



Title IX: Investigator Training



Aspirational Agenda

- Title IX Requirements
- Investigation Process
- Interviews
- Weighing Evidence
- Writing the Investigation Report



Title IX Requirements

- Request for investigator
 - You will receive the names of the parties
 - Determine if you have a bias or conflict of interest
 - Determine timeline (60 days) to investigate/write investigation report

Title IX Timeline



Total Time: 113 days

Notice of Investigation and Allegation

- Your name will be included in the NOIA
 - You will be CC'd on the NOIA
- Parties will have a chance to request a different investigator or state they may have a conflict with you.
- Within 2 business days of receiving the NOIA, reach out the parties and schedule interviews

Investigation Process

Review any evidence “directly related to the allegations”, including the evidence upon which Wright State does not intend to rely in reaching a determination regarding responsibility 34 C.F.R. § 106.45(b)(5)(vi)

Complainant → Respondent → Witnesses

Organizing for the Interview

- What should you have with you?
 - Intake report
 - Written notice with allegations
 - Investigation log
 - Investigation notes cover sheet
 - Pre-prepared questions (read the NOIA)
 - Evidence you may need to reference
 - Policy or handbook

Relevant Evidence

Anything related to the incident could be deemed relevant.

“ evidence pertinent to proving whether **facts material to the allegations** under investigation are **more or less likely to be true** (i.e., on what is relevant)

”

Note Taking Tips

- Use predictable symbols in the margin to easily skim during the interview:
 - ? ← Follow-up questions
 - * ← Potential evidence
 - W ← Potential witness
- Try to record exact quotes when possible
- Type up written notes that organize the interview, will be included in the final report

Simultaneous Criminal Matter

- Is it okay to proceed with the investigation?
- **If not, could be interfering with a police investigation.**
- Communicate with Title IX Coordinator.
- May require calling the local policy department and/or detective.



Setting up the Interview

- Identify yourself, your role, and general outline of the investigation (template)
- Try at least three times to schedule the interview (with each party/witness)
- Provide enough time to prepare and ask questions
 - date, time, location, modality (virtual/in-person)

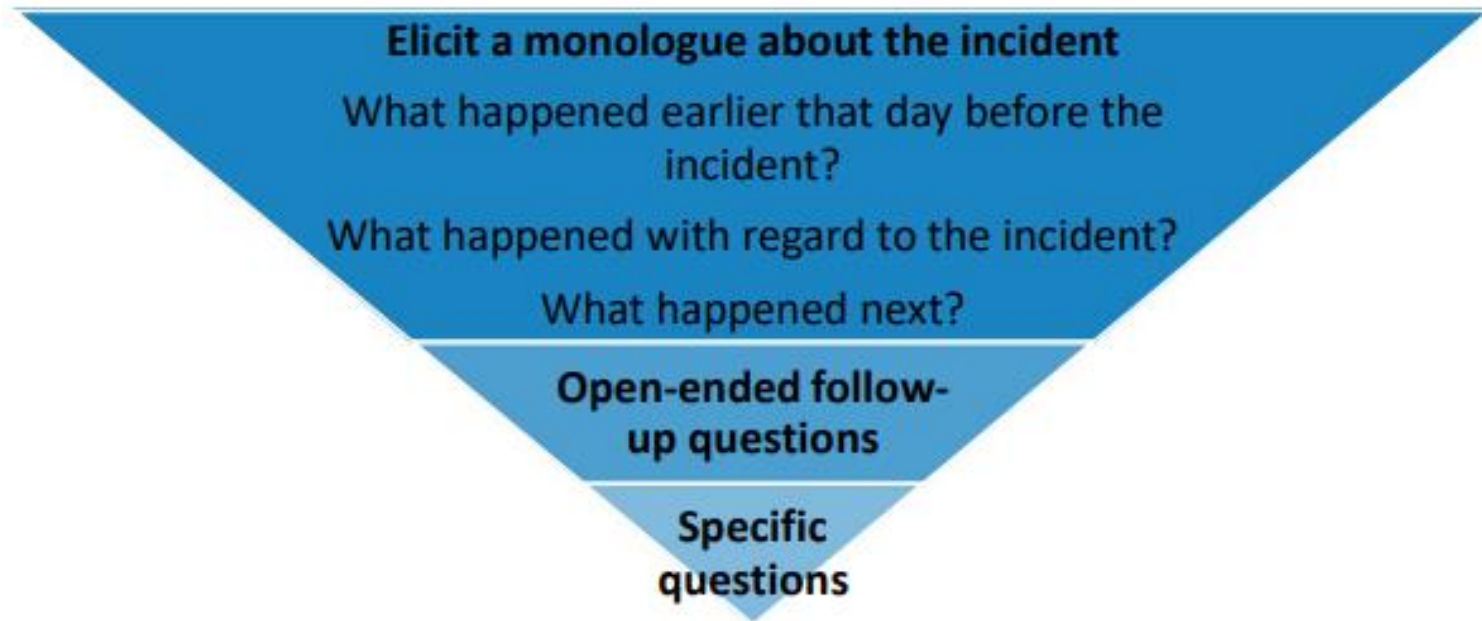
Set the Stage

- Make introductions
- Be hospitable
- Give overview of why they are being interviewed
- Explain non-retaliation policy
- Invite them to ask you questions

Focus on Policy

- The NOIA provides the allegations of the case. Your role is to uncover evidence related to the allegations from:
 - The complainant (person who was harmed)
 - The respondent (person who is alleged to have harmed)
 - Witnesses
 - Documented information (text messages, photos, videos, etc.)

