

Title IX Investigator Training

45TH ANNUAL NATIONAL CONFERENCE ON LAW AND HIGHER EDUCATION

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Welcome & Introductions

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Not Legal Advice

As a reminder, this session is not intended to serve as legal advice for you or any case you may be working at your institution. We are providing you with tips, efficiencies, and best practices for the investigative process. Should you need a legal opinion, we recommend you seek out your university counsel or obtain private counsel for legal matters.





Unless otherwise noted, source: Department of Education, Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance, 85 Fed. Reg. 30026 (May 19, 2020)(final rule) (online at <https://www.govinfo.gov/content/pkg/FR-2020-05-19/pdf/2020-10512.pdf>).



Much of the content for these slides were previously constructed for the NASPA Student Affairs Administrators in Higher Education - Title IX Training Certificate program, in conjunction with Peter and Jennifer Lake, Jake Sapp, and Melissa Carleton.
<https://www.naspa.org/events/title-ix-certificate-program-fall-2021-cohort-1>

References

Session Norms

Be respectful of each other

Afford all attendees the opportunity to speak

If you need a break, take it.

Silence your phones

Take what you need for your individual institution based on culture, type, and control

Thoughtful participation is welcomed

Hypothetical scenarios allowed

The Parking Lot



Goals and Outcomes

- 1) Learn effective investigative practices for fact-finding and report generation
- 2) Understand the various resolution and adjudication processes for Title IX cases
- 3) Connect with colleagues about best practices in the Title IX investigation process
- 4) Contemplate possible changes coming – and how you might handle those



Assumptions

Assumptions



You already have an updated policy of record that has been updated at least once since the 2020 language was published



You have done your designations of campus officials



You have practiced the process revisions you made in a mock investigation or hearing already



You have already had investigations and hearings



You have met with counsel about these policy and process changes



You have had your entire team do annual trainings (3 or 4 by now)



You have published those trainings on your website (and will include ours as well)



You probably have run into some "snags" along the way and worked on solutions



You have someone you call for Title IX investigation questions



Policy Inclusions

What should your policy include?

Definitions
(consent, sexual
harassment) in
particular

Scope of the
policy

Concurrent
investigations with
law enforcement
statement

Dismissal of
complaints
statement

Offenses to be included

- i. Sexual harassment
- ii. Sexual assault
 - 1. Non-consensual sexual contact, and
 - 2. Non-consensual sexual intercourse
- iii. Domestic violence
- iv. Dating violence
- v. Sexual exploitation
- vi. Stalking
- vii. Retaliation
- viii. Intimidation



Sexual Harassment (three-pronged test)

Sexual harassment means conduct on the basis of sex that satisfies one or more of the following:

(1) An employee of the recipient conditioning the provision of an aid, benefit, or service of the recipient on an individual's participation in unwelcome sexual conduct;

(2) Unwelcome conduct determined by a **reasonable person** to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the recipient's education program or activity; or

(3) "Sexual assault" as defined in 20 U.S.C. 1092(f)(6)(A)(v), "dating violence" as defined in 34 U.S.C. 12291(a)(10), "domestic violence" as defined in 34 U.S.C. 12291(a)(8), or "stalking" as defined in 34 U.S.C. 12291(a)(30).

Emphasis added

Consent

[T]he Assistant Secretary will not require recipients to adopt a particular definition of consent with respect to sexual assault.

Id. at 30125.

You should be well-versed on the definition of consent contained within your specific campus policies. Address specific issues of consent related to the new definition of sexual harassment.

Consent

The Department believes that the definition of what constitutes consent for purposes of sexual assault within a recipient's educational community is a matter best left to the discretion of recipients, many of whom are under State law requirements to apply particular definitions of consent for purposes of campus sexual misconduct policies.

Id. at 30124

Consent

The third prong of the § 106.30 definition of sexual harassment includes “sexual assault” as used in the Clery Act, 20 U.S.C. 1092(f)(6)(A)(v), which, in turn, refers to the FBI’s Uniform Crime Reporting Program (FBI UCR) and includes forcible and nonforcible sex offenses such as rape, fondling, and statutory rape which contain elements of “without the consent of the victim.”

Id. at 30124.

Elements to consider

- consent is a voluntary agreement to engage in sexual activity;
- someone who is incapacitated cannot consent;
- (such as due to the use of drugs or alcohol, when a person is asleep or unconscious, or because of an intellectual or other disability that prevents the student from having the capacity to give consent)
- past consent does not imply future consent;
- silence or an absence of resistance does not imply consent;
- consent to engage in sexual activity with one person does not imply consent to engage in sexual activity with another;
- consent can be withdrawn at any time; and
- coercion, force, or threat of either invalidates consent.

