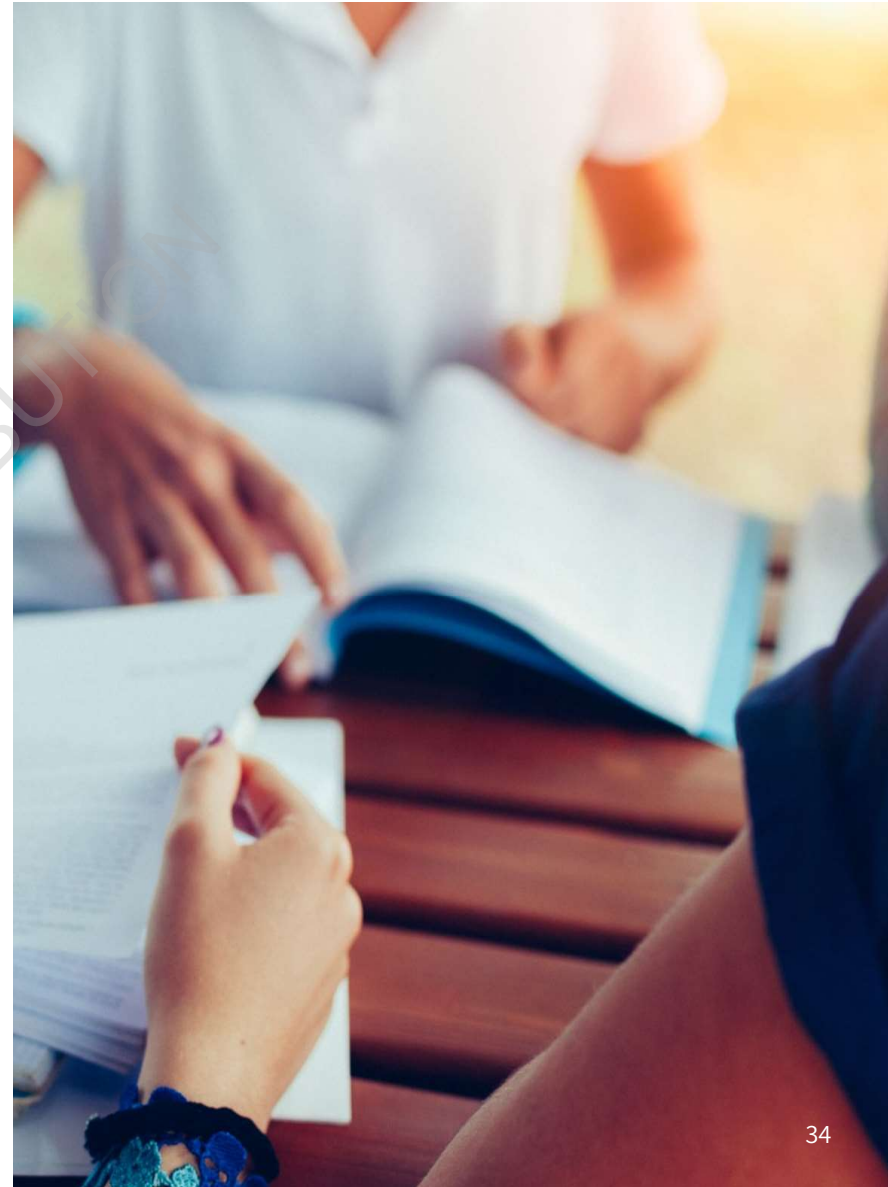
- ❑ The touching of the private body parts of the Complainant
- ❑ For the purpose of sexual gratification
- ❑ Without the consent of the Complainant
 - Including instances where the Complainant is incapable of giving consent
 - Because of their age or
 - Because of a temporary or permanent mental incapacity

Credibility

NOT FOR DISTRIBUTION

Credibility

- **Credibility** is largely a function of corroboration and consistency
 - Credibility and honesty are not the same
- **Credibility Assessment** involves evaluating the extent to which evidence is believable and reliable (accurate reflection of what occurred)
 - Refrain from focusing on irrelevant inaccuracies and inconsistencies
- **Note:** Memory errors alone do not necessarily diminish witness credibility, nor does some evasion



Credibility Factors

Corroborating Evidence

- Evidence that can be verified by an independent and objective individual

Inherent Plausibility

- Information that is believable on its face/ by context

Consistency of Evidence/Testimony

Motive to Falsify

Past Record*

Demeanor*

* Less probative



Corroborating Evidence

- Strongest indicator of credibility
- Independent, objective authentication
- Corroboration of central vs. environmental facts
- Not simply aligning with friendly witnesses
- Contemporaneous witness accounts
- Outcry witnesses
- Allegiances

Inherent Plausibility

- Does what the party described make sense?
 - Consider environmental factors, trauma, relationships
- Is it believable on its face?
- “Plausibility” is a function of “likeliness”
- Is the party’s statement consistent with the evidence?
- Is their physical location or proximity reasonable?
- How good is their memory?

Motive to Falsify

- Does the party have a reason to lie?
- What's at stake if the allegations are true?
 - Academic or career implications
 - Personal or relationship consequences
- What if the allegations are false?
 - Other pressures on the Complainant
- Reliance on written document while answering questions



Past Record

- Is there evidence or records of past misconduct?
- Are there determinations of responsibility for substantially similar misconduct?
- Check record for past allegations
 - Even if found “not responsible,” may evidence pattern or proclivity
- Written/verbal statements, pre-existing relationships

Demeanor

- Physical presentation and speech patterns are not determinative of credibility or truthfulness
 - Humans are often good at picking up non-verbal cues
 - **However**, humans are terrible at using demeanor to determine credibility or honesty demeanor cues may indicate cause for additional questioning
 - “I noticed when I asked you about...you crossed your arms. Can you tell me why your posture changed?”
 - “I noticed when I started asking you questions about...your responses became much shorter. Can you explain that for me?”
 - “I noticed you rolled your eyes when I mentioned....Can you tell me about your reaction?”

Credibility Assessments in Investigation Reports

Indicate where to focus for the Decision-maker without rendering conclusions or making findings related to credibility

NOT GOOD

“The Decision-maker should find Mark to be unbelievable in his testimony about having received consent for the following reasons...”

BETTER

“Mark’s testimony about X conflicts with Mariana’s testimony about X. The accounts of Witness 1 and Witness 7 aligned with Mariana’s testimony, not Mark’s, during the investigation.”

Common Credibility Assessment Errors

- Misinterpretation of and misplaced emphasis on nonverbal deception indicators
- Misplaced emphasis on (often trivial) information inconsistencies
- Confusion about memory
- Bias in interviews
 - Presumptions of responsibility
 - Anchor bias
- Confirmation bias
- Excusing inconsistencies by citing to trauma
- Accepting information at face value

Consent Construct

ATIXA's Model Consent Policy Definition

Consent is:

- knowing,
- voluntary, and
- clear permission
- by word or action
- to engage in sexual activity



Overview of The Three Questions

1. **FORCE:** Was force used by the Respondent to obtain sexual or intimate access?
2. **INCAPACITY:** Was the Complainant incapacitated?
 - a. If so, did the Respondent know, or
 - b. Should the Respondent have known that the Complainant was incapacitated

Note: The intoxication of the Respondent cannot be used as a reason they did not know of the Complainant's incapacity

3. **CONSENT:** What clear words or actions gave the Respondent permission for each specific sexual or intimate act that took place?

Force

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

Physical Violence:

- Hitting, restraint, pushing, kicking, etc.

Threats:

- Objective and subjective analysis of the viability of the threat (true threat if public)

Intimidation:

- Implied threat that menaces and/or causes reasonable fear

Coercion:

- Unreasonable amount of pressure for sexual access (isolation, frequency, intensity, and duration)

Incapacity

Was the Complainant incapacitated?

- **Incapacitation:** a state where an individual cannot make rational, reasonable decisions because they **lack the capacity** to give knowing consent
 - Unable to understand who, what, when, where, why, or how
 - Incapacity ≠ impaired, drunk, intoxicated, or under the influence
 - Situational awareness
 - Consequential awareness

