



Association of
Title IX Administrators

Investigation Skills and Report Writing for Higher Education

Training and Certification Course

WELCOME!

- Please log in to your ATIXA Event Lobby each day to access the course slides, supplemental materials, and to log your attendance.
- The ATIXA Event Lobby can be accessed by the QR code or visiting www.atixa.org/atixa-event-lobby in your internet browser.
- Links for any applicable course evaluations and learning assessments are also provided in the ATIXA Event Lobby. You will be asked to enter your registration email to access the Event Lobby.
- If you have not registered for this course, an event will not show on your Lobby. Please email events@atixa.org or engage the ATIXA website chat app to inquire ASAP.





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 course 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.

Course Introduction



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



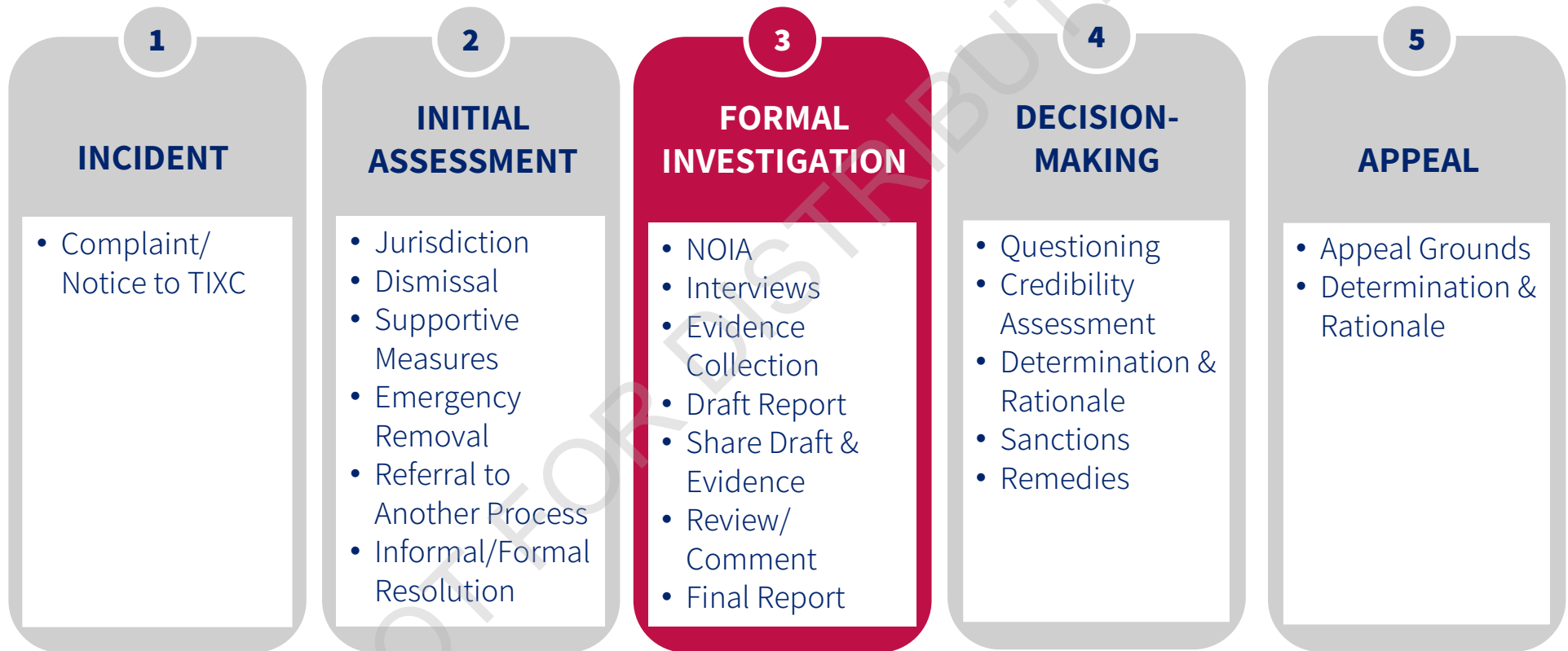
Practitioners will learn how to use policy language as a starting point for generating interview questions and synthesizing the information collected during an investigation.