Scope of policy

A recipient with actual knowledge of sexual harassment in an education program or activity of the recipient against a person in the United States, must respond promptly in a manner that is not deliberately indifferent. . . . “education program or activity” includes locations, events, or circumstances over which the recipient exercised substantial control over both the respondent and the context in which the sexual harassment occurs, and also includes any building owned or controlled by a student organization that is officially recognized by a postsecondary institution.

§106.44(a) General response to sexual harassment (emphasis added)

First example of a “scope of policy”

This policy applies to ABC University students, employees, and third-parties located within the United States both on and off campus, as well as in the digital realm. Off-campus coverage of this policy is limited to incidents that occur on employee-led trips, at internship or service-learning sites, and college-owned properties (including buildings operated by Registered Student Organizations), or in any context where the University exercised substantial control over both alleged harassers and the context in which the alleged harassment occurred.

Provided by Jennifer Lake and NASPA certification program

Second example of a “scope of policy”

- I. This policy applies to all members of the Indiana University community, including:
 - A. All students
 - B. All academic appointees, staff and part time (hourly) employees
 - C. All others while on Indiana University property, including employees of third-party vendors and contractors, volunteers, and visitors, and others while involved in an off-campus Indiana University program or activity.

- II. Other university policies and codes related to misconduct remain in effect for complaints of misconduct other than discrimination, harassment and/or sexual misconduct. However, any report or complaint of misconduct that includes elements of the covered behaviors below may be addressed in accordance with this policy and its related complaint resolution procedures.

IU Bloomington: <https://policies.iu.edu/policies/ua-03-discrimination-harassment-and-sexual-misconduct/index.html#scope>

Concurrent Law Enforcement activity

Further, subject to the requirements in § 106.45 such as that evidence sent to the parties for inspection and review must be directly related to the allegations under investigation, and that a grievance process must provide for objective evaluation of all relevant evidence, inculpatory and exculpatory, nothing in the final regulations precludes a recipient from using evidence obtained from law enforcement in a § 106.45 grievance process. § 106.45(b)(5)(vi) (specifying that the evidence directly related to the allegations may have been gathered by the recipient “from a party or other source” which could include evidence obtained by the recipient from law enforcement) (emphasis added); § 106.45(b)(1)(ii).

Department of Education, *Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance*, 85 Fed. Reg. 30026 (May 19, 2020) (final rule) (online at www.govinfo.gov/content/pkg/FR-2020-05-19/pdf/2020-10512.pdf) at 30099 n.466

Police investigations

*The 2001 Guidance takes a similar position: “In some instances, a complainant may allege harassing conduct that constitutes both sex discrimination and possible criminal conduct. **Police investigations or reports may be useful in terms of fact gathering.** However, because legal standards for criminal investigations are different, police investigations or reports may not be determinative of whether harassment occurred under Title IX and do not relieve the school of its duty to respond promptly and effectively.”*

Id. at 30099 n. 467 (emphasis added).

Interconnectedness

“[T]he recipient must dismiss the formal complaint with regard to that conduct for purposes of sexual harassment under Title IX or this part; such a dismissal does not preclude action under another provision of the recipient’s code of conduct.”

The Department notes that recipients retain the flexibility to employ supportive measures in response to allegations of conduct that does not fall under Title IX’s purview, as well as to investigate such conduct under the recipient’s own code of conduct at the recipient’s discretion.

Id. at 30289 (emphasis added).

Interconnectedness (continued)

[E]ven if alleged sexual harassment did not occur in the recipient's education program or activity, dismissal of a formal complaint for Title IX purposes does not preclude the recipient from addressing that alleged sexual harassment under the recipient's own code of conduct. Recipients may also choose to provide supportive measures to any complainant, regardless of whether the alleged sexual harassment is covered under Title IX.

Id. at 30093 (emphasis added)

Code of Conduct Considerations

What do you call things referred to the Conduct office that do not rise to the level of Sexual Harassment?

Sexual Misconduct?

Conduct of a Sexual Nature not Rising to Title IX?

For this Code item are there any “other” carryovers from the Title IX grievance process besides the Support Measures? Role of advisor? Time frames?

Does this warrant a Panel Hearing (if you have those) or Administrative Hearing?

Would you outsource these referrals? Advantages/disadvantages?