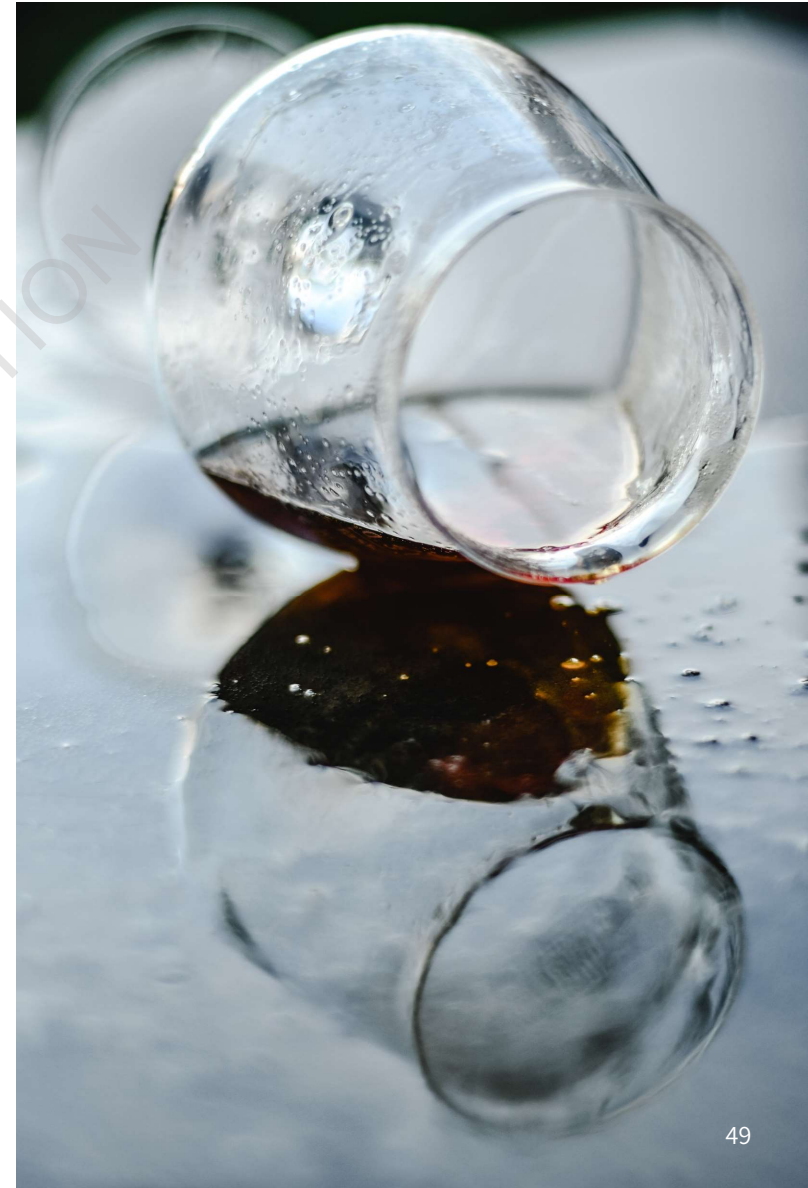
Incapacity

- What was the reason for incapacity?
 - Alcohol or other drugs (prescription or non-prescription)
 - Mental/cognitive impairment
 - Injury
 - Asleep or unconscious
- Blackouts are frequent issues
 - Blackout ≠ incapacitation (automatically)
 - Blackout = working memory is functional; short-term memory not retained
 - Partial blackout must be assessed as well
 - Although memory is absent in a blackout, verbal and motor skills may still function, as may decision-making capacity

Evidence of Incapacity: Potential Context Clues

- Slurred speech
- Scent of alcohol on the breath
- Shaky equilibrium; disorientation
- Passing out/unconsciousness
- Throwing up
- Known blackout
- Outrageous or unusual behavior (requires prior knowledge)

Incapacitation determination is made contextually **in light of all the available relevant evidence**



Incapacity Analysis

- If the Complainant **was not** incapacitated, move to the Consent Analysis
- If the Complainant **was** incapacitated, but:
 - The Respondent did not know, **AND**
 - The Respondent would not have reasonably known of the Complainant's incapacity = no policy violation, move to Consent Analysis
- If the Complainant **was** incapacitated, and:
 - The Respondent **knew it or caused it** = policy violation
 - The Respondent **should have known it (reasonable person)** = policy violation
 - Remember: the Respondent's own intoxication cannot be used as a defense because of the reasonable person standard (though it could mitigate sanctions)

Prior Knowledge Construct

- Did the Respondent previously know the Complainant?
 - If so, was the Complainant acting differently than previous similar situations, or out-of-character?
- Evaluate what, if anything, the Respondent observed the Complainant consuming
 - Use a timeline analysis
- Determine if the Respondent provided any substances to the Complainant

Consent Analysis

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

- Is there any relevant sexual or intimate pattern or history between the parties?
- What verbal and/or non-verbal cues were present during any acts or portion of the encounter that the parties agree were consensual? Non-consensual?
 - Contemporaneous communication
- Critical to gather evidence regarding detailed and specific intimate behaviors
- Investigators sometimes think it isn't trauma informed to probe, but probing is part of the job – Investigators must probe gently and with tact

Inclusive Investigations

Bias

- **Bias:** prejudice for or against **a person or group**, or an unwillingness/inability to be influenced by factual evidence
 - A preference or tendency to like or dislike
 - Implicit or explicit
 - Usually unintentional, or at least unconscious
 - Formed from stereotypes, societal norms, and cultural experiences
- Can affect our perceptions of Complainants **and** Respondents
 - Common preconceptions about Complainants and Respondents
 - Can affect our perceptions of others within the process or associated with the process

Identity in Investigations

Identities may influence participants' openness during interviews

- Concern about understanding issues related to identity
 - Cultural norms, language, religion, citizenship status, sexual practices, etc.
- Misconception that sex-based harassment cannot occur between same-sex individuals
- Fear of negative stereotypes
- Concern about law enforcement or institutional response
- Fear of minimization

Identity-Based Concern Examples

INTERNATIONAL

- Language barriers
- Cultural variance and differences
- Religious considerations
- LGBTQIA+ acceptance
- Alcohol or drug use
- Immigration/Visa concerns

LGBTQIA+

- Outing
- Unique health concerns
- Religious considerations
- Familial tensions
- Fear of betraying community
- Sexual practices

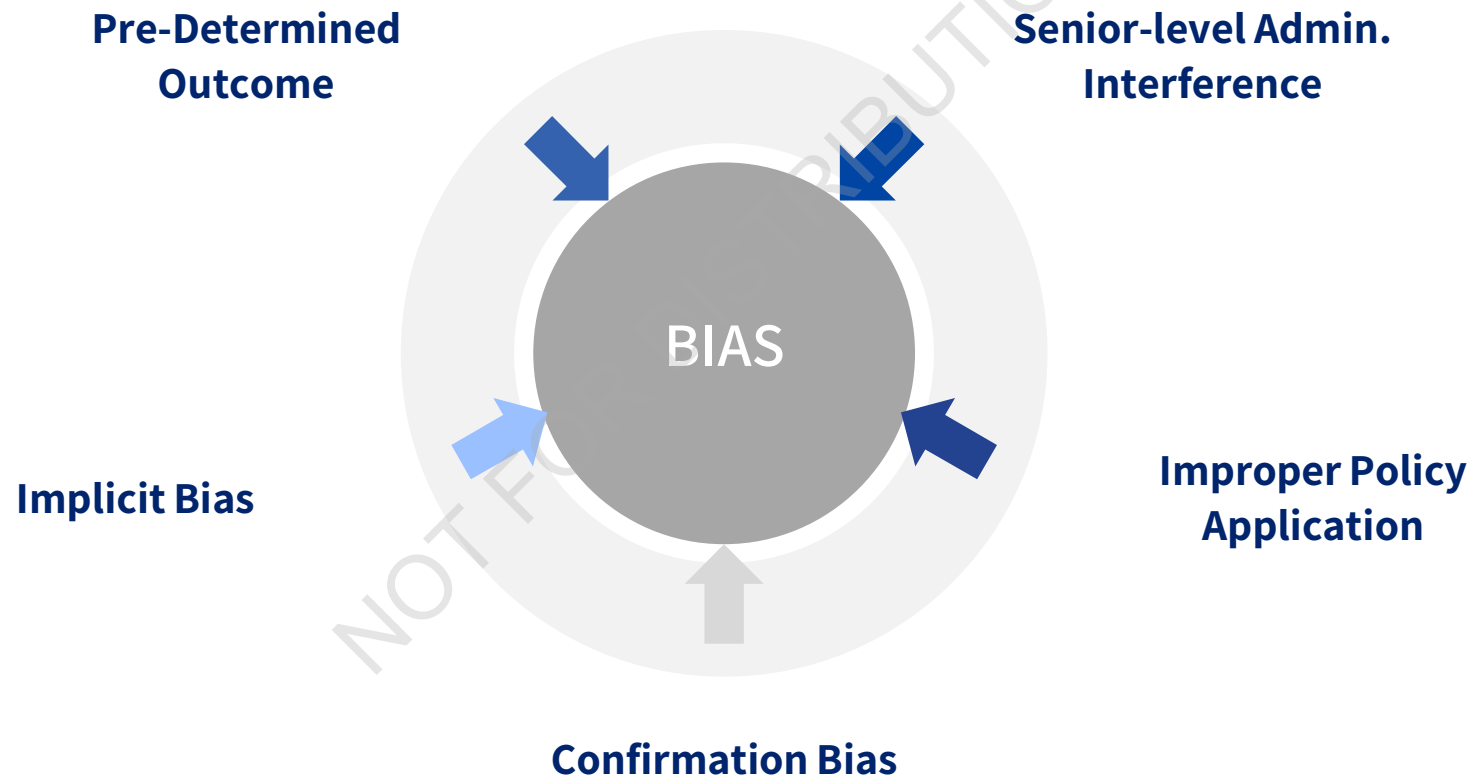
PERSONS WITH DISABILITIES

- Difficulty communicating with first responders
- Non-inclusive prevention and awareness programs
- Accommodation needs
- Processing and memory challenges

Inclusivity Discussion

- What types of challenges might disrupt or impede an effective investigation based on the individuals and/or sexual practices involved?
 - Think about institutional culture and presumptions related to race, ethnicity, religion, sexual orientation, gender identity, etc.
- How should an Investigator navigate an issue where an Investigator's response to descriptions of preferences or practices that are “new” or “unfamiliar” to the Investigator may impact rapport with an interviewee?