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

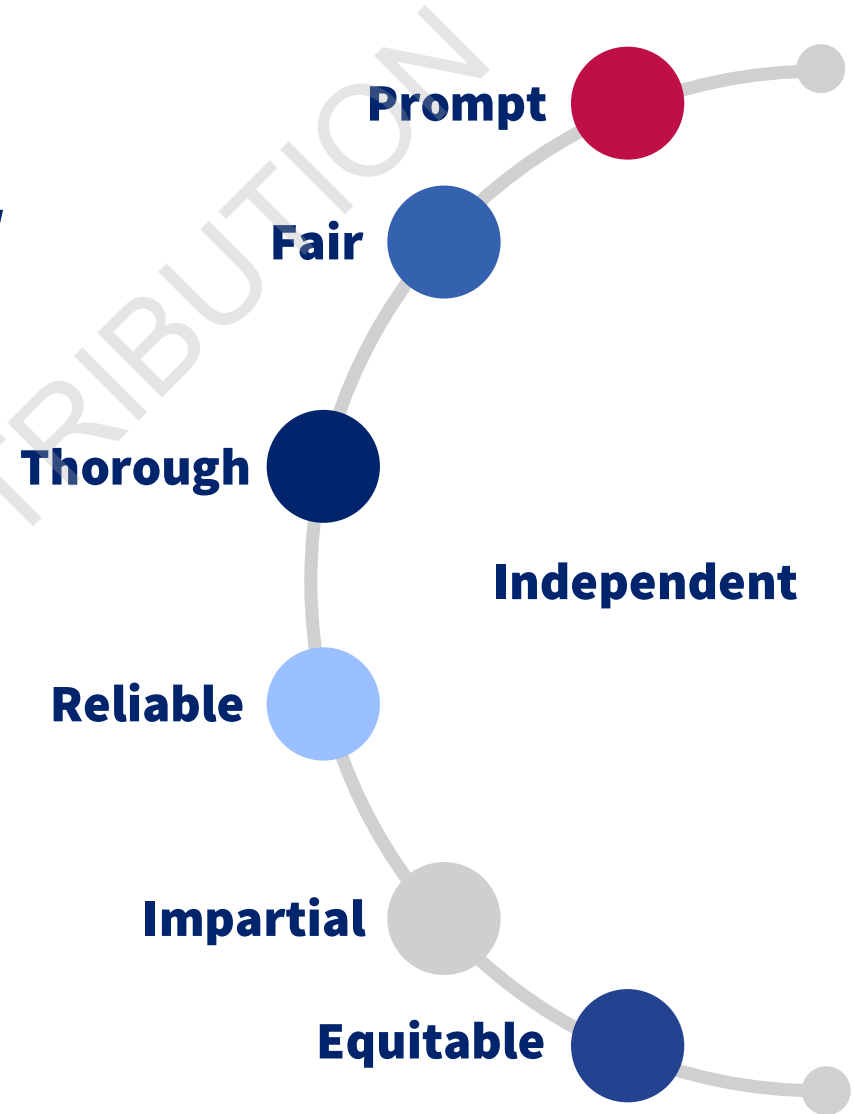
Investigation Process Overview

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 Overview

10 Steps of Investigations:

1. Receive Notice/Complaint
2. Initial Assessment & Jurisdiction Determination
3. Determine Basis for Investigation
4. Notice of Investigation and Allegations (NOIA)
5. Establish Investigation Strategy
6. Formal Comprehensive Investigation
7. Draft Investigation Report
8. TIXC Reviews Draft Report & Evidence
9. Parties Review Draft Report & Evidence
10. Final Investigation Report



Investigation File

- Investigator is responsible for developing and maintaining an **Investigation File** throughout the investigation
- Investigator maintains:
 - 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
 - File for each party and witness
 - Verified interview transcripts
 - Associated evidence (e.g., screenshots, written statements)
 - Correspondence with the Investigator(s)

Investigation File

- Investigator maintains:
 - Collected evidence and evidence log
 - 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 documents (if applicable)
- Communication regarding Informal Resolution (if applicable)
- Signed releases of information for Advisors
- Advisor Non-Disclosure Agreements (if applicable)
- Dismissal information (if applicable)
- Allegations of bias or conflict of interest and response