Code of Conduct Considerations

Does this part of the Code also include definitions on your campus not captured in the new regulations? (sexual exploitation)(intimidation)

If you include sexual assaults not required in Title IX, do you detail that in your Title IX policy and your Code of Conduct (cross-reference them)

Same for outside program or activity

Can students serve on the boards that hear these cases (why or why not)

Dismissal of complaint statement

§ 106.45(b)(3)(i)

(3) Dismissal of a formal complaint—

(i) The recipient must investigate the allegations in a formal complaint. If the conduct alleged in the formal complaint would not constitute sexual harassment as defined in § 106.30 even if proved, did not occur in the recipient's education program or activity, or did not occur against a person in the United States, then the recipient must dismiss the formal complaint with regard to that conduct for purposes of sexual harassment under Title IX or this part; such a dismissal does not preclude action under another provision of the recipient's code of conduct.

Dismissal of complaint statement

§ 106.45(b)(3)(ii)

(ii) The recipient may dismiss the formal complaint or any allegations therein, if at any time during the investigation or hearing: A complainant notifies the Title IX Coordinator in writing that the complainant would like to withdraw the formal complaint or any allegations therein; the respondent is no longer enrolled or employed by the recipient; or specific circumstances prevent the recipient from gathering evidence sufficient to reach a determination as to the formal complaint or allegations therein.

Dismissal of complaint statement

§ 106.45(b)(3)(iii)

(iii) Upon a dismissal required or permitted pursuant to paragraph (b)(3)(i) or (b)(3)(ii) of this section, the recipient must promptly send written notice of the dismissal and reason(s) therefor simultaneously to the parties.



Pre-Investigation

Pre-Investigation



Written Notice to
Parties



Presumption of Non-
Responsibility



What has happened so
far?



Prepare your questions
before the interview

Written Notification to Parties

Before you conduct an interview with the Respondent, you must provide them time to prepare.

Notice of the school's grievance process

The opportunity, if any, to engage in an informal resolution process

Key details of the alleged sexual harassment

- Who was involved in the incident

- Date and time of the incident, if known

- Location, if known

- The alleged misconduct that constitutes sexual harassment

Written Notice (continued)

A statement that the respondent is presumed not responsible at the outset of the process and can only be found responsible after the grievance concludes

A statement that the parties are entitled to an advisor of their choice

A statement that the parties can request to inspect and review certain evidence

Any conduct rules, if they exist, that prohibit providing knowingly false information or statements during the grievance process

Presumption of non- responsibility

A recipient's grievance process must—

Include a presumption that the respondent is not responsible for the alleged conduct until a determination regarding responsibility is made at the conclusion of the grievance process.

§

106.45(b)(1)(iv)(emphasis added).

- Question #36—Respondent should be presumed not responsible but that doesn't mean a complainant should be presumed to be lying.
 - *Schools that have relied on this presumption to decline services to a complainant or to make assumptions about a complainant's credibility have done so in error. Dept. of Education, Office for Civil Rights, Questions and Answers on the Title IX Regulations on Sexual Harassment (July 2021), at 20.*

What has happened so far?

A formal complaint has been received (and signed).

An initial meeting with the Title IX Coordinator has happened to provide support measures.

A notice of investigation has gone out to both parties.

The case has been assigned to you (the investigator) or as the Title IX Coordinator, you are the investigator, or you have outsourced the investigation.

The investigator has read the formal complaint.



Prepare your questions before interview

Read the Formal Complaint

Write out the questions you have about the report on first read

Read the Formal Complaint again

What additional questions do you have about the incident narrative

Who is identified in the Formal Complaint you feel you need to interview

What questions do you have for those individuals

Have all of these typed out ahead of the interviews

Update with additional/follow-up questions and witnesses as you go

Create a question bank



Investigation

Investigation Slides

Regarding Title IX Investigators

Investigation order

Purpose of Investigation

Think about the investigative report

Remember your role

How to start an interview

Follow up questions

Clarifications

A word about trauma

Sense and Feel questions

Meet the students where they are

Burden of Gathering Evidence

Types of Evidence

A word on Credibility Assessments

Universe of Evidence

Universe to Relevant

Relevance

Rape Shield Laws

Advisors

What evidence do they want reviewed?

Regarding Title IX Investigators

Campuses are no longer permitted to have a “single” or “pure” investigator model under Title IX.

A separate decision-maker (or panel of decision-makers) must make a final determination of responsibility.

This has been a shift in the function of the investigator on some campuses.

What, then, is the scope of the investigative report? Purpose? Tone? Format?