Common Bias Manifestations in Investigations



Mitigating Bias

- Investigate in pairs
- Investigators review each other's questions
- Follow institutional process
- Question mapping to ensure comprehensiveness
- Be conscious of own biases
- Be aware of bias in the process



Activity: Small Group Discussion

Interviewing Considerations

- Investigations should be non-judgmental and respectful
- Language is important
 - Use inclusive language
 - Avoid inflammatory, dated, or biased language
 - Reflect language used by interviewees
 - Get educated; do not expect interviewees to educate investigators
 - Assume nothing and permit the interviewee to self-identify



Interviewing Considerations

- Visible reactions may impact rapport building or push a witness to dig deeper
 - Consider how facial expressions and demeanor may impact interviewees
 - Whether you are impassive or expressive, be intentional and keep it neutral
- Be mindful of power dynamics, Investigator identities, and Investigator role as an authority figure in the Title IX process and the institution



Interviewing Considerations

- Anticipate heightened confidentiality concerns
 - Prepare to answer questions; don't dodge them
 - Be clear about expectations, especially limiting other parties or witnesses from discussing the complaint or the individuals involved
- Be aware of personal biases and assumptions
 - Cultural barriers
 - Lack of knowledge or experience
 - Consent

Disability Considerations

- Collaborate with disability/accessibility services staff as appropriate
- Possible accommodations
 - Communication services
 - Extended time
 - Accessible materials
 - Additional support persons
 - Other reasonable accommodations
- Provide equitably to other parties as needed



Language Considerations

- English may not be a participant's first language and translation services may be needed for meaningful participation
- Some research indicates that individuals prefer to speak about traumatic events in their second language in order to distance themselves from the event(s)
- Even when speaking the same language there are often easy misunderstandings, so ensure accurate understanding



Trauma and Investigations

Trauma-Informed Practices

- **Trauma** is exposure to an event or events that create a real or perceived threat to life, safety, sense of well-being or bodily integrity, and can be:
 - Acute, chronic, or complex
 - Neurological, biological, psychological, social, and emotional impacts
 - Developmental, intergenerational, historical, secondary, vicarious, or collective
- Responses to trauma can vary, depending on a variety of factors
- Provide all people with support that makes TIX services and processes accessible, including those who may have experienced trauma

Trauma-Informed Practices

- **ATIXA Position Statement:** application of trauma-informed practices in our field has gotten ahead of the actual science
 - **ATIXA Recommendation:** incorporate trauma-informed investigation and interviewing methods without compromising gathering credible, relevant evidence
 - Trauma-informed practices should not significantly influence evidence evaluation



Trauma Responses



Trauma-Informed Environments

- A soft interview room is considered an integral component of a trauma-informed interview environment
- Creating a space that is comfortable allows the interviewee to feel physically and emotionally safe and can have a significant impact on the interview process
- Soft interview rooms are useful when interviewing Complainants, Respondents, and witnesses, though many interviews now are online



Source: <https://youtu.be/xGCMqxvvoCI?si=januovfATbx6U6dT>

Trauma and Interviewing Complainants

- Interviewing Complainants about trauma they have reportedly experienced is different than interviewing other individuals
- Physiological changes occurring in the brain and body during trauma may affect memory, resulting in information that may be:
 - Disjointed
 - Incomplete
 - Inconsistent
- Acknowledge that individuals may not have a complete memory or answers to every question
 - Note gaps in the investigation report
 - Lack of memory can't be excused by trauma but may be explained by it
- Ask questions carefully; memory can be impacted by suggestion

Trauma and Interviewing Respondents

- Treat everyone with equal dignity
- Interview the Respondent in the same manner as you interview the Complainant
- Acknowledge that the Respondent may not recall details about the reported incident(s), especially if they indicate the NOIA was the first signal that the behavior was unwelcome and/or much time has passed
- Remember that some Respondents may be affected by trauma, too

Suggested Questions

- Prior relationships with other party(ies) and witnesses
- Thought process
 - Do you recall what was going through your mind then?
- Sensory information
 - What do you remember seeing?
 - What do you remember hearing?
- Response (physical, emotional, verbal)
- Disclosures and/or documentation



Additional Insights

- It may not be possible to confirm or challenge a party's statements during the first interview
 - Be planful and thoughtful in follow-up interviews
- If appropriate, make parties and witnesses aware that repeatedly providing detailed accounts of the incident(s) in other settings can potentially impact memory accuracy
- Memory limitations may result from a variety of circumstances
 - May pre-date or post-date the reported incident(s)
 - Often impossible to determine cause

Trauma and Credibility

- Investigators and Decision-makers can only assess available relevant evidence
- Avoid substituting trauma indicators for evidence
- Trauma is neutral; it neither enhances or detracts from proof
- Lack of evidence from an individual often negatively impacts their credibility
- Avoid blaming questions, or question that imply that a Complainant could have or should have made different choices
- Biased thinking around what a person “should” or “would” have done
 - Timing of report

Trauma and Credibility

- Differentiate between **more** versus **inconsistent** versus **contradictory** information if an individual's account changes
- Variations in testimony on minor or insignificant details should not significantly impact credibility
- One's affect ≠ evidence



Activity: Trauma-Informed Interviewing

Activity: Trauma-Informed Interviewing

Read each of the following questions, identify why they are problematic, and suggest more trauma-informed phrasing

- Have you had sex with this person before?
- Why does this keep happening to you?
- What were you wearing that night?
- Why would Complainant file a complaint if it wasn't true?
- Isn't it possible that you misunderstood Complainant's signals?
- Help me understand why you think what happened is a policy violation.
- Did anyone see this happen?

Investigation Reports

Title IX Regulatory Requirements

- 2024 Regulations **do not require a written investigation report**
 - **Section 106.45:** institutions must provide parties access to all relevant and not otherwise impermissible evidence **or** an accurate description of the evidence
 - **Section 106.46:** institutions must provide parties and their Advisors access to all relevant and not otherwise impermissible evidence **or** an investigation report
 - If providing a description or investigation report, institution must still provide access to relevant evidence upon request

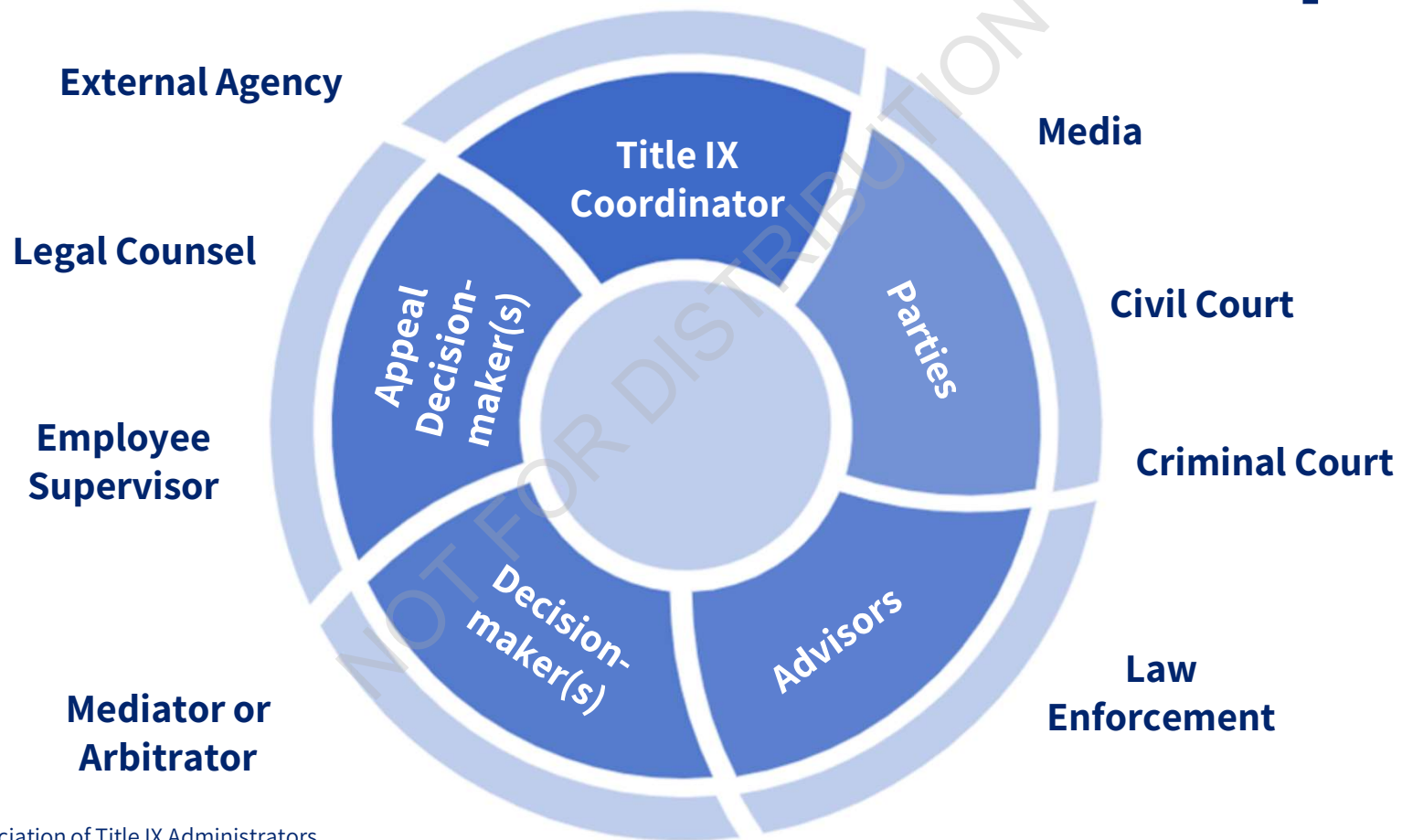
ATIXA's Recommendation

Comprehensive investigation report for all Title IX complaints

- Creates an opportunity for equitable access to relevant evidence
- Shows Investigator's work
- Provides Investigators with a standard and consistent format
- Helps protect institution on complaints that may be subject to scrutiny



Consider Potential Audiences for Report



FERPA, Title IX, and Student Records

- Title IX investigation reports involving students are subject to the **Family Educational Rights and Privacy Act (FERPA)**
- An investigation report is considered part of each party's education record
 - Not part of a student witness's education record, typically
- FERPA permits the disclosure of information contained in education records, without the student's consent, to school officials and specific external stakeholders who have a **legitimate educational interest**
 - Includes other parties and their Advisors
 - Avoid including or redact personally identifying information before releasing the report

FERPA and Title IX

“The Department has long interpreted this provision to mean that FERPA continues to apply in the context of enforcing Title IX, but **if there is a direct conflict** between FERPA’s requirements and Title IX’s requirements, such that enforcing FERPA would interfere with Title IX’s primary purpose to eliminate sex-based discrimination in schools, **the requirements of Title IX override** any conflicting FERPA provisions”

Employee Records

- Title IX investigation reports involving employees may be subject to state employment record laws
- Institutional policy dictates whether a complaint, and subsequent Resolution Process, are part of a Complainant's employee records
- Title IX requires releasing the investigation report to parties (whether students or employees) and their Advisors

The background of the slide is a blurred photograph of a desk. In the foreground, there is a stack of papers, a pair of glasses, and a pen. The text is overlaid on this image.

