Equal Opportunity & Nondiscrimination

Investigator Training

Equal Opportunity and Compliance, Human Resources Division
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Outline of Today's Presentation

- Brief review
- Investigation Techniques

Basics Refresher

- Board Policies and System Procedures
- 1B.1 and 1B.3 Tables

Decision Factors

- » Interviewing parties and witnesses
- » Include evidence and present credibility factors
- » Create context by presenting the totality of circumstances
- » Focus on gathering evidence, as a neutral fact finder not if there is evidence for finding

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Relevant Evidence

For 1B.3/Title IX

- Evidence is generally considered **relevant** when it helps determine:
  - Whether the Respondent violated policy, and/or
  - The credibility of any evidence, including a party or witness statement
- The Investigator initially evaluated relevance, but the DM ultimately decides
- All relevant evidence must be objectively evaluated and considered
  - **Inculpatory**: tending to suggest a finding of responsibility
  - **Exculpatory**: tending to suggest a finding of not responsible
- In the decision-making phase, parties may dispute the Investigator's initial relevance determinations

Relevant Evidence Exclusions

For 1B.3/Title IX

» Evidence of the **Complainant's sexual predisposition** is never relevant

» Evidence of the **Complainant's prior sexual behavior** is not relevant except:

- If offered to prove that someone other than the Respondent committed the alleged conduct; or
- Specific incidents of the Complainant's prior sexual behavior with respect to the Respondent offered to prove consent

» Exclusions apply even if admitted or introduced by the Complainant

» Exclusions do **not** apply to the Respondent's prior sexual behavior or predisposition, which are admissible if relevant

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Investigation Skill-building

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Part 1: Investigation Strategy

INVESTIGATION SCOPE

» Scope of Investigation

- What are the allegations?
  - 1B.1, 1B.3, RWP, Code of conduct, etc.
  - What are sub-elements
  - Partnership w/ other departments
- Who are the involved parties?
  - Multiple respondents; multiple complainants – may consider splitting
- Do the allegations arise out of same set of facts
  - If not, consider splitting or referring non 1B.1/1B.3 matters
  - Allegations for each specific Respondent
- Why is scope important?
  - Prevents Scope creep i.e., getting lost/sidetracked
  - Can help structure interviews

CREATING INVESTIGATION PLAN

- Outline the scope
  - Complainant(s); Respondent(s); policies, allegations
- Allegations
  - What are the elements
  - Track information that goes to each element
- Witnesses
  - Large witness pool
  - Name, role, who identified by, information they possess, interview date, evidence submitted
- Investigative questions
  - Outline for each party
- Evidence
  - Received; Needed

COLLECTING EVIDENCE

» Initial evidence to collect and review

- Time sensitive evidence
  - Security footage
  - Keycard access
  - University owned devices
- Initial records to review
  - Internal past 1B.1/1B.3 records
  - Personnel files
  - Conduct records
  - Reports: security, residential life, etc.
  - Org. Charts
- Create a timeline
  - Continue to grow as more information is gathered
- Tracking
  - Who provided what and/or where it was found

TYPES OF EVIDENCE

» Direct Evidence
  - Evidence based on personal knowledge or observation of a fact (can include documentary evidence)

» Documentary Evidence
  - Written or recorded material used to prove its contents

» Circumstantial Evidence
  - Direct evidence of a fact from which a person may reasonably infer the existence of another fact
  - Statements or behavior in other situations that support or refute alleged conduct

» Character Evidence

» Corroborating evidence
  - any admission or rationalizing of conduct; specific denial; witnesses with the opportunity to observe, recognize, or understand the situation

» Hearsay Evidence

TYPES OF EVIDENCE, CONT.

- Hearsay Evidence
  - Information received from someone other than the interviewee
  - Offered to prove the truth of matter asserted
- Exceptions to hearsay
  - Excited utterance
  - Present sense impressions
  - Recorded recollection
  - Records of regularly conducted business activity
  - Public records and reports
  - Records of vital statistics
  - Then existing Mental, emotional, physical condition

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EXAMPLES OF EVIDENCE

- Personnel files/conduct records
- Meeting minutes
- Emails, voicemails, text messages. Etc.
- Security or Residential life report
- Social media records
- Supervisory notes
- Grading data
- D2L records

PARTNERSHIPS TO OBTAIN EVIDENCE

- Security
- Student Conduct/Student Affairs
- Human Resources
- Residential Life
- Athletics
- Other campus processes
- Ombudsperson
- Campus advocate
- Law enforcement

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WHO TO INTERVIEW

- Complainant & Respondent
- Witnesses
  - Those present in incident(s)
  - Outcry witnesses – administrators, friends, family complainant/respondent shared with about incident(s)
  - Those involved in documenting incident or process/response - security, other administrators, etc.
  - Focus on witnesses that have knowledge of the incident rather than the character of the individual
- Document interview decisions
  - Who is doing the interview and why
  - Why was someone not interviewed