Will the investigator become a witness in the hearing or play other roles?

Investigation Order

Interviewed Complainant

Interviewed Respondent

Interviewed Witnesses

Collect written witness statements

Examined physical evidence

Reviewed information submitted by the parties as evidence

Reviewed any pertinent student records

Reviewed social history between parties (if available)

Who should you interview?

When and in what order?

What questions should you ask?

What evidence is available/obtainable?

How and when should witnesses be contacted?

How and when do we share information with the parties?

Construct the timeline of information as you go and fill it in

What about discrepancies or gaps in the timeline?

Purpose of Investigation:

Gather all relevant information regarding an allegation of sexual harassment

Interview all relevant parties (place on a timeline)

Collect and organize relevant evidence (create a log)

Write a **detailed** investigative report with timeline

Not investigator role any longer:

Individual credibility assessments

Investigators providing weight of the evidence

Investigators making recommendations for interim measures or accommodations

Investigators providing findings of responsibility

Think about the investigative report



AS YOU GO INTO THE INVESTIGATION, THINK ABOUT THE INVESTIGATIVE REPORT YOU WILL BE WRITING. IF YOU HAVE EVER SAT IN ON A HEARING OR PARTICIPATED IN A ROUND TABLE EXERCISE – FOR TRAINING AS A DECISION MAKER – POORLY WRITTEN REPORTS – OR POORLY DOCUMENTED INTERVIEWS ARE THE WORST.



YOU WANT TO MAKE SURE YOU CONSIDER THE “UNIVERSE OF EVIDENCE” THAT IS AVAILABLE AND TRY TO CONTAIN WHAT ALL THAT COULD BE – AND LOCATE DOCUMENTATION WHERE POSSIBLE.



IF TEXT MESSAGES, PHONE CALLS, PHOTOS, EMAILS ARE INVOLVED – SEEK THOSE DOCUMENTS. ALWAYS ASK TO SEE THE ORIGINAL THREAD AS WELL AS ANY PRINTED DOCUMENTS THAT ARE PROVIDED.

Remember your Role



YOU ARE NOT A PARTY'S
LAWYER, ADVISOR,
COUNSELOR, PARENT, OR
FRIEND



YOU ARE AN
INVESTIGATOR AND A
FACILITATOR



YOU ARE FREE FROM BIAS



YOU ARE FREE FROM
PREJUDGMENT



YOU ARE INTERESTED IN
FINDING OUT FACT ABOUT
THE INCIDENT



YOU ARE INTERESTED IN
THE TRUTH



Remember Your Role

Being Impartial \neq Being a Robot

You can be a neutral fact-finder and still show empathy and kindness.

Investigation spaces should be judgment free zones

All Title IX personnel should serve in their roles impartially. All Title IX personnel should avoid the prejudgment of facts, prejudice, conflicts of interest, bias, and sex stereotypes

How to start an interview

Introduce yourself

Build rapport/Establish baseline responses

*How are your classes going? Year in school?
Major? Weather chat.*

Explain what your role is (fact finder)

Explain you will be note/taking/recording the interview for notes

Ask interviewee to share their recollections of the incident

Do not interrupt the narrative

Let them talk until they are done

Follow up questions later

Follow up questions

When seeking clarification after the party's initial recollection of the event, try to ask questions that build confidence and put them at ease.

"You said you left the party around 1am, is that correct?"

"You said you recalled having three cups of 'red solo cup' punch, is that right?"

If they are describing a location, it might be helpful to ask them to sketch out the room for you (if it is a residence hall, you should have those schematics on your computer to pull up/print out).



Clarifications

When asking harder questions about the order of events, or specifics about the conversation or activities, you may run into a series of “I don’t know” or “I can’t remember” statements. That’s ok.

Reassure the party it’s ok that they cannot remember or don’t know.

You can move to another question or kind of questioning.

If you hit a memory gap, ask them some sensory questions to see if it triggers any memories. Often there are memories they cannot access unless you ask the question from a different lens.



A word about trauma

Anyone you speak with about alleged sexual harassment (complainant, respondent, or witnesses) could have experienced or still be experiencing trauma as a result of the alleged situation.

Be cognizant that talking to you may be very difficult for the parties.

Remember to document their experience with as little interruption as possible. Follow-up questions should be limited.

Ideally, you want the party being interviewed to do most of the speaking.

Modified from: Russell Strand, Frontline Training Conference, 2018

Sense and Feel Questions

“Can you draw what you experienced?”

“What were you feeling when XYZ occurred?”