New Unauthorized Disclosure Rule:

“A Recipient must take reasonable steps to prevent and address the parties’ and their advisors’ unauthorized disclosure of information and evidence obtained solely through the grievance procedures”

Unauthorized Disclosure Exceptions

▪ Unauthorized Disclosures

- **Exception:** Complainant or Respondent may share evidence they have gathered themselves
- The parties may not share other information disclosed in the Title IX Resolution Process that is the institution's work product
- **Note:** This is not a FERPA requirement, but rather a specific Title IX confidentiality requirement
- Typically warrants either warning, sanctioning (parties), or removal (Advisors)
- Disclosures of such information and evidence for purposes of administrative proceedings or litigation related to the complaint of sex discrimination are authorized

Writing Mechanics

Tone, Voice, Tense, and Point of View



TONE

Writer's attitude toward the subject or audience



VOICE

Form or format through which a narrator communicates a story



TENSE

When events or actions occurred in time—in the past, present, or future



POINT OF VIEW

The position from which the author “speaks” to the reader

Formal vs. Informal Language

Formal Language

- Medical/anatomical terms
- Accurate terms for alcohol or other drugs, their composition, and use
- Full words--we would, cannot, percent
- Last name, role, titles
- Third-person writing

Informal Language

- Colloquial or slang terms for anatomy (“junk”) or sexual acts (“smashing”)
- “Weed,” “hunch punch,” “hammered”
- Contractions--we’d, can’t
- First name or nickname
- Empathic writing/taking a position

Active vs. Passive Voice

- **Active Voice:** used when the subject performs the action
 - Focuses on the doer of the action
 - Best practice
- **Passive Voice:** used when the action is performed upon the subject
 - Focuses on the action; doer is unknown, implied, or irrelevant

Examples of the Three Voices in Writing	
1. Active Voice	"You ate six donuts."
2. Passive Voice	"Six donuts were eaten by you."
3. Passive-Aggressive Voice	"You ate six donuts and I didn't get any. Don't worry, it's cool. I can see donuts are very important to you."

Tense

- Investigation reports are a narrative of events that have already occurred
 - **Past tense is best practice**
 - Avoid changing tenses
 - Exception: Investigator actions for the present or future
- **Present Tense:** expresses anything that is happening now, or is ongoing, constant, or habitual
- **Past Tense:** indicates past events, prior conditions, or completed processes
- **Future Tense:** indicates actions or events that will happen in the future

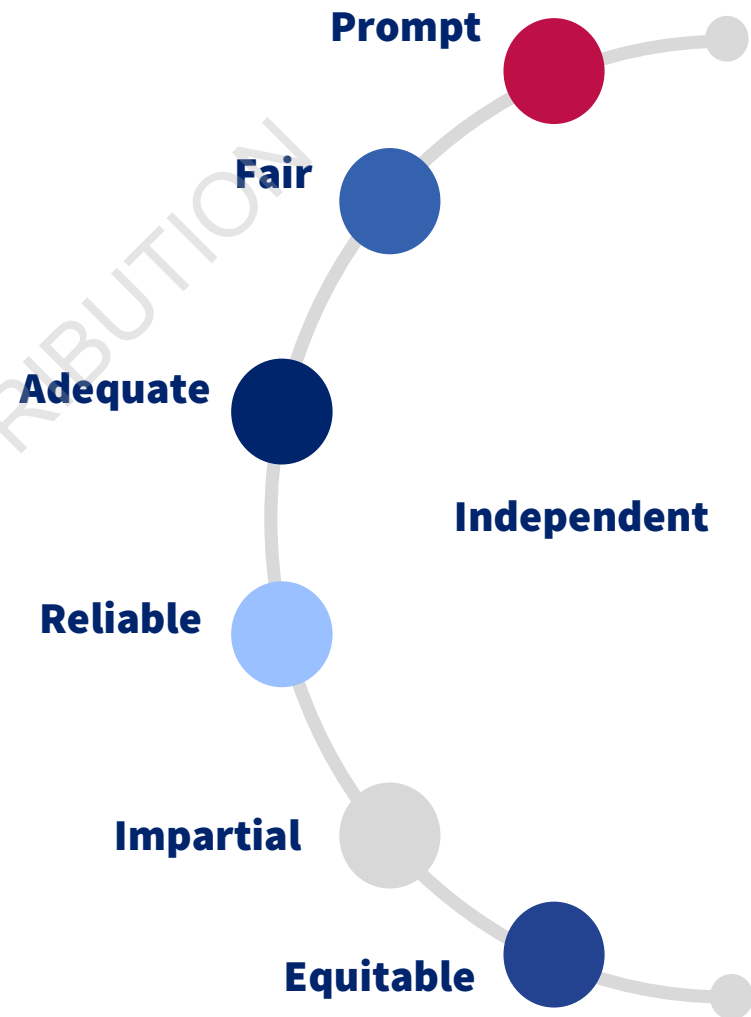
Neutral Perspective

- **ATIXA recommends Investigators write in third person and from a neutral, detached observer point of view**
 - Creates distance between the reader and the parties
 - Example: I watched the Complainant sob and tremble at the pain they felt as they described the incident during the interview vs.
 - Complainant stated it was “very painful” to discuss the incident
- Investigator’s writing can unintentionally reflect their own biases
 - Focus on information and evidence, not opinions or suppositions
 - Describe evidence in a neutral manner; avoid emotional language or moralizing
 - Write so that the report is consistent in tone/format/voice no matter who writes it
- Templates can help maintain a neutral perspective regardless of Investigator

Writing and Structuring Investigation Reports

Fair and Impartial

- It is incumbent on fair and impartial Investigators to provide a report that accurately and succinctly summarizes the evidence the parties and witnesses have provided, and the Investigator has otherwise collected



Relevant Evidence

Investigators should include **relevant** evidence in their reports

- **Relevant** means related to the allegations of sex discrimination under investigation
 - Evidence is relevant when it may aid a Decision-maker in determining whether the alleged sex discrimination occurred
 - Evidence can also be relevant to credibility assessments
- It is the Investigator's responsibility to obtain **relevant** evidence



Privileged and Medical Information

The party must provide written permission to obtain and/or include:

- Evidence protected under a legally recognized privilege, including evidence relevant to determining capacity to consent for students with disabilities
- Records made or maintained by:
 - Physician
 - Psychiatrist
 - Psychologist
 - Recognized professional or paraprofessional in reference to party or witness treatment



Impermissible Evidence

- Evidence of the **Complainant's sexual interests** is never relevant
- Evidence of the **Complainant's prior sexual conduct** is not relevant except:
 - If offered to prove that someone other than the Respondent committed the alleged conduct, or
 - Prior sexual conduct with Respondent, if offered to prove consent to the alleged sex-based harassment
 - Any prior consensual sexual conduct between the parties does not by itself demonstrate or imply the Complainant's consent
- Even if admitted/introduced by the Complainant
- Does not apply to Respondent's prior sexual behavior or sexual interests

Format and Structure

- Templates, templates, templates
- Transcripts vs. interview summaries
- Narrative vs. bulleted format
 - Headnotes
- Multi-party or multi-allegation investigations
- Use attachments, appendices, and exhibits

Enhancing User-Friendliness

- Table of contents
- Page numbers
- Line numbers
- File naming conventions
- Internal document links

Direct Quotations

- Direct quotations and commentary from parties and witnesses can help to accurately convey their experiences and perceptions
- Recorded interviews, written statements, electronic messages, etc. can help facilitate use of direct quotations
- Advisors' statements should not be attributed to a party
- Care must be taken to indicate whether a quote is something a witness told Investigator(s) or something another person said to a witness

Incorporating Direct Quotations

Introduce the quotation with a complete sentence

Cole described how his relationship with Devyn evolved over time: “We were friends, and then we became friends with benefits.”

Use an introductory or explanatory phrase

When asked to describe his relationship with Devyn, Cole responded, “We are friends with benefits.”

Incorporate the quotation part of the sentence

Cole described his relationship with Devyn as “friends with benefits.”

Use a short phrase as part of the sentence

Cole used the term “friends with benefits” to describe his relationship with Devyn.

Punctuation for Quotations

If words are omitted from a quotation, use an ellipsis (...)