SCHEDULING INTERVIEWS

- Order of interviews
  - Strategy – different order for different situations
    - Witnesses – may be helpful to start w/ "neutral persons"
- Timing
  - Set aside enough time: prep, interview, notes/reflection time
  - Consider past interactions with party
  - Consult interview outline
- Flexibility – timing and location
  - Provide location options but be sensitive to different needs.
  - i.e., - Zoom requires technology, internet, etc.
- Accommodations
  - Know who/what departments to partner

TYPES OF MEETINGS AND INTERVIEWS

- Complainant
  - Intake
  - Investigatory interview
  - Follow-up interview
- Respondent
  - Initial meeting
  - Investigatory interview
  - Follow-up interview
- Witness
  - Investigatory interview
  - Follow-up interview

NOTICE OF MEETINGS

- Complainant
  - Outreach letter
  - Notice of formal investigation – Notice of Informal Resolution
  - Notice of investigation and decline to file letter
  - Notice of reassignment
- Respondent
  - Notice of review
  - Notice of investigation (formal or informal) and allegations
  - Notice of reassignment
- Witness
  - Witness Pre-interview letter

MEETING STRUCTURE

» Interview structure consistent for all parties
  - "speeches" - overview of meeting, about role/office, policy, procedure, flowchart; advisory notice, waiver of union, privacy of interview' recording/note taking timing of interview
  - Review allegations – respondent meetings
  - Background – name, title/year, start date, major, involvement in extracurriculars/committees, explanation of role, where they live on campus
  - Interim actions and supportive measures
  - Resources
  - Next steps
  - Reminder about retaliation

Building Rapport

- Rapport is meant to create a level of transparency and trust
  - Reinforce neutrality and impartiality with authenticity
  - Set the tone for the interview
  - Establish expectations
- Rapport building occurs throughout the interview, not just in the first five minutes
  - Ongoing effort to build and maintain rapport
- Do not sacrifice professionalism or neutrality to build rapport

Part 2: Strategies for managing investigation-based challenges

BIAS

- » A disproportionate prominence in favor of or against an idea or thing, usually in a way that is closeminded, prejudicial, or unfair
  - Can be innate or learned
  - Bias can be for or against an individual, group, or belief
- » Title IX requires a college or university to conduct a “prompt, thorough and impartial inquiry.”

TYPES OF BIAS

- First Impression Bias
- Affinity Bias
- Confirmation Bias
- Attribution Bias
- Characteristic based bias
  - Race, ethnicity, gender, religion, sexual orientation, socioeconomic, educational, etc.
- Anchoring bias
- Beauty Bias

Investigator-Specific Biases

- Complainant/Respondent is likeable/sympathetic
- Complainant/Respondent is not likeable/sympathetic
- Repeat Complainant/Respondent
- Fact pattern similar to a prior, unrelated investigation
- Complainant/Respondent behavior patterns

Bias Impact on Investigation

- Priming – Your pre-investigation or mid-investigation thoughts about the case
  - “This is a really bad case.”
  - “This person has complained three times before.”
  - “This is low level.”
- Phrasing – The way you ask a question can influence the answer – The misinformation effect
  - Do you get headaches frequently, and if so, how often? 2.2/week
  - Do you get headaches occasionally, and if so, how often? 0.7/week
  - How long was the movie? 130 minutes
  - How short was the movie? 100 minutes

Headaches: Elizabeth Loftus (1975); Movie: Richard Harris (1973)

Rape Myth vs Common Behavior for Victims of Rape

Common Behavior for Victims of Rape

- Delay in reporting
- Change in account of what happened
- Unexpected demeanor/disposition
- Unexpected behavior
  - Contact with person who caused the harm
  - Desire to resume “normal” routine
  - Subsequent sexual activity (sometimes with the person who caused the harm)

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Neurobiological Responses to Trauma

PARALLEL PROCEEDINGS

- Independent from any civil or criminal proceeding
- Not required to delay, and in most cases should not delay due to other proceedings
- May contact prosecutor/law enforcement to coordinator when feasible
- Gather available information:
  - Police Report
  - Court records

Best Practices

- Rely on the policy and procedure
- Adhere to the policy and procedure
- Let the evidence lead you

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Part 3: Interviewing Approaches

Trauma Informed and Human Centered

- Empathy and validation
- Reinforce agency and choice
- Set clear boundaries
- Consider the centrality of identity

Trauma Informed Preparation

- Developing questions in a way that does not assign responsibility, blame, or guilt
- Creating safe and comfortable interview environment/setting
- Check your bias especially when reflecting credibility
- Consider questions that speak to the senses
- Framing and phrasing meeting invitations, email communications
- Understand and attend to your own reactions or triggers