Investigation Strategy

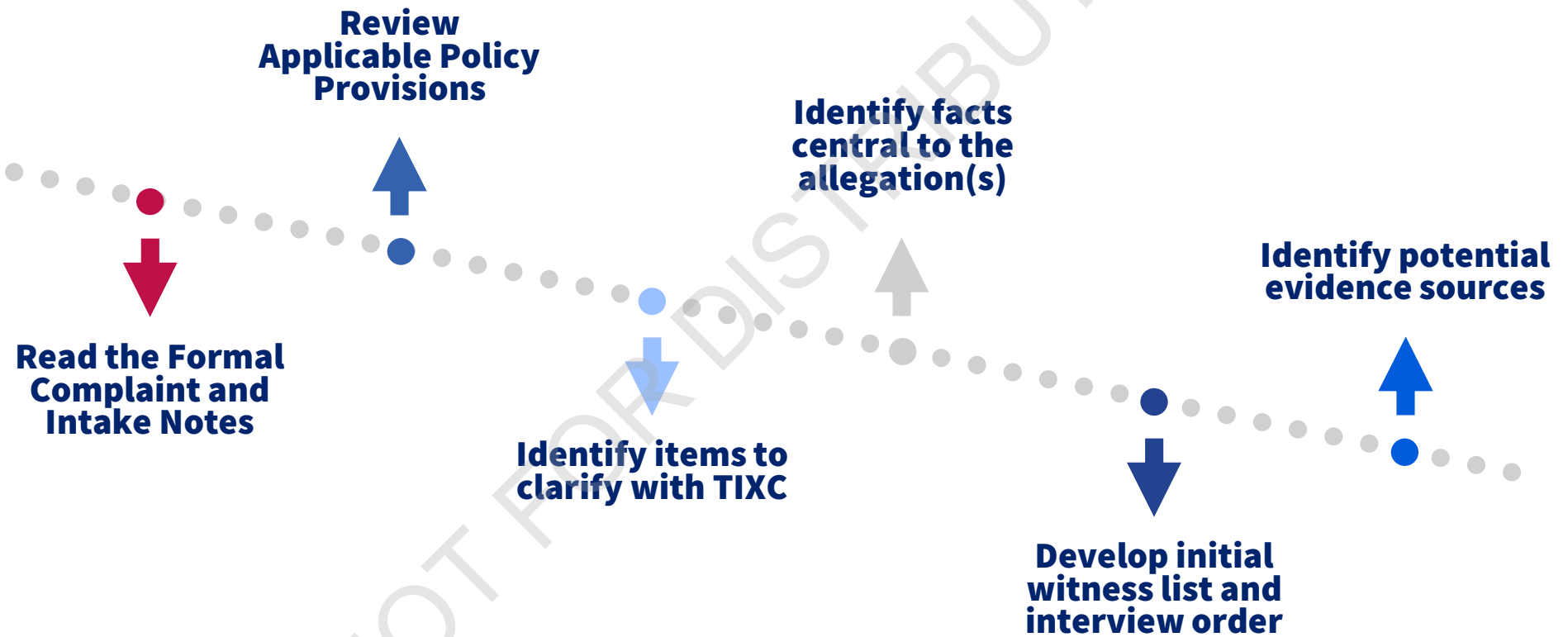
Investigation Strategy Review

Investigator(s) consult with TIXC to strategize and plan the investigation:

- Elements of the specific policy provision(s) alleged to have been violated
- Challenges with the type of complaint and the parties involved
- Preliminary undisputed and disputed facts and their significance
- Initial witnesses and interview order
- Other types of possible evidence and the plan to acquire such evidence
- Anticipated obstacles and obstructions
- A working timeline for the investigation

Activity: Investigation Strategy

Activity: Investigation Strategy



Activity: Investigation Strategy

Read the Strategy Exercise document in the course lobby

- Are there additional policies that may apply?
- Who are the initial witnesses?
- Who do you want to interview and in what order?
- What other sources of evidence may exist?

Trauma-Informed Practices

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 and 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



Fight Responses

THREAT RESPONSES

- Attack
- Insult
- Exhibit anger



STRESS RESPONSES

- Self-preservation at all costs
- Explosive temper and outbursts
- Aggressive, angry behavior
- Controlling behaviors
- Difficulty hearing other points of view
- Demanding of others
- Dictatorial tendencies
- Social media posts and rumors
- “Silent treatment”

Flight Responses

THREAT RESPONSES

- Attempt to flee or hide
- Pursue safety



STRESS RESPONSES

- Obsessive and/or compulsive behavior
- Feelings of panic and anxiety
- Over-worrying
- Can't sit still; can't relax
- Tries to micromanage situations and other people
- Always “on the go”
- Creating escape plans

Freeze Responses

THREAT RESPONSES

- Can't move
- Shut down
- Feel numb



STRESS RESPONSES

- Isolation
- Brain fog
- Disassociation
- Spacing out
- Difficulty making and acting on decisions
- Wants to hide from the world
- Achievement-phobic
- Inactive

Fawn/Friend Responses

THREAT RESPONSES

- Try to please others
- Neglect own boundaries and needs



STRESS RESPONSES

- People-pleaser
- Poor boundaries
- Co-dependent
- Afraid to express true thoughts and feelings
- Lets other people make decisions
- Apologizes for everything
- Flatter others in an exaggerated fashion

Flop Responses

THREAT RESPONSES

- Physically or mentally unresponsive
- Fainting
- Loss of control over bodily functions



STRESS RESPONSES

- Appearing disengaged
- Showing little or no emotion
- Missing classes, work, meetings, etc.
- Sleeping a lot
- Apathy
- Depression
- Disorientation

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



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

- 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 and witnesses
- Thought process
 - Can you share what was going through your mind when...?
- 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
- Caution parties and witnesses 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
- Biased thinking around what a person “should” or “would” have done
 - Timing of report

Trauma and Credibility

- Differentiate between **more** versus **different** 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

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 use the information gathered in the investigation to determine whether all necessary elements are met for each alleged policy violation

Activity: Applying Policy to Investigations

Definition: Fondling

The touching of the private body parts of the Complainant (buttocks, groin, breasts), 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 (buttocks, groin, breasts)
- ❑ 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

Consent Construct

Consent Policy Definition 1P2P

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 can not be used as a reason they did not know of the Complainant's incapacity.

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

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
 - The Respondent's own intoxication cannot be used as a defense

Prior Knowledge Construct

- Did the Respondent previously know the Complainant?
 - If so, was the Complainant acting differently than previous similar situations?
- 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 by Complainant gave the Respondent permission for each specific sexual or intimate act that took place as it 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

Rape Shield Provision

- 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
 - **If offered to prove consent**, with respect to prior consent with the Respondent
- Even if admitted/introduced by the Complainant
- Does not apply to Respondent's prior sexual behavior or predisposition
 - Not inequitable

Information Gathering and Recordkeeping

Keeping Information

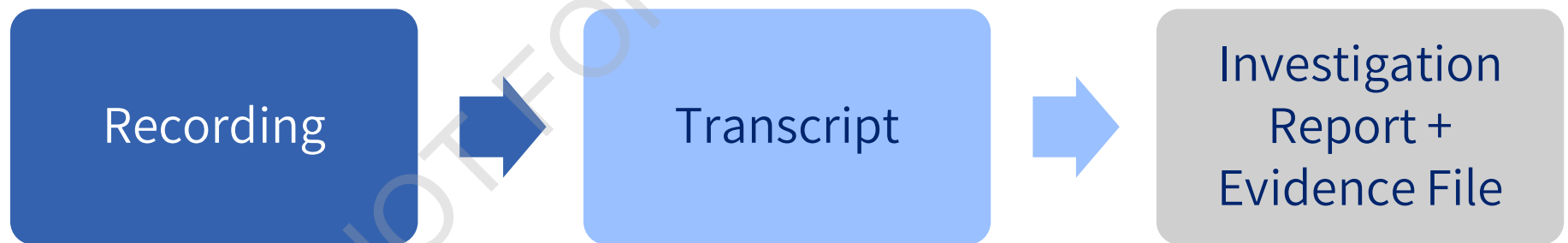
- Keep **investigation file** in a secure location
- Compile a timeline of the investigation steps, including dates of all meetings and interviews
- Records of all contacts, including emails and phone calls with all parties and witnesses
- Documenting interviews:
 - Take specific notes or record
 - Recording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