- Three dots (...) indicate the quote omits words in a sentence or sentences in a paragraph
- Four dots (....) indicate indicates the quote omits words at the end of one sentence when the quote continues onto the next sentence
- Do not change the meaning of the sentence by omitting text

If words are inserted or altered in a quotation to improve readability, use square brackets [] to indicate the change

- May include:
 - Letter case or verb tense
 - Replacing a word to clarify meaning

Punctuation for Quotations

Enclose “sic” in square brackets to indicate that the quote is verbatim, though there are spelling or other syntax errors

- Most needed for excerpts from documentary evidence or interview transcripts
- Use [sic] when the meaning of the quotation is unclear
 - Helps proofreaders know what is/is not intentional
- If there are numerous errors throughout, consider a blanket statement that quotes are verbatim and that grammatical, syntax, or other errors are a function thereof

Sensitive Information

- Offensive, triggering, or explicit language (e.g., slurs)
- Graphic images/videos
- Medical information, including test results
- Mental health information
- Sex assigned at birth vs. gender identity
 - Avoid the singular “they” in report writing; use roles instead (e.g., C, R, W1, W2)
- Chosen name vs. legal name



Redaction Practices

Full redaction vs. role identifiers

- Example:
 - **Original:** Teagan stated that Jesse smacked her with an open hand
 - **Full:** [REDACTED] stated that [REDACTED] smacked her with an open hand
 - **Role Identifiers:** Complainant stated that Respondent smacked her with an open hand
- Full redaction is a common practice in law enforcement, but is not recommended for Title IX investigations
- Provide key with names for parties and Advisors

Redaction Practices

- Other options:
 - Include full name for first mention
 - Use initials
 - Use one- or two-letter identifiers (C, R, W1, W2, etc.)
- Determine whether to create a fully unredacted copy
 - Legal counsel
 - Decision-maker(s)



Word Choice

- Investigation report writing is **clear and factual**
- Avoid:
 - Unnecessary adverbs and adjectives
 - Conclusory words
 - Bias language
 - Judgmental statements

Common Pitfalls

- Abbreviations, initialisms, and acronyms
- Absolutes
- Clichés
- Exaggerations
- Generalizations
- Idioms
- Inconsistency
- Jargon
- Repetition

Word Choice Exercise Part 1

Consider the difference a single word makes:

- The Respondent **fondled** the Complainant's breasts while they were sitting next to each other at the movie theater
- The Respondent **felt** the Complainant's breasts while they were sitting next to each other at the movie theater
- The Respondent **caressed** the Complainant's breasts while they were sitting next to each other at the movie theater
- The Respondent **touched** the Complainant's breasts while they were sitting next to each other at the movie theater
- The Respondent **groped** the Complainant's breasts while they were sitting next to each other at the movie theater

Word Choice Exercise Part 2

Now that you've considered each of the statements, where would you place the described actions on a continuum from least severe/egregious to most severe/egregious?



The Respondent:

- Fondled
- Felt
- Caressed
- Touched
- Groped

Word Choice Examples

- The Respondent **refused** to answer the question.
- The Respondent **declined** to answer the question.
- The Respondent **chose not** to answer the question.

- The Complainant **denied** offering to massage the Respondent.
- The Complainant **vehemently denied** offering to massage the Respondent.
- The Complainant **flatly denied** offering to massage the Respondent.

Word Choice Examples

Poor Phrasing Example: “On September 21, 2016, four upperclassmen male students brought unwelcome sexual activity to Jane Doe and another female student in a stairwell at Maplewood.”

Doe v. Metropolitan Government of Nashville and Davidson County, No. 20-6225 (6th Cir. May 19, 2022)

Recommended Revision: Four male upperclassmen engaged in sexual activity with Jane Doe and another female student in a Maplewood stairwell on September 21, 2016. Jane Doe and the other female student allege the sexual activity was unwelcome.

Biased Language Example

“Allegations of sexual assault on college campuses are fraught with potential injustice for both female student victims of sexual violence and male students who may be falsely accused of improper conduct”

Doe v. Wake Forest University, 1:23-cv-00114 (M.D.N.C., Sept. 6, 2023)

Bias Example

Email to Complainant

Dear Joelle,

Thank you so much for sending your written statement. I hope you are doing ok. I would like to set up another meeting with you to ask some further questions and discuss the evidence that you may have, witnesses you'd like me to speak with, and any other concerns you might have. If you could just let me know if there's a convenient time that works well for you and if you have a preferred meeting location, I'll set an appointment for us.

I hope we can find a good time to meet next week. In the meantime, take good care and please don't hesitate to reach out if there's anything you need. Thanks!

Best regards, Title IX Investigator

Bias Example

Email to Respondent

Hank,

I have received your statement. We will need to meet again so that I can ask you follow-up questions I have and discuss the evidence that you may have, witnesses you'd like me to speak with, and any other outstanding process pieces. Based on your class schedule, I set an appointment for us at 11 AM on Monday, October 7, 2024, in my office.

Refer to the list of resources at [website] if you need assistance before our meeting.

Sincerely,

Title IX Investigator

Footnotes

- Provide a space for definitions, context, or source information that would disrupt the flow of the report
- Description of electronic devices or applications
- References to appendices or evidence file
- Background information
- Relevant evidence source(s)
- If the Investigator is offering context from their own knowledge, make sure it is clearly indicated as such
 - Example: The Investigator notes from personal familiarity with the building that Room 19 is approximately halfway down the hall from the elevator

Footnotes

- Consider who will be reading the report now and potentially in the future
 - Technology evolves
 - Slang shifts
 - Pop culture references change
 - Businesses come and go
 - Generational differences
 - Cultural differences
- Do not assume common knowledge
- In text, the footnote marker follows punctuation except for the em dash (—)
 - I.e., .¹ vs. ¹—

Footnote Example

Respondent described this interaction as follows,

“At this point we were fully naked. And so we were grinding on each other. We were grinding on each other’s genitalia. And then she placed her hand over her vagina and said, ‘Wait, do you have a condom?’ Then we began to discuss the use of a condom. I did not have a condom. I had just ran out the week prior. And so she asked if I could grab one from one of my friends, to which I responded, ‘They’re not home. They’re still at the party. And I can’t exactly go searching through their things while they’re gone to find a condom.’”²

The parties agreed they engaged in a conversation about Respondent’s lack of a condom and Complainant’s concerns regarding proceeding with sexual intercourse without a condom.

² See Respondent Interview 4.1.2024_Transcript.pdf, p. 6.

Parties' Questions for Others

Document questions suggested or requested to be asked by the parties

1

Otherwise Answered

Document: the question and the answer

3

Rephrased and Asked

Document: the question, rephrased question, rationale for rephrasing, and the answer

2

Asked and Answered

Document: the question, how it was asked, and the answer

4

Not Asked

Document: rationale for not asking the question (e.g., irrelevant, impermissible)

Tips for Report and Evidence File Sharing

- Use a secure file-sharing platform
 - Consider functional and time limit restrictions as appropriate for the school community and process
- Include a separate watermark for each party and Advisor
- Clearly mark **draft** and **final** versions, including draft number
- Ensure the parties have a user-friendly method for providing feedback
- Remind of Unauthorized Disclosure Rule



Parties' Review and Response

- Must provide an equal opportunity to access:
 - Relevant and not otherwise impermissible evidence, **or**
 - An accurate description of this evidence (investigation report)
 - Must provide the parties with the relevant and not otherwise impermissible evidence upon the request of any party
- Must provide a reasonable opportunity to respond to the evidence or the investigation report
- Strategies for addressing :
 - New evidence
 - Clarification of earlier statements

Post-Review Investigator Response

- Follow-up on all areas, as needed
 - Additional evidence
 - Additional witnesses
 - Questions
- Track changes
- Include each party's review and comment in appendix
 - Note if a party declined to comment
- Include Investigator response to review and comment in appendix
 - Rationales for responses

TIXC and/or Legal Counsel Report Review

Internal Report Review and Feedback

- TIXC and/or legal counsel reviews draft investigation report prior to providing it to the parties, after providing it to the parties, or both
 - ATIXA recommends having legal counsel review after providing the report to the parties
- Reviewer(s) identifies gaps, logic leaps, typographical errors, and substantive issues
- Reviewer(s) should not rewrite any section of the report but can ask questions and provide suggestions
- Investigator should review and incorporate helpful edits and suggestions

Feedback Examples

- Respondent said, “You can touch me too if you want.” Complainant did not say if she touched Respondent.
 - **Comment:** Why is this unanswered? As a primary element of their defense, the Respondent is arguing Complainant reciprocated the sexual contact. This is important information.
- Witness 4 also said that Complainant did not explain what Complainant meant when she said she was considering getting Respondent in trouble.
 - **Comment:** Did the Complainant say what she meant by this comment?
- Complainant was told there was no appeal process.
 - **Comment:** By whom? Do you know?

Absent Information

Information Not Obtained

Investigators should document all efforts to obtain evidence and explain any information that could not be obtained

- Did/does not exist
- Cannot be located
- Party/witness not available or declines to respond to question(s)
- Party/witness declined to submit
- Deleted, destroyed, damaged
- Unable to access without a court order
- Cannot be released based on an ongoing criminal and/or agency investigation

Unanswered Questions

- **ATIXA recommends including unanswered questions asked** during the investigation to:
 - Demonstrate a thorough investigation
 - Help guide the Decision-maker to topics that may need further exploration
- **If relevant, document in the interview summary**
 - Example: “Witness 2 declined to provide additional information regarding their text conversation with Complainant on February 19, 2024. Witness 2 was informed that Complainant voluntarily submitted screenshots of the text messages in question for purposes of this investigation.”