Begin Broadly



If Party Does Not Participate

- Document!
 - Each attempt to schedule interview (via email and send email after a phone call)
 - Contact Title IX Coordinator to attempt to contact party
 - Send email to alert party that the process will continue without their participation
 - Move on...
 - Send the party and their advisor the preliminary/final report

When Consent is at Issue

- **Common concern: investigators not asking the questions to get the details needed for incapacitation analysis**
- Consider the wording and tone of questions
- Utilize “freeze frame” strategy
 - What did they see/hear/smell
- Ask questions about what happened to determine whether there was unspoken consent
- Ask questions to identify whether alcohol/drugs played a role

Asking Questions

The burden of gathering evidence is on the institution, not on the parties.

- How did the physical contact occur?
 - Who initiated?
- What is the timeline for the incident?
- Could you please describe the room in which the incident occurred?
 - If you can, please draw the room.
- You said “we did it”. Could you please describe what you mean by “it”?
 - Did that include penetration? Of which body parts?



Credibility

- Gather facts to assist the **decision-maker**
- Your job: ask questions to test memory
- Identify where the witness may corroborate or contradict their testimony, or other witness, and physical evidence
- Be sensitive to potential trauma experienced by witnesses

Questions about Credibility- Bias

- Bias: (a) lay witnesses and (b) experts.
- Relationships (friendship and romantic)
- Experts: getting paid for testimony
 - You charge fees based on an hourly rate?
 - You were paid to produce a written report?
 - Based on this report, you're testifying today?
 - You're charging money for each hour you're here?

Question of Credibility- Perception/Recall

- What is the witness's perception of the facts?
 - Has time impacted recall or ability to remember clearly?
 - How many times has the witness talked about to the other party about this case?
 - Was there anything that impacts the person's physical or mental ability to perceive or recall facts accurately?
- Is the expert limited by the information provided to inform the expert report?
- Does the witness form a conclusion without knowing certain information?

Questions of Credibility- Inconsistency of Statements

- Only happens if you interview the parties or witnesses multiple times
 - If a fact was very important, why is the hearing the first time it has come up?
 - What possible reasons might the witness have for changing their testimony?
 - Did a witness receive coaching from the party or others between making one statement and another?
 - Has the witness's perspective or motive changed between statements?
 - Does changing this fact help the other party's case?

Question of Credibility- Example

- **Intoxication level information from witness.**
 - Did you see the consumption, or keep track of how long the party was consuming alcohol?
 - Did you measure the alcohol poured by_____?
 - Are your statements based on your own information?
 - Was there anyone else who provide these details?
 - Were your experiences after you consumed alcohol/drugs?

Closing the Interview

- Closing questions
- Request copies of the evidence potentially available
- Discuss confidentiality
 - Do not prohibit a party from discussing the allegations
- Inform the witness of next steps of how to reach you
 - Via email

Relevance and Weight of Evidence

- Recipient must ensure that “all **relevant** questions and evidence are admitted and considered (through varying weight or credibility may of course be given to particular evidence by the decision maker).” (30331)



This Means:



Cannot exclude redundant evidence



Cannot exclude character evidence



Cannot exclude hearsay



Cannot exclude evidence where the probative value is substantially outweighed by the danger of unfair prejudice (30294)



Relevancy: Not Relevant

The Department has determined that recipients must consider relevant evidence with the following exceptions:

**Party's
medical/treatment
records**

*(unless voluntary
written consent)*



**Information
protected by a
legally
recognized
privilege**



**Complainant's
sexual
behavior**

*(except for two
exceptions)*



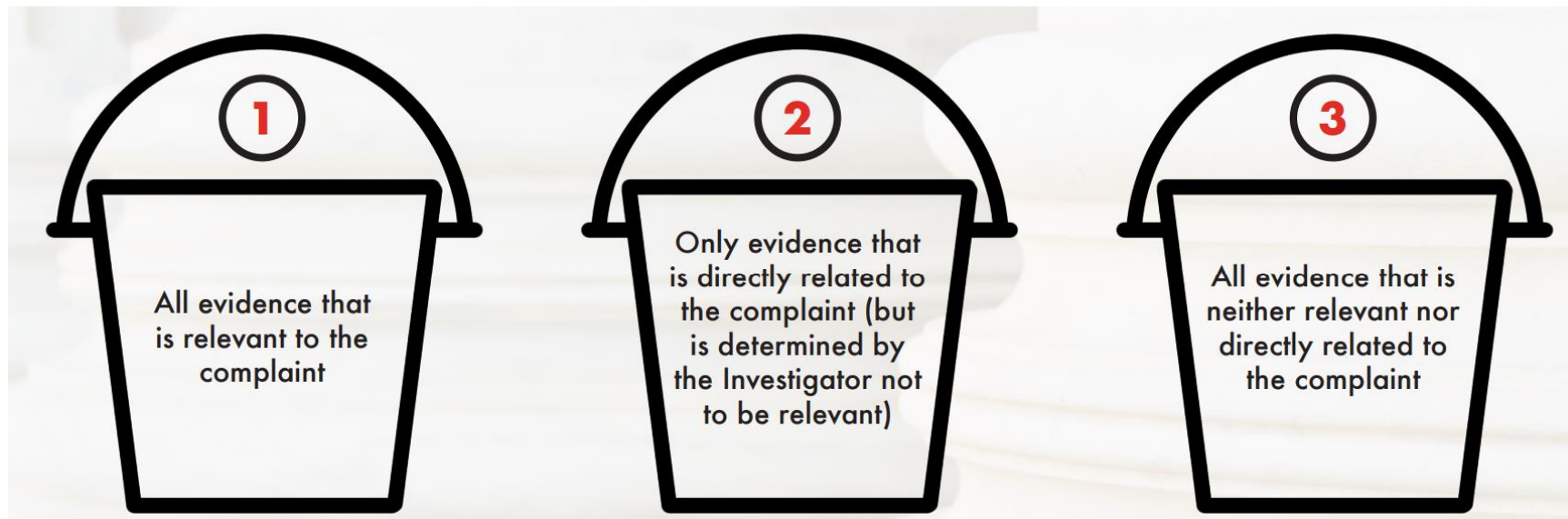
Relevancy: Rape Shield Provision & Complainant

- Evidence about **complainant's** prior sexual history (must exclude) unless such questions/evidence:
 - Are offered to prove that someone other than the respondent committed the conduct, or
 - If the questions/evidence concern specific incidents of the complainant's prior sexual behavior with respect to the respondent and are offered to prove consent.

Relevancy: Rape Shield Provision & Respondent

- Rape shield protections do not apply to Respondents
- “The Department reiterates that the rape shield language...does not pertain to the sexual predisposition or sexual behavior of respondents, so **evidence of a pattern** of inappropriate behavior by alleged harasser **must be judged for relevance as any other evidence must be.**”
- Guidance from September 2021 Q&A: no parties sexual history usually relevant

Buckets of Evidence



Writing Investigation Report



Organize All Relevant Evidence



The **GATHERER** of all relevant evidence.



The **ORGANIZER** of all relevant evidence.



Here are some tools for how to best organize all the relevant evidence.

Summarize Basic Information

Identify factual information:



Complainant



Respondent



Investigator



Witnesses

- Perhaps organize by fact v. expert witnesses or by party whom requested the witness

General Organization

- Natural and neutral organization strategies:
 - Chronological order
 - By topic or allegation
 - Perhaps by chronology within each topic or allegation
- Chronologically based on how information was shared with investigator
- By witness summary

Explain Organization

- Example

“The information in this report is a summary of the facts as agreed upon by the parties and the witnesses. Where there is a difference in the accounts, it is noted in the report. For the sake of clarity, the report is organized chronologically and by subject matter when appropriate.”

Other Information to Include

- Basic description of charges (at time of incident)
- How did the complaint make its way to investigation?
- Witnesses interviewed
- Witnesses not interviewed
 - And why
- Procedure followed (step by step)
- Any procedural anomalies that need explained

State Regarding Relevant Evidence

- “All relevant information gathered during the course of the investigating has been included in this report” (template)
 - Identify if you thought something was not relevant and why-include in appendix for non-relevant information for decision-maker review
 - Provide table of contents for appendices of evidence

Evidence



Give an overview of
evidence collected

AND



Attach as appendices any
statements and important
evidence

Writing Examples

Disclaimer: the following hypotheticals are not based on any actual cases handled of which we are aware. Any similarities to actual cases are coincidental.

Example 1



Bad example: Rook was very believable when they said they had been attacked by Charlie.



Neutral and clear correction: Rook stated they were attacked by Charlie outside of North Hall. Rook provided the names of witnesses and contact information for those witnesses.

Example 2



Bad example: Charlie stated that they didn't think she had witnessed anything, but that I should check with her.



Neutral and clear correction: Charlie stated that Charlie did not believe that her roommate, Wendy, had witnessed anything. Charlie asked the investigator to follow up with Rebecca to verify what, if anything, Rebecca witnessed.

Example 3



Bad example: Rook seemed nervous at the interview and wasn't consistent with the information.



Neutral and clear correction: Rook provided the following information at the interview: that Rook had 3 whiskey sours, that Rook had at least 2 whiskey sours, and that Rook may not have had any whiskey sours.

Example 4



Bad example: Charlie requested that I follow up with their roommate, but I did not because the evidence seemed redundant.



Neutral and clear correction: Charlie requested the investigator follow up with her roommate, Wendy. The investigator scheduled an interview with the roommate to follow up on any additional information the roommate may have. The roommate's account of events at the interview, provided in Exhibit C, is consistent with Charlie's statement regarding the time period between 8 and 9am on January 6, 2023. The roommate was not present outside of that time frame and had no additional information.

Questions?