Information Flow

Option 1: Notetaking



Option 2: Recording



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



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

Collecting and Managing Evidence

Evidence Preservation

- Discuss with parties and witnesses as soon as feasible
 - Evidence provided by the institution
- Record names of witnesses and contact information
- Save relevant communications in a secure location, not just on the device
 - Screenshots
 - Date stamps
- Physical evidence
 - Clothing
 - Damaged property
 - Injuries

Evidence Management

- Properly record and categorize evidence provided to Investigator or TIXC
 - Quick access (indexed, digitized)
 - Organized
 - Redacted versions and/or descriptions of explicit content
 - Unredacted version available for viewing
- Ensure the evidence is not compromised
 - Establishing chain of custody
 - Do not modify evidence in any way, unless you are clear about doing so

Managing Sensitive Information

Store information in secure locations:

- Electronic
 - Password protection or encryption; multi-factor authentication
 - Limited 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

- 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 LE evidence

Executing the Exchange of Information

- Use a secure file-sharing platform
 - Consider functional and time limit restrictions as appropriate for your community and process
 - Downloading
 - Saving
 - Printing
- Recommend using a descriptive watermark for each party/Advisor
- Ensure the parties have a user-friendly method for providing feedback
- Provide deadline, parameters, and directions for party feedback

Investigation Reports

Investigation Report Writing

“

It's a process of asking questions and then pruning and splicing and editing the transcribed answers, and it takes a tremendous amount of time and labor.

”

William Zinsser

American writer, editor, literary critic, and teacher

Title IX Regulatory Requirements

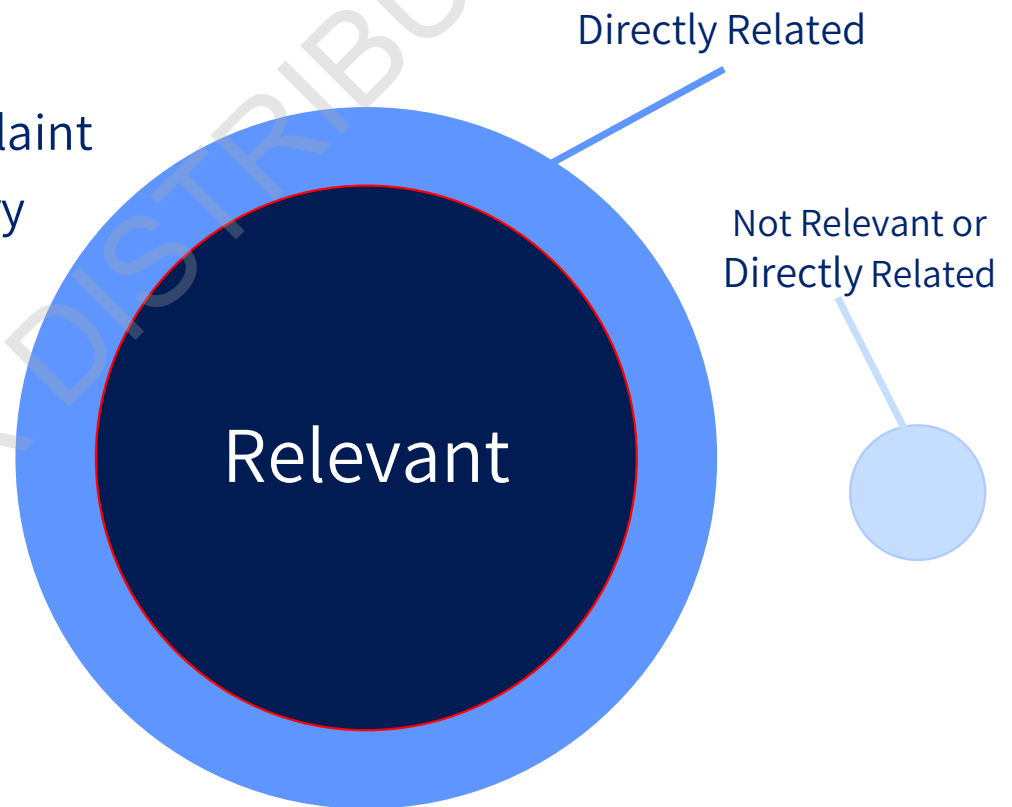
- Investigation report that fairly summarizes **all** relevant evidence
- Investigators must be trained on issues of relevance and writing investigation reports that fairly summarize relevant evidence
- Include relevant inculpatory and exculpatory evidence
- Leave considerable room for best practices

Relevant Evidence

- Investigators should include **relevant** evidence in their report
 - Evidence is relevant if it has value in proving or disproving a fact at issue
 - Evidence can also be relevant to credibility assessments
 - It is the Investigator's responsibility to obtain **relevant** evidence
- Never relevant
 - Evidence of Complainant's sexual predisposition
 - Evidence of Complainant's prior sexual behavior unless
 - Offered to prove someone other than Respondent committed the alleged conduct
 - Offered to prove consent, with respect to prior consent with the Respondent

Directly Related Evidence (DRE)

- Not defined by the regulations
- Evidence connected to the complaint
 - Not inculpatory or exculpatory



Relevant vs. DRE: Example 1

Respondent: Yeah, yeah. I feel like my roommate was like, "We're out of bread." So, I figured I might as well get it while we're here.