Investigation Report Sections

Showing Investigators the Ceiling

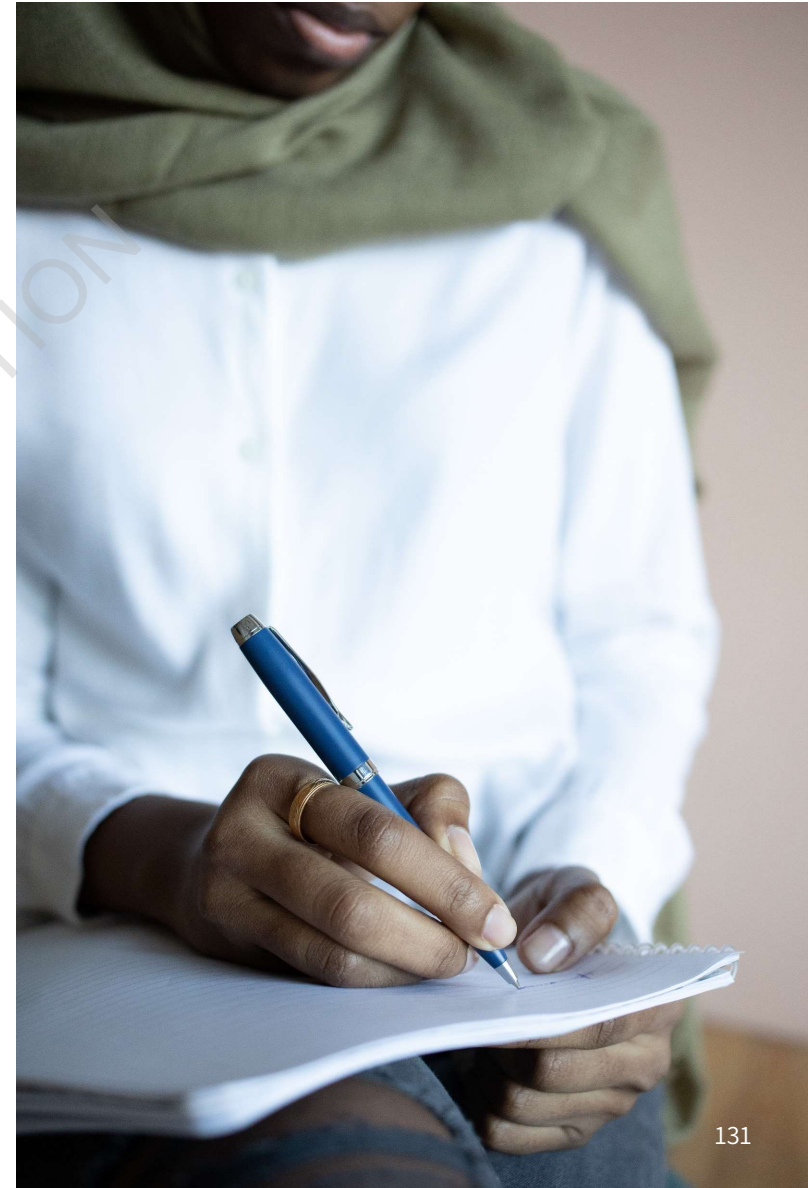
- The 2024 Regulations state:
 - Institution must provide an equal opportunity to access either:
 - **The relevant and not otherwise impermissible evidence, or**
 - **An accurate description of this evidence (which may be an investigation report)**
- This is the floor; we recommend shifting more toward the ceiling because a report is the best way to organize evidence for clarity and user-friendliness
- The slides that follow provide a detailed explanation of the various sections that investigation reports can include
 - Investigators are encouraged to select those elements that will help provide a report that is **adequate, impartial, fair, and reliable**

Possible Investigation Report Sections

- Introduction/Complaint Information
- Allegations Overview
- Jurisdiction
- Investigation Scope
- Applicable Policies and Relevant Definitions
 - Standard of Proof
- Evidence List
- Investigation Timeline
- Relevant Background
- Incident Timeline
- Relevant Evidence Summary
- Credibility Assessment
- Discussion and Synthesis
- Recommended Findings and Final Determination
- Conclusion
- Appendices
- Evidence File

Complaint Information

- Complaint date
- Complainant's name
- Respondent name
- Initial notice date
- Initial notice received from
- Date assigned to Investigator(s)
- Assigned Investigator(s)



Allegations Overview

- Date, time, and manner of complaint
 - Complainant, third party, or TIXC
- Description of alleged misconduct
- Policies governing the investigation



Allegations Overview Example

On Tuesday, October 6, 2024, the Title IX Coordinator (TIXC) met with Complainant and her advisor, the Sexual Assault Victim's Advocate. Complainant reported that on Saturday, September 5, 2024, Respondent sexually assaulted her while Complainant was in a state rendering Complainant unable to give consent due to alcohol consumption. Complainant requested to initiate a complaint and completed the complaint form during the meeting.

As a result of this allegation and additional evidence presented at the time of intake, the TIXC asked the Title IX Investigator to conduct a thorough and impartial investigation using the provisions outlined in the University's Equal Opportunity, Harassment, Nondiscrimination Grievance Policy (hereinafter, Grievance Policy) and in accordance with Title IX and following guidelines from the U.S. Department of Education's Office for Civil Rights.

Jurisdiction Statement

Provide a jurisdiction statement including:

- Date(s), time(s), and location(s) of reported conduct
- Individuals involved
- Relevant policies and procedures related to jurisdiction
 - Analysis of the institution's jurisdiction over this type of complaint
 - Institutional control and/or disciplinary authority for the context of the alleged misconduct
 - Indicate whether Title IX requires the institution to investigate, or whether jurisdiction is discretionary
- Often prepared by TIXC

Jurisdiction Statement Example

According to available information, the Respondent is currently a full-time administrative employee in the College of Human Performance, and the Complainant is currently a third-year doctoral student the physical therapy program. Both parties maintained the same institutional affiliations at the time of the reported incident.

The reported incident occurred in Parking Garage Six on the University of the Northwest campus in Seattle, Washington, United States. If proven, the allegations would constitute sexual assault under University policy and Title IX.

The University controls the location of the reported incident. The Respondent is an employee, and the Complainant is participating in the institution's education program as a student; therefore, the University has jurisdiction over this complaint pursuant to University Policy 10.1, Section 2(b).

Scope of the Investigation

- **Scope** refers to the nature of the allegations, timeframes, and parties subject to the investigation
 - Clearly indicate whether the investigation is examining an incident, pattern, or climate/culture (and if pattern, whether there is a pattern charge)
- TIXC determines the scope of the investigation
- Parties and relevant witnesses
 - Provide basic context for a witness's connection to the institution and the parties
- Include when each individual was interviewed and by whom
 - Include nonresponsive individuals and anyone who declined to participate

Scope Example

The Office of Institutional Equity, which oversees Title IX and VAWA compliance, commenced an investigation to determine:

1. Whether the Respondent engaged in behavior that constitutes sexual assault under University policy in an on-campus apartment on April 7, 2021
2. Whether the Respondent engaged in behavior that constitutes sexual exploitation under University policy in an on-campus apartment on April 7, 2021

Investigator Felicia Morris conducted an investigation in accordance with guidelines and requirements set forth by the U.S. Department of Education's Office for Civil Rights for Title IX investigations, the Violence Against Women Act Section 304, and University policy. Her efforts were overseen by Melanie Wallace, Title IX Coordinator. Witnesses interviewed include current students and non-students.

Scope Example

This investigation was designed to collect all available information and to determine if the complaint should be dismissed or referred to a decision-maker for a formal hearing.

Individuals interviewed:

- Complainant – student
- Respondent – student
- Witness 1 – student and Complainant’s best friend
- Witness 2 – student and Respondent’s roommate
- Witness 3 – former student and Respondent’s former roommate

Applicable Policies and Relevant Definitions

- Include the full text of **ALL** (correct versions) of applicable policy sections
- Alleged violation(s)
 - Relevant definitions (e.g., consent)
 - Standard of Proof
- Consistent with the Notice of Investigation and Allegations (NOIA), including any amendments



Evidence List

- Recipient policies
- Evidence from Title IX staff
 - Meeting notes
 - Incident reports
- Evidence from parties and witnesses
 - Verified interview transcripts/summaries
 - Additional evidence provided
- Unavailable evidence



Investigation Timeline

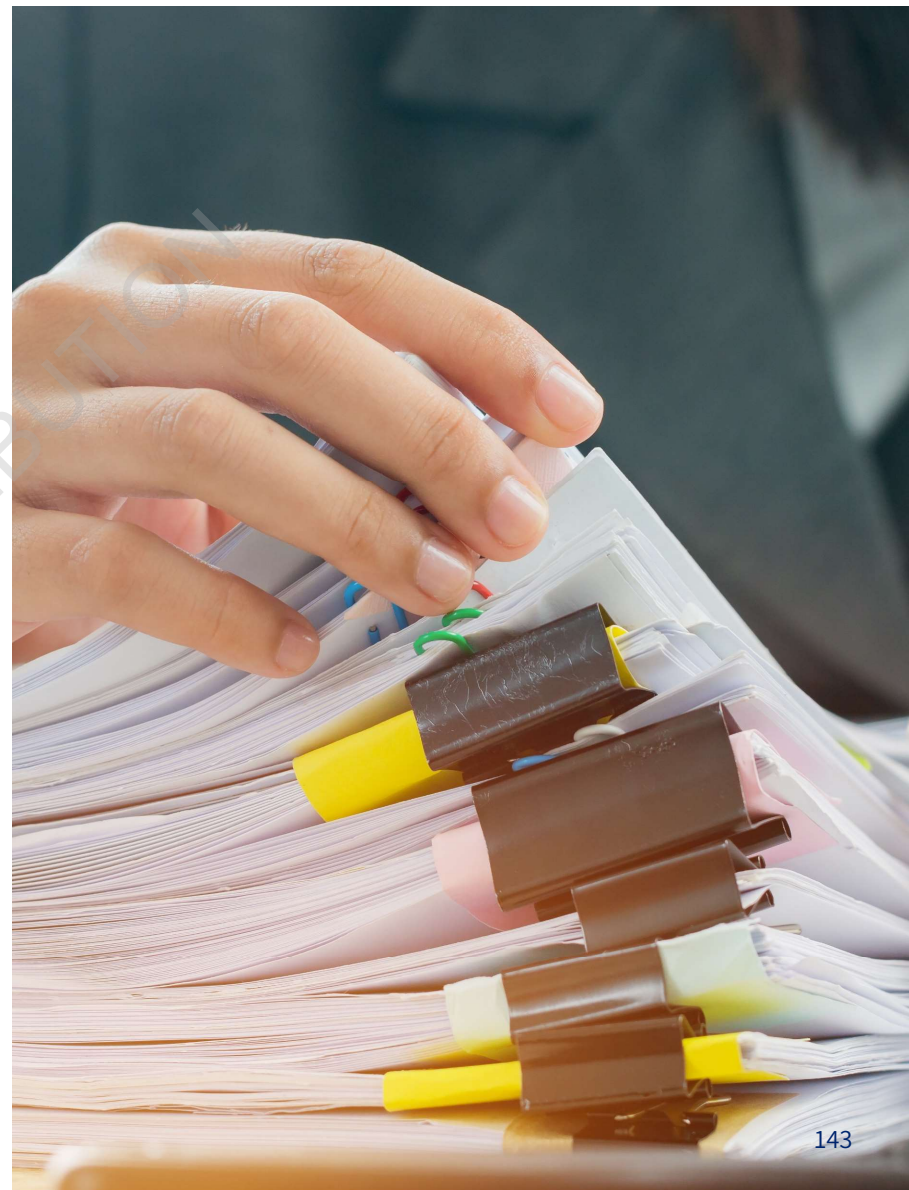
- Notifications to the parties
- Interviews with parties and witnesses
- Site visits
- Methods used to gather other evidence
- Meetings/Hearings held
- Note any process delays, including reasons for the delay