“What did you smell?”

“Can you show me?”

“What were you feeling when you were kissing?”

“Tell me more about that.”

“What did you hear?”

“Was there any music playing?”

“What could you see when you awoke?”

“Tell me about their eyes.”

“What can you not forget?”

Source: Russell Strand, Frontline Training Conference, 2018

Meet the student where they are:

Baseline knowledge = all students don't know the same things about these issues (sex, consent, dating, intimacy, alcohol, drugs, etc.)

- How to evaluate risk
- Factors to consider in decision-making
- Medically accurate knowledge of sex, reproduction, sexual health
- Ability to navigate interpersonal relationships
- Communication skills
- Conflict resolution skills
- Emotional intelligence

Burden of Gathering Evidence

[I]t is the recipient's burden to impartially gather evidence and present it so that the decision-maker can determine whether the recipient (not either party) has shown that the weight of the evidence reaches or falls short of the standard of evidence selected by the recipient for making determinations.

Id. at 30292 (emphasis added).

Types of Evidence

VERBAL

Interviews with:

Parties

Witnesses

Others with relevant information

PHYSICAL

Images (photos and videos)

Text messages (entire thread)

Screen shots

Documents

E-mails (entire thread)

Security footage

Medical records

What evidence do they want reviewed?

Inculpatory evidence

Exculpatory evidence

Relevant to the allegations

Rape shield law protections

Witnesses to interview

If they know of others with similar experiences

Character testimony is permitted

They may not know what they possess to be reviewed.

Ask them if they understand what can be provided to you as evidence...

“Universe of Evidence”

[T]he universe of evidence given to the parties for inspection and review under § 106.45(b)(5)(vi) must consist of all evidence directly related to the allegations; determinations as to whether evidence is “relevant” are made when finalizing the investigative report, pursuant to § 106.45(b)(5)(vii) (requiring creation of an investigative report that “fairly summarizes all relevant evidence”).

Id. at 30248 n.1021 (emphasis added).

Relevance

[R]elevance is the sole gatekeeper evidentiary rule in the final regulations, but decision-makers retain discretion regarding the weight or credibility to assign to particular evidence. Further, for the reasons discussed above, while the final regulations do not address “hearsay evidence” as such, § 106.45(b)(6)(i) does preclude a decision-maker from relying on statements of a party or witness who has not submitted to cross-examination at the live hearing.

Id. at 30354.

The final regulations do not define relevance, and the ordinary meaning of the word should be understood and applied.

Id. at 30247 n. 1018.

From the Universe to Relevant

“[D]irectly related” may sometimes encompass a broader universe of evidence than evidence that is “relevant.” *Id.* at 30304.

Non-treatment records and information, such as a party’s financial or sexual history, must be directly related to the allegations at issue in order to be reviewed by the other party under § 106.45(b)(5)(vi), and all evidence summarized in the investigative report under § 106.45(b)(5)(vii) must be “relevant” such that evidence about a complainant’s sexual predisposition would never be included in the investigative report and evidence about a complainant’s prior sexual behavior would only be included if it meets one of the two narrow exceptions stated in § 106.45(b)(6)(i)-(ii) . . . *Id.* at 30304.

Think about how you are organizing the evidence.

Credibility of Evidence

Is the information accurate?

Is the information reliable?

Is this misremembered?

Is the presenter of information being evasive?

Is the evidence misleading?

Can you corroborate or matchup information on the timeline?

Some inconsistencies are irrelevant – don't worry about those.

Is this plausible? Keep the trauma-informed process in mind with everyone you speak with.

Rape Shield Language

[T]he rape shield language in § 106.45(b)(6)(i)-(ii) bars questions or evidence about a complainant's sexual predisposition (with no exceptions) and about a complainant's prior sexual behavior subject to two exceptions:

1) if offered to prove that someone other than the respondent committed the alleged sexual harassment, or

2) if the question or evidence concerns sexual behavior between the complainant and the respondent and is offered to prove consent.

Id. at 30336 n.1308 (emphasis added).

Advisors

Advisor of party's choice

Could be a parent, friend, an attorney, an employee of the college

Could even be a witness in the investigation

Schools cannot require a particular type of advisor, nor can they require an advisor to have a specific type of training

Schools may provide resources to advisors to better understand the process

Schools may implement limits for participation by advisors in meetings and rules of decorum for hearings as long as they are applied equally



Investigative Report Sections to Consider

Sections to consider

Background

Jurisdiction

Scope and Timeline of the Investigation

Relevant Policies

Investigation Summary

Party Testimony

Credibility Assessment of Relevant Evidence (not for the parties)

Evidence Addendum

One Size Does Not Fit All

Background

I. BACKGROUND AND REPORTED CONDUCT

Summary of allegation goes here. Identify the names of the CP and RP here and the Investigator. [One paragraph summary].