Investigator: Okay. So, in terms of alcohol, what did you guys end up getting?

Respondent: Yes. She wanted some girly wine thing, and I don't really drink wine. I don't like it. I got a six pack of beer, I think.

Investigator: Okay. Do you remember what kind of beer?

Respondent: Gosh. I don't think the fall stuff was out yet. No, it's probably some kind of IPA. I don't know. That's what I usually drink.

Investigator: You get a bottle of wine; you get a six pack of some kind of IPA. You get a loaf of bread. Then what happens?

Respondent: Then we were walking back from Marty's to my apartment and just making small talk. And I was like, "Yeah, so you want to Netflix and chill?" She was like, "Yeah, that sounds good."

Relevant vs. DRE: Example 2

- Witness 2 is the roommate of the Respondent. Witness 2 and the Respondent share membership in several student organizations. Witness 2 is also a senior and knows the Complainant's older brother through social interactions. Witness 2 reports never meeting or communicating with the Complainant.
- Witness 2 remembers seeing the Respondent in their shared apartment around 2:00 a.m. on the date of the reported incident. Witness 2 remembers the Respondent coming out of their room with just shorts on.
- Witness 2 recalls joking about Respondent's luck.
- Witness 2 recalls telling Respondent to try to "keep it down" as Witness 2 was going to sleep.
- Witness 2 e-mailed the Investigator screenshots of group text messages from September 5-6, 2020 in which the Respondent, Witness 2, and Witness 3 debriefed the night.

Strategies for Separating Evidence

- Color-code the evidence
 - Highlight relevant evidence or use a different font color
- Add footnotes to the investigation report indicating where the evidence can be found in the DRE file
- Some Investigators prefer to include the DRE as an appendix
 - ATIXA generally prefers a separate file

Separating Evidence: Example

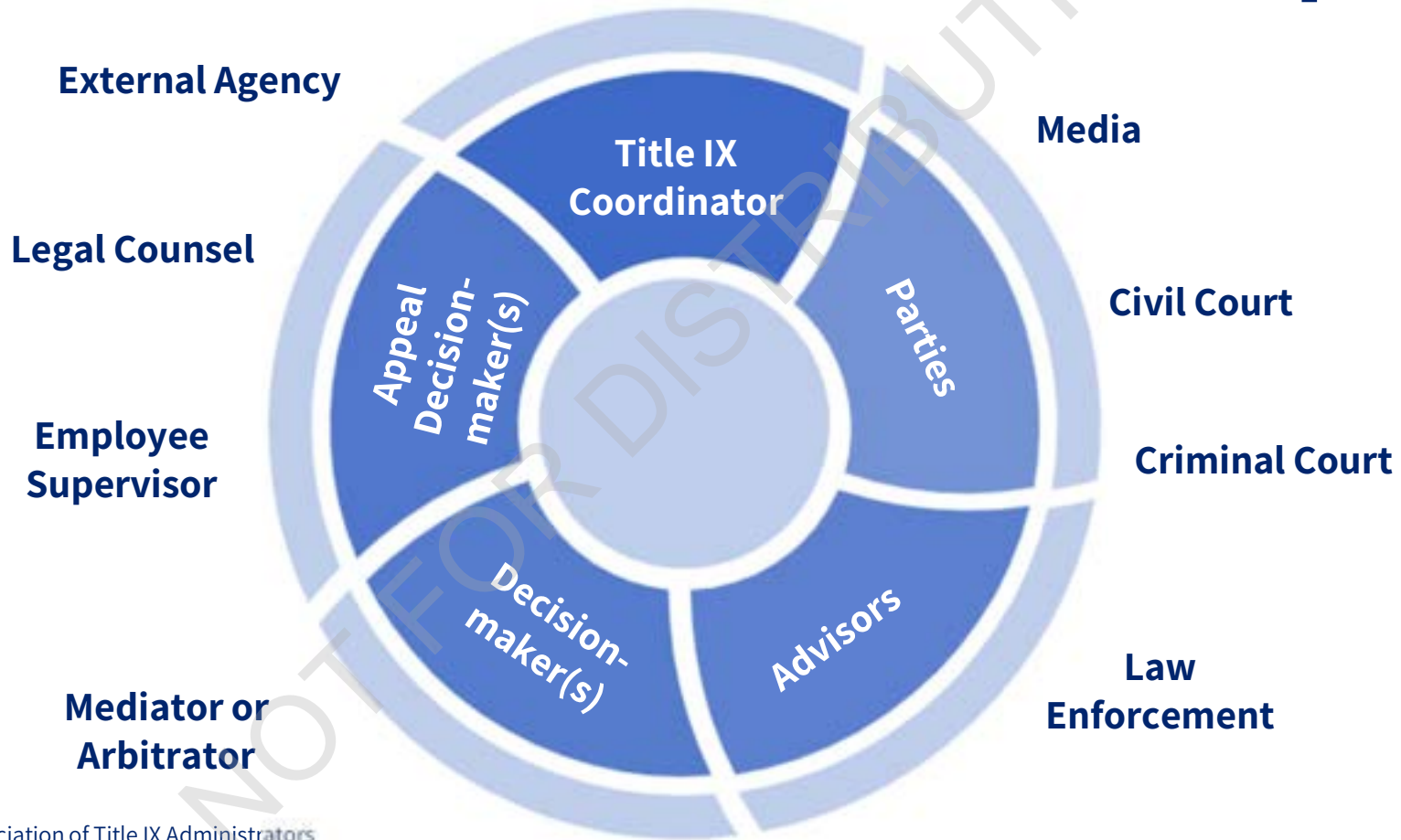
- Investigator obtained screen shots of 36 text messages
 - 20 are relevant
 - 16 are DRE
- **How could the Investigator separate the evidence into the report and evidence file?**