Discussion: Investigation Report Context Sections

Relevant Background

- Include additional background information as necessary to understand relationship history, context, etc.
 - Separate by topic



Incident Timeline(s)

- Visual representation or list that shows events in chronological order
 - One timeline for the reported incident(s) based on all available information
 - Use separate timelines for multiple incidents if necessary
- Reference evidence connected to points on the timeline
 - E.g., timestamped text messages, receipts, call logs
- Especially helpful in evaluating incapacitation
- For stalking allegations, it is an industry standard to include a timeline to assess the “course of conduct” element of the offense

Incident Timeline Example

~10:00 PM

Marty's

C & R meet at Marty's Convenience Store and purchase beer, wine, and bread

Travel

C & R travel to R's on-campus apartment and begin consuming alcohol and watching Netflix

Restroom

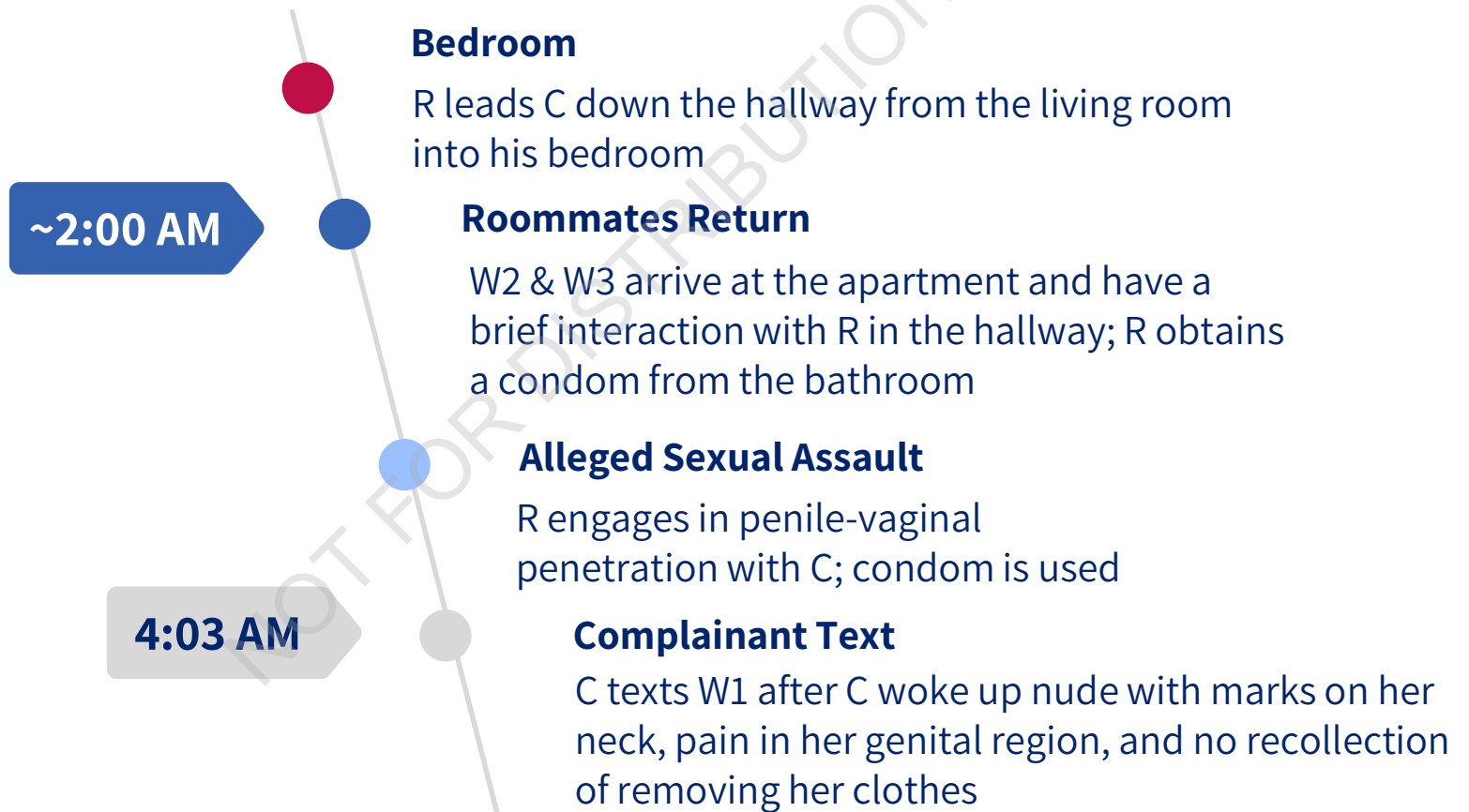
C uses the restroom and begins feeling "like it took a lot of effort to move [her] limbs" and "everything was going on around [her] in slow motion"

1:47 AM

Roommate Text

W2 texts R and tells him that W2 and W3 are coming back to the apartment; R says he is "entertaining"

Incident Timeline Example



Incident Timeline Example

~4:30 AM

Pick-up

W1 picks up C outside of R's residence hall and transports C to the hospital for a sexual assault examination

- Timeline established by using all available information
 - Receipts
 - Text message time stamps
 - Witness statements
 - Party statements
 - Building access records
 - Other

Relevant Evidence Summary

Relevant Evidence Summary Includes:

- Complaint and/or Incident Report
- Interview summaries/relevant portions of transcripts
- Written statements
- Responses to Draft Investigation Report
- Text/social media/email/electronic messages
- Photographs
- Description of and link to videos
- Relevant documents

Organizing the Relevant Evidence Summary

- Content may dictate the most logical organization structure for this section
- Can organize in multiple ways, depending on number of complainants, respondents, witnesses, or allegations, as well as the nature and type of the allegations themselves
- Some common approaches
 - By interviewee
 - By allegation
 - Chronological by interview
 - Chronological by incident timeline

Credibility Assessment

- Specific and detailed credibility assessment of:
 - Each party
 - Each witness
 - Any other relevant evidence
- Point to specific details that were considered that have aided in the assessments
- May or may not include conclusions about credibility, depending on institutional policy
- ATIXA does not recommend Investigators make conclusions, but comparisons may be helpful

Credibility Assessment Example

Respondent

- Respondent indicated that his current job at the institution is his “dream job” and he “would never do anything to jeopardize his employment”
- Respondent indicated that several people had come to him to discuss the allegations made by Complainant, and acknowledged conversations with W1, W2, W4, W9, W17, and W22
- W6 specifically refuted any suggestion that Respondent would call anyone a “lipstick lesbian,” but investigators never shared with W6 that Respondent was alleged to have used that specific term
- W2 indicated that Respondent would never use derogatory language about a student-athlete
- W21 indicated that Respondent texted her at an unusual hour to see how she was doing on the same day that Complainant filed the allegations

Discussion and Synthesis

- Discuss and synthesize the relevant information
 - Consider the elements of each policy at issue
 - Refer back to relevant evidence cited
 - Refer to the credibility assessment(s)
- Guide for the Decision-maker(s) determination
 - What remains unresolved?
 - What type of analysis is required based on the applicable policy provisions?

Discussion and Synthesis Example: Undisputed Facts

The parties agree to the following facts:

- The parties met at an off-campus store, Marty's, where the Respondent purchased beer, wine, and bread
- The Respondent selected the beer, and the Complainant selected the wine
- The parties returned to the Respondent's on-campus apartment where they both consumed alcohol and watched Netflix while sitting on the couch in the living room
- The Complainant used the restroom in the apartment
- The Complainant awoke in the Respondent's bedroom early the following morning and texted her friend to pick her up

Discussion and Synthesis Example: Disputed Facts

The parties disagree about the following:

- Whether the Complainant was incapacitated due to alcohol consumption
- Whether Complainant asked Respondent to get a condom
- Whether the Respondent engaged in physical violence against the Complainant resulting in bruising on Complainant's neck and hip
- Whether Respondent had consent to engage in vaginal sexual intercourse with Complainant

Discussion and Synthesis Example

Allegation #1 – Sexual Harassment

Did Respondent sexually harass Complainant by showing Complainant's nude video to other Acme students?

- Acme Policy defines “sexual harassment” as any unwelcome or unwanted sexual attention, sexual advances, requests for sexual favors, and other verbal, visual, or physical conduct of a sexual nature or other offensive behavior directed toward a student because of or on account of their gender, when:
 - such conduct has the purpose or effect of unreasonably interfering with an individual's performance as a student; or
 - such conduct creates an intimidating, hostile or offensive environment at the school.

Discussion and Synthesis Example

The parties dispute this allegation

- Respondent denied showing Complainant's nude video to Witness 3
 - Complainant was not present when Respondent allegedly shared the video
 - Respondent did not explicitly deny playing the video on her phone in the presence of other students, but very deliberately defined “share” in such a way that Respondent could have been playing the video on her phone in plain view of other students and Respondent would not consider that “sharing” the video with other students

Discussion and Synthesis Example

- Witness 3 told Complainant that Respondent showed Witness 3 and other students a nude video of Complainant
 - Witness 3 told Complainant that she was wearing a colorful robe in the video Respondent showed Witness 3
 - Complainant recognized Witness 3's description of the video as one she had shared with Respondent privately
 - Respondent denied that Complainant sent a video wearing a colorful robe

Discussion and Synthesis Example

- Respondent thought Witness 3 overheard a conversation that was not directed at Witness 3 but denied ever showing or describing Complainant's video. Respondent also said Respondent did not have Complainant's text messages pulled up during this time.
 - Witness 3 told Complainant that Respondent showed Witness 3, Witness 1, and Witness 2 a video of Complainant while the group was talking about their classmates
 - Witness 3 said that she and another student in the group during the conversation were new to the Queens campus, and the conversation was about "who was weird" and trying to "warn" people about other students
 - At some point, Complainant was brought up and then Respondent showed the videos

Discussion and Synthesis Example

Did the incident occur as described?