Trauma-Informed Approach

- Pre-interview framing: "it's okay if you don't remember something today," "sometimes it takes time to remember, which is okay"
  - Also clarify: "if you don't remember yourself but your friends told you that's what happened, please share that"
- Let Complainant talk uninterrupted and ask clarifying questions afterwards
  - Consider explaining questions (e.g. "I'm trying to image that")
  - Avoid asking "why" and victim-blaming; instead "tell me more" or "what do you remember next"
- Consider asking questions about the other senses
  - Is there any smell about the room that you remember?
  - Do you recall what color the walls or bed was?
  - Were there any sounds or noises that you remember– music? Voices?
- Do not insist in chronological order retelling; gather the information and organize it

Significant Time Between Incident And Report

- The norm when the person causing the harm was not a stranger
- Many victim/survivors are able to report only after they receive the necessary support to do so
- Why do they wait? For many of the same reasons they later recant
  - They fear repercussions
  - They are pressured by others not to report
  - They feel shame, embarrassment
  - They are afraid of the person who caused the harm
  - They are afraid of not being believed
  - Fear that nothing will be done about it

Cultural Considerations

- Communication styles
- Attitudes toward conflict
- Approaches toward completing tasks
- Decision-making styles
- Approaches to knowing
- Attitudes toward disclosure
  - Appropriate to share emotions, reasons for conflict

--Sue Ann Van Dermyden, 2017

Common Practice Considerations

- Be mindful of cultural differences
  - Continuum of honesty and face-saving
  - In-group vs. out-group
  - Linear vs. non-linear narrative
- Check biases, especially when assessing credibility
- Ask questions in a way that does not assign responsibility, blame, or guilt

Investigation Clarification

- Policy elements
  - Components defined
  - Evaluation considerations
- Evidence and credibility
- For 1B.3.1 (Title IX) Consent construct

DETERMINE GOALS OF QUESTIONS

- Who, what, where, when, why, how
- Intake meeting vs. Investigatory interview
- Refine scope
- What information are you missing or have questions
  - Read through reports/complaints and note any questions
- Policy elements
  - Policy element handout

HOW TO STRUCTURE QUESTIONS

- Start with broad/open ended questions
- Allow to tell their story/experience however they choose
  - Where they start/end their story and what they emphasize can be very telling and important for you to have.
- Clarifying questions
  - Funnel approach
  - Ask to clarify meaning of words/descriptors
- Allow for Silence
- Additional questions/things left unanswered
- Closing questions
  - Is there anything else you think I should know?
  - Anything I didn't ask that you thought I would ask about?
  - Is there anyone that you think I should talk to? Why?

INTERVIEW QUESTIONS for ALL

- Interview questions for all parties
  - Allow them chance to share their story/experience
    - "Tell me about your experience" - "this is your opportunity to respond to allegations" - "do you know why I asked to meet with you"
    - Prepare what information willing/able to share
  - Ask the who/what/where/when/how questions
  - Summarizing Information back
  - Policy elements
  - Effect/impact

INTERVIEW QUESTIONS CONTINUED...

- Interviewee specific questions
  - Respondent – make sure to review allegations before questions
    - Make sure the respondent has an opportunity to speak to each individual allegation
  - Complainant – clarify protected class and identity
  - What they observed/their perspective of incident(s)
  - Inconsistencies with other parties/witnesses
  - Evidence specific questions – what they have, might have seen/been part of, etc.
  - Desired outcome/resolution

Assessing Credibility

INTERVIEW CONSIDERATIONS FOR CREDIBILITY

- Look for consistency with out-cry witnesses or contemporaneous reports
- Assess demeanor
- Inherent Plausibility
  - Consider relevant past acts; are there alternative versions that are more plausible
- Compare overlap/consistency with other statements
- Interviewee who derails questions and/or focuses on irrelevant information
- Providing inconsistent statements
- Motives/Relationships
- Positionality
- Mind/memory altering substances

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Analyzing certain qualities and factors

- Demeanor: noted reactions to allegations or information shared; behaviors or feelings shared with others
- Logic and consistency: consistency with what others shared (including possible witnesses); plausible explanations
- Corroborating evidence: any admission or rationalizing of conduct; specific denial; witnesses with the opportunity to observe, recognize, or understand the situation
- Circumstantial evidence: statements or behavior in other situations that support or refute alleged conduct
- Trauma-informed approach: note that trauma itself is not evidence to support or not support

CONDUCTING INTERVIEWS

EACH INTERVIEW MIGHT LOOK DIFFERENT

- Emotion – crying, anger, indifference, being conflicted, shock, trauma, etc.
- Timing – short answers, decisions to make, communication styles, etc.
- How you ask questions
- Credibility concerns
- Effort needed to structure interview – redirect, diffuse conversation, etc.