Separating Evidence: Example

- Investigator obtained screen shots of 36 text messages
 - 20 are relevant
 - 16 are DRE
- Investigator could:
 - Include the relevant texts in the report
 - Note that a section of the text messages are redacted
 - Create a footnote referencing the DRE file location of the complete text thread
 - Provide entirety of text conversation in the evidence file
 - Color-code the relevant sections and DRE sections

Activity: Relevant vs. Directly Related Evidence

Consider Potential Audiences for Report



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

<u>Examples of the Three Voices in Writing</u>	
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

- **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
- 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

Point of View

- **ATIXA recommends Investigators write from a neutral, detached observer point of view (third-person)**
 - This point of view creates distance between the reader and the parties
 - Example: Complainant was scared vs. Complainant reported they were scared
- What and how much the reader learns about the events, people, and locations in an investigation report depends on the Investigator's point of view
 - How much does the Investigator know and understand?
 - How much does the Investigator want the reader to know?
 - How would the report be different if someone else wrote it?
- Does the Investigator **describe** what parties and witnesses told them, or do they **repeat** what they were told by parties and witnesses?

Writing and Structuring Investigation Reports

Writing Process

“

The first draft is just you telling yourself the story.

”

Terry Pratchett
English humorist, satirist, and author



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“Your ethical duty to the person being interviewed is to present [their] position accurately...but after that your duty is to the reader. [They] deserve[] the tightest package.”

William Zinsser

Format and Structure

- Templates, templates, templates!
- Transcripts vs. interview summaries
- Narrative vs. bulleted format
 - Headnotes
- Multi-party or multi-allegation investigations
- Report, Evidence File, or Appendix?
 - Transcribe texts/social media/audio recordings
 - Description of video content
 - Email or other writing description or transcript/excerpt
 - Expert statements

Enhancing User-Friendliness

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

Direct Quotations

“[Their] own words will always be better than your words...this is a person talking to the reader directly, not through the filter of a writer.”

William Zinsser

- Direct quotations and commentary from parties and witnesses can help to accurately convey their experiences and perceptions
- 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 an omission of words in a sentence or sentences in a paragraph
- Four dots (....) indicate an omission 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
- No need to identify the error or include [sic] unless the meaning is unclear
- Helps proofreaders know what is/is not intentional

Sensitive Information

- Offensive, triggering, or explicit language (i.e., slurs)
- Graphic images/videos
- Medical information, including test results
- Mental health information
- Sex assigned at birth vs. gender identity
- 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: ██████ stated that ██████ 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.)
- Create a fully unredacted copy?
 - Legal counsel
 - Decision-maker(s)

Word Choice

- Investigation report writing is beige
- Unnecessary adverbs and adjectives
- Conclusory words
- Bias language

"What's wrong with adverbs in dialogue tags?" John asked inquisitively.

"They're unnecessary and irritating," Marsha said judgmentally.

"Says who?" John said defensively.

"The poor reader," Marsha said authoritatively.

Common Pitfalls

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

Word Choice Exercise Part 1

If you are comfortable doing so, please close your eyes and visualize what is happening during each of the following statements.

Word Choice Exercise Part 2

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



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 unwelcome sexual activity with Jane Doe and another female student in a Maplewood stairwell on September 21, 2016.

Bias-Free Writing

- Words communicate ideas, but also reflect power, status, and privilege
- Language can reflect social capital
- Conscious and purposeful use of language can promote equity, justice, and inclusion
- Pay attention to communication with individuals in different roles
- Bias-free communication attempts to include all identities in a way that respects the subject and doesn't make assumptions about the recipient
- Bias-free writing does not discriminate

Tips for Bias-Free Writing

- Know your own biases
- Focus on what's relevant
- Recognize and acknowledge differences
- Think small
- Avoid labels
- When in doubt, ask
- Use nouns, objectives, and adjectives properly

Biased and Bias-Free Language Examples

Biased Language	Bias-Free Language
Chairman	Chairperson
Ray is mentally disabled	Ray has Attention Deficit Disorder
The elderly are our biggest customers	Adults aged 65 and older are our most frequent customers
The new Black kid on the team is the captain	James is the captain
Poor kids qualify for those scholarships	Students with a household income below \$20,000 qualify for those scholarships

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

Thank you so much for sending your written statement. 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 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!

Bias Example

Email to Respondent

Thank you for sending your written statement. We will need to meet again so that I can ask any 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, February 7, 2022, 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 follows punctuation except for the em dash (—)

Footnote Example

Respondent described this interaction as follows. Relevant portions of the transcript are below.