- The Decision-maker should first evaluate the witness and parties' statements to determine whether the factual allegations are supported by a preponderance of the evidence
- Because there is a material disagreement on whether the video was shown, the Decision-maker should determine which description of these specific events is most reliable
- That determination may largely depend on the Decision-maker's evaluation of the credibility of the parties
- Relevant evidence that may impact the Decision-maker's evaluation of the parties' credibility is outlined in the credibility section of this report

Discussion and Synthesis Example

- When the Decision-maker has determined which version of the interactions subject to disputed evidence in Allegation #1 is supported by a preponderance of the evidence, the Decision-maker should, if appropriate, determine whether the conduct constituted unwelcome or unwanted sexual attention that had the purpose or effect of unreasonably interfering with Complainant's performance as a student or created an intimidating, hostile, or offensive environment at the school

Discussion: Investigation Report Evidence Sections

Recommended Finding & Recommended Determination

Recommended Finding

Whether the conduct occurred, by the standard of evidence

Recommended Determination

Whether the conduct that is proven to have occurred violates policy

Recommended Findings

- This section is only applicable if permitted by institutional policy (not recommended)
- **Apply the standard of proof and use the relevant, credible evidence to answer the following question:**
 - **Did the conduct occur as alleged?**
 - What is more likely than not to have occurred?
 - Who was involved in what occurred?
 - When and where did it happen?

Recommended Findings

- Apply the credibility analysis
 - Evidence is less credible if it is inconsistent or not corroborated
 - Passage of time, coupled with memory errors can adversely impact credibility of evidence
- Don't assign disproportionate weight to minor deviations
- Recognize and neutralize any biases – allow the evidence alone to guide recommended findings
- List the recommended finding of fact for each alleged policy violation, applying the standard of proof

Recommended Final Determination

- This section is only applicable if permitted by institutional policy (not recommended)

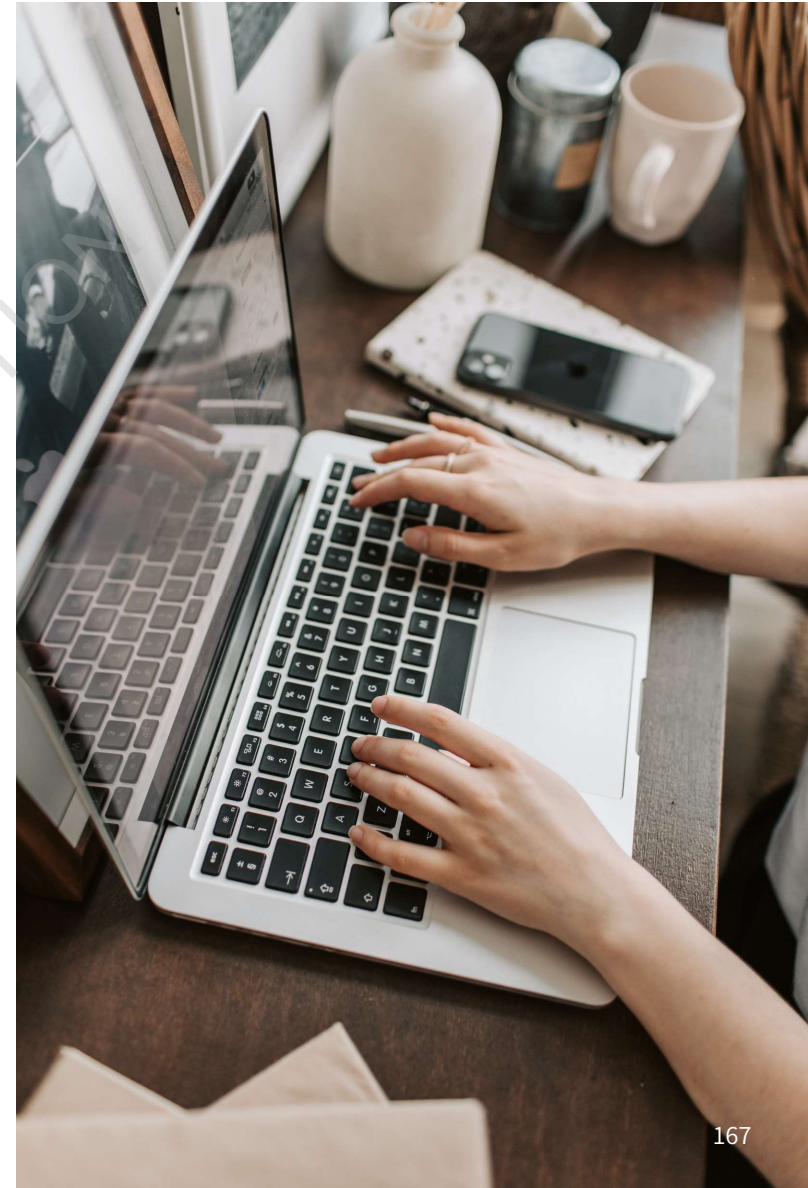
For complaints where Investigator(s) found that the alleged conduct occurred, apply the standard of proof and use the relevant, credible evidence to answer the following question

- **Did the conduct alleged violate policy?**
 - Parse the policy into its individual elements (model of proof)
 - A final determination of a violation can only occur when every element of a policy is met
 - Which facts provide information that either supports or detracts from meeting each element?
- List the recommended final determination for each alleged policy violation applying the standard of proof

Discussion: Investigation Findings and Final Determinations

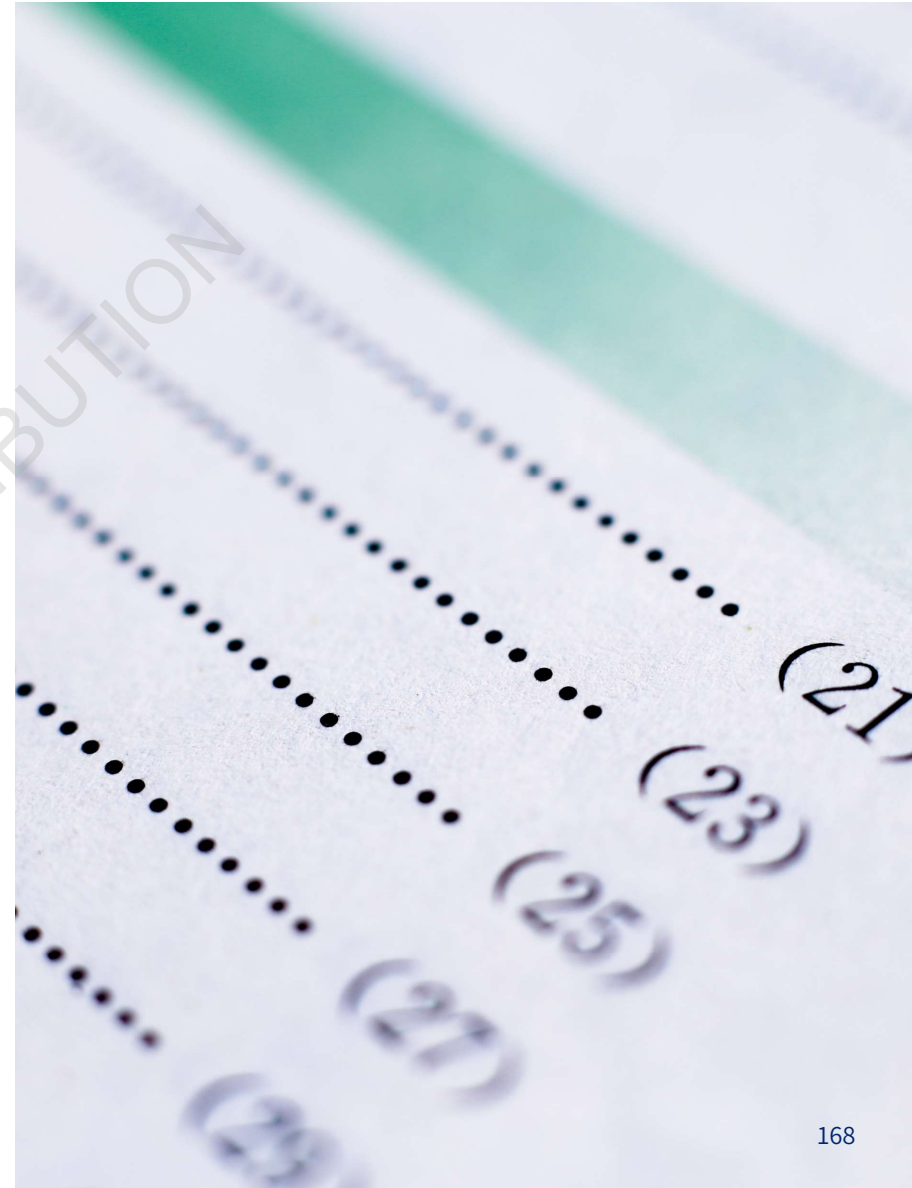
Appendices

- Relevant information that would not fit neatly in the investigation report
 - Policies
 - Complaint (depending on length)
 - Lengthy documents
- Parties' feedback on the investigation report and Investigator responses
- Parties' questions for others and responses
- Description, date of receipt, source, method of receipt, and verification/authentication information



Evidence File

- All relevant information in complete form
- Redact information that is impermissible
- Logical organization to align with report
- Maintain electronically
- TIXC must be able to access



Questions?

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Title IX Administrators

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