MAINTAINING CONTROL OF INTERVIEW

- Provide roadmap of interview
- Safety – Think about how you have arranged the room, security, etc.
- Union reps/ support persons/parents/lawyers
  - Be clear about what their role is [I.e., don't ask interview questions and don't answer questions) from the very beginning (include in letters; share in speech)
    - Communicate to party and support person (if appropriate)
  - Allow for time and space for them to meet away from investigator (separate room; breakout room, etc.)
  - Give reminders/warnings if necessary
- Don't be afraid to end a meeting
- Difference between control and parties not cooperating

PROVIDING EMPATHY AND VALIDATION

- Empathy for all interviewees
  - Focus on treating the individual as a whole person
  - Develops rapport and shows respect for your story/experience
  - Reduces resistance and allows them to share in supportive environment
- Remain neutral
  - Don't confuse/misuse as a way to justify actions or suggest leniency in consequences
  - Don't relate to your own personal experiences (this is not about you)
- Needs to be sincere and genuine
  - Develop your own style
  - Practice using sample language that validates a person's experience but remains impartial
- Remember to allow space for decisions

CHALLENGING INTERVIEWEE TROPES

- The Clueless one
- The Denier
- The Distractor
- The Confessor
- The Explainer
- The Apologetic one
- The TV lawyer
- The Avoidant one
- The Questioning one

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RECORDING AND NOTE TAKING

NOTE TAKING

- Handwritten, typed
- Some of this is a personal preference – be consistent
- Have outline of meeting/interview
- Consider a notetaker for support
- Model notes after investigation report
- Make notations where you still have questions for follow up or for other parties

COMMON CHALLENGES & TIPS

- Common challenges
  - parties talk fast or talk in circles/share repetitive information
  - interviews are long
  - prioritizing typing notes after interview
  - Self-care
- Tips
  - type notes/update as soon as possible after interview
  - document thoughts for follow up
  - have a notetaker
  - encourage all to submit a written statement

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RECORDING INTERVIEWS

- Allows the investigator to focus on content/information and being present during the interview
- Recordings can ensure that all data and information is accurate.
  - Provides for use of direct quotes
  - Allows for investigator to review/reflect to determine what gaps still exist
  - Provides investigator an opportunity to refine investigation skills
- Recordings can be taken in multiple ways
  - Teams, handheld, etc.
- Record ALL the interview - including opening information, data privacy review (ask for verbal acceptance), all "housekeeping" information

RECORDING INTERVIEWS, CONT.

- There are additional nuances of recording that are different from standard interviewing.
  - Open recording stating date, time, and introduction of parties (including spelling of names). End recording with time.
  - Audio recordings do not pick up on non-verbal (head nods, etc.) – prepare parties at beginning of interview and clarify during interview if needed.
- Develop a plan for your recording - send for transcription, etc.
  - This provides a typed/hard copy of the interview.
- Transcription review
  - Determine if you want to add this as a part of your process
  - Who can attend to complete the review

RECORDING CONSIDERATIONS

- Contracts for transcription
  - REV.com, other transcription services.
- Access to transcripts
  - Who, when, why
- Storage of recordings and transcripts
- Data retention policies

Part 4: Components of Investigation Report

GOALS OF INVESTIGATORY REPORT

- Present findings in a well-written and well-organized format
- Document the steps taken during the investigation
- Document the evidence collected and reviewed
- Provide a clear, objective picture of investigation to the DM
- Should contain all information a DM needs to make their decision

INVESTIGATORY REPORT COMPONENTS

1. Transmittal letter & Cover Sheet/Disclosure Notice
2. Investigation report cover page
3. Table of contents
4. Introduction
5. Scope & Methodology
6. Policies & Definitions
7. Statements & Evidence
8. Synthesis
9. Exhibit Index

TECHNICAL VS OBJECTIVE WRITING

Technical Writing

- Focuses on explaining complex concepts clearly
- Instructional, procedural, and often involves guidelines/manuals
- Primary goal is to make technical information easy to understand and use
- Written for a specific audience

TECHNICAL VS OBJECTIVE WRITING, CONT.

Objective Writing

- Impersonal and factual
- Focuses on being neutral and informative, ensuring the reader can make their own judgments
- Focuses on credibility but avoids overt persuasions
- Presenting facts without bias
- Written for a general audience

TECHNICAL VS OBJECTIVE WRITING

Comparing technical and objective writing:

- Both require clarity, structure and accuracy
- Both are focused on fact-based and credible information
- Share a purpose to explain or instruct without bias

Best practices:

- Be concise and avoid unnecessary complexity.
- Stick to facts and connect to relevant exhibits attached to investigatory report
- Avoid language that can be misinterpretted

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Thank you.

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