“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 try 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.

¹ See Complainant Interview 3.25.2022 Transcript.pdf, p.5

² See Respondent Interview 4.1.2022 Transcript.pdf, p.6

Attachments, Appendices, and Exhibits

- Complete versions of relevant information incorporated into the investigation report by reference or in excerpt form
 - Photographs
 - Video stills
 - Screenshots of text messages/social media
 - Access logs, card swipe logs, phone records
 - Academic course schedules
 - Floorplan diagrams
 - Others
- Description, date of receipt, source, method of receipt, and verification/authentication information

Parties' Questions for Others

Document questions suggested or requested to be asked by the parties

1

Not Asked/Otherwise Answered

Document: the question posed 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, not allowed)

Incorporating Parties' First Ten-Day Review Feedback

- Include parties'/Advisors' entire feedback and any responses from the Investigator(s) as an appendix
 - Ask individuals to provide an itemized list of feedback rather than a long narrative
- Include appropriate discussion if feedback impacts credibility
- New evidence
- Clarification of earlier statements
- Requested shifts between relevant evidence and DRE

Post-Review Investigator Response

- Follow-up on all areas identified by parties, as appropriate
 - 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

Absent Information

Information Not Obtained

Investigators must document all efforts to obtain evidence and an explanation for 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 due to an ongoing criminal and/or agency investigation

Unanswered Questions

Include 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, 2019. Witness 2 was informed that Complainant voluntarily submitted screenshots of the text messages in question for purposes of this investigation.”

Investigation Report Sections

Investigation Report Sections

- Complaint Information
- Executive Summary
- Relevant Background
- Jurisdiction and Scope
- Applicable Policies and Relevant Definitions
- Investigation Timeline
- Incident Timeline(s)
- Summary of Relevant Statements and Evidence
- Credibility Analysis
- Discussion and Synthesis
- Recommended Findings
- Recommended Final Determination
- Conclusion
- Appendices
- Evidence File

Complaint Information

- Complaint date
- Complainant's name and recipient ID#
- Initial notice date
- Initial notice received from
- Respondent name and recipient ID#
- Date assigned to Investigator(s)
- Assigned Investigator(s)
- NOIA date
- Final investigation report date



Executive Summary

- Date, time, and manner of complaint
 - Complainant or TIXC
- Description of alleged misconduct
- Policies governing the investigation
- Summary of disputed and undisputed facts
- Status of the complaint (e.g., dismissal or referral to Decision-maker(s))

Relevant Background

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



Jurisdiction

Provide a jurisdiction statement including:

- Date(s), time(s), and location(s) of reported conduct
- Individuals involved
- Relevant policies and procedures related to jurisdiction
 - Information and analysis for subject matter jurisdiction
 - Institutional control of the context of the alleged misconduct
 - Indicate whether Title IX requires the institution to investigate, or whether jurisdiction is discretionary, and Title IX does not apply
- 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 Harassment Grievance Policy Section 2(b).

Scope of the Investigation

- **Scope** refers to the allegations, timeframes, and parties subject to the investigation
- TIXC determines the scope of the investigation
- Content of the complaint is not the sole determinant of investigation scope
- 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(s) 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 Evidence
- Consistent with the Notice of Investigation and Allegations (NOIA), including any amendments thereto

Investigation Timeline

- Decision-maker or TIXC will need to include “a description of the procedural steps taken from the receipt of the formal complaint through the determination” in the outcome letter
 - Notifications to the parties
 - Interviews with parties and witnesses
 - Site visits
 - Methods used to gather other evidence
 - Hearings held
- Note any process delays, including rationale

Incident Timeline(s)