Jurisdiction

II. JURISDICTION

This office (the name of your office) houses the Title IX Office which has campus-wide responsibility for investigating alleged violations of the “name of your” Sexual Harassment Policy. This office responds to claims of harassment (including sexual assault), stalking, dating violence, domestic violence, and retaliation brought forward by students, employees or third parties.

Scope of the Investigation

III. SCOPE OF THE INVESTIGATION

[This is the timeline and details pertinent to the case. It is the record of when it was reported. If a No Contact Order was issued. When parties were notified, interviewed, submitted evidence, asked for additional parties to be interviewed, and if they rescheduled or didn't respond.]

This is the accounting for the time it took for the investigation. It will match what is in the file, (in emails and in phone logs).

When did you send out documents/correspondence? (1-2 paragraphs.)



Scope (continued)

Parties interviewed:

Receipt of signed Complaint, February 5, 2024

Notice of Investigation sent to parties, February 6, 2024

Complainant Name, in-person interviews on February 7, 2024

Respondent Name, in-person interview on February 8, 2024

Witness 1 Name, in-person interview on February 9, 2024

Witness 2 Name, in-person interview on February 10, 2024

Witness 3 Name, in-person interview on February 11, 2024

Witness 4 Name, in-person interview on February 12, 2024



Scope (continued)

Documentary evidence acquired:

Written statement of Complainant Name, dated February 5, 2024

Text message correspondence between CP Name and Witness 1 Name (received February 21, 2024)

Text message correspondence between CP Name and Witness 2 Name (received February 21, 2024)

Text message correspondence between Witness 2 Name and Witness 3 Name (received February 18, 2024)

Video shared by Witness 4, February 20, 2024

Photographs shared by Witness 3 and Witness 4, February 21, 2024



Relevant Policies

IV. RELEVANT POLICY AND LAW PROHIBITING SEXUAL HARASSMENT (INCLUDING SEXUAL ASSAULT) AND RETALIATION

This is straight from your policy. What are the relevant policy prohibitions you have published with regard to sexual harassment (the definitions and why it is being investigated).

In this new format, this section could be optional on some campuses. We believe including this section makes the investigative report complete.

Investigation Summary

V. INVESTIGATION SUMMARY

A. Statement Summary of the Parties

Complainant:

Respondent:

B. Documentary Evidence:

Below is the list of the documentary evidence reviewed for this report:

Documentation and investigative files obtained by the Title IX Investigator;

The written or documented verbal statement provided by the COMPLAINANT and evidence;

The written or documented statement provided by the RESPONDENT and evidence;

The written or documented statements provided by the WITNESSES and evidence.

Analysis (evidence credibility)

VI. ANALYSIS

A. In this section you will provide credibility assessment of the evidence gathered, provided, and documented (or omitted) and what the rationale was.

Mistakes to avoid:

Commentary on nonverbals of the parties, inconsistency rabbit hole, commentary on confusion or recall, any commentary on the status of the parties who submitted the evidence, allowing any biases of your own to creep into evidence analysis.

Relevant Evidence

List of the evidence provided

Summary of whether determined to be relevant or not

Can break this out by inculpatory and exculpatory

One party may provide more than the other

Make sure you assign who provided the evidence in the summary of evidence (and the dates received in the timeline of events – evidence is often sent after interviews with the investigator).

Conclusion and/or Recommendations

VII. CONCLUSION and/or RECOMMENDATIONS

Many schools/investigators used to routinely include this section. This is not recommended under the 2020 regulations. However, if your institutions still requires this, perhaps consider:

The investigator finds that the relevant evidence supports a possible violation(s) of the University's Sexual Harassment policy. This report will be forwarded to the decision-maker.
OR

The investigator finds the relevant evidence does not support a possible violation(s) of the University's Sexual Harassment policy. This report will be forwarded to the decision-maker.



One size does not fit all

Draft up a template that works for your school

Draft it together

Have counsel review it

You want this template to be the blueprint all investigators use

Craft a draft report and think about how you would use it if you were the decision maker – what would you want to know?
Need to know? Train using this template!

Update and modify as you need.

Keep it simple.

Ask the people at your table to exchange templates.

Questions?

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