- **Timelines:** 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

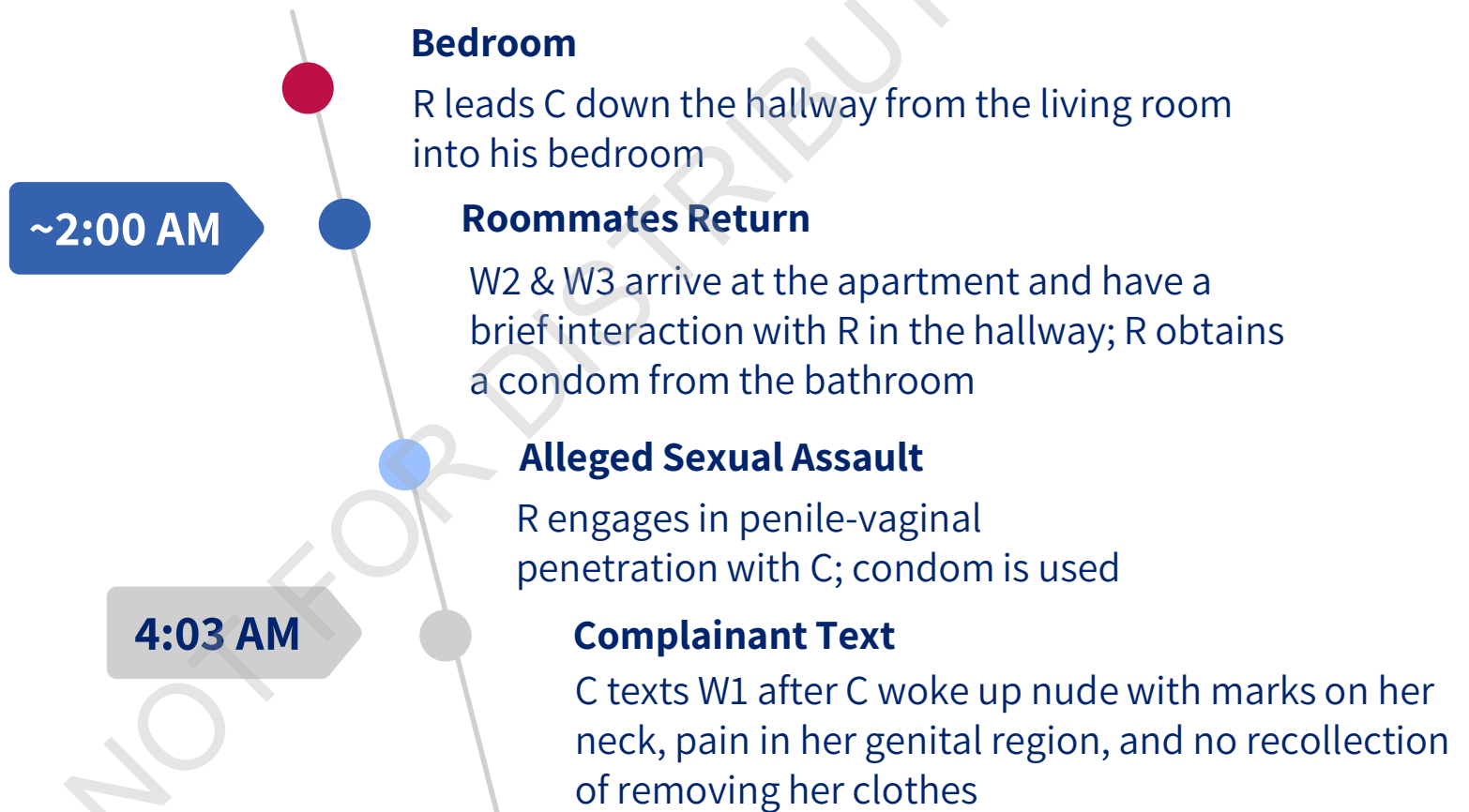
C uses the restroom and begins feeling "like it took a lot of effort to move [her] limbs" and "everything was going on around [her] in slow motion"

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

Summary of Relevant Evidence

Content may dictate the most logical organization structure for this section

- Chronological by interview
- Chronological by incident timeline
- By allegation
- Parties first, then witnesses

Credibility

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



Credibility Factors

Corroboration

- Aligned testimony and/or physical evidence

Inherent Plausibility

- “Does this make sense?”
- Be careful of bias influencing sense of “logical”

Motive to Falsify

- Do they have a reason to lie?

Past Record

- Is there a history of similar behavior?

Demeanor

- Do they seem to be lying or telling the truth?

*Enforcement Guidance
on Vicarious Employer
Liability for Unlawful
Harassment by
Supervisors*

EEOC (1999)

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 truthfulness
 - Humans are excellent at picking up non-verbal cues
 - Humans are terrible at spotting liars
- 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.”

Credibility Analysis

- Specific and detailed credibility analysis 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 making conclusions, but comparisons may be helpful

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
- Accepting information at face value

Activity: Credibility Analysis

Activity: Credibility Analysis

Read pages 1-21 of the Investigation Report for Activities document in the course lobby

- What information speaks to the Complainant's credibility?
- What information speaks to the Respondent's credibility?
- Is there information that should be included about evidence credibility?

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)
- Summarize all areas of contested and uncontested facts/evidence
- Guide for the Decision-maker(s) determination
 - What remains unresolved?
 - What type of analysis is required based on the applicable policy provisions?

Recommended Findings

- This section is only applicable if permitted by institutional policy
 - ATIXA does not recommend Investigators provide recommendations in processes involving hearings under the 2020 regulations
- Did the conduct occur as alleged?
 - List recommended findings for each alleged policy violation applying the standard of evidence
- Include a statement that the recommended findings are not binding on the Decision-maker(s)

Activity: Recommended Findings

Activity: Recommended Findings

Using the Investigation Report for Activities document in the course lobby, write recommended findings for each allegation

- Cite the specific evidence upon which the findings are based
- Include credibility assessment

Recommended Final Determination

- This section is only applicable if permitted by institutional policy
 - ATIXA does not recommend Investigators provide recommendations in processes involving hearings under the 2020 regulations
- Did the conduct violate policy?
 - List recommended final determination for each alleged policy violation applying the standard of evidence
- Include a statement that the recommended determination is not binding on the Decision-maker(s)

Conclusion

- Final summary statement regarding the status of the investigation
- Indicates whether the report will be forwarded to a Decision-maker, or the complaint will be dismissed

Example

This report is intended to provide a comprehensive summary of the relevant evidence related to Complainant's allegations. It is not intended to draw any conclusions regarding the accuracy of the allegations or the credibility of the parties and witnesses. The Investigator submits this report for consideration by a Decision-maker appointed by Acme College and remains available to answer any questions regarding the investigation or information contained in this report.

Appendices

- Relevant information that would not fit neatly in the investigation report
 - Policies
 - Complaint
 - Floorplans
 - Drawings
 - Lengthy documents
- Parties' feedback on the investigation report and Investigator responses
- Parties' questions for others and responses



Evidence File

- All relevant and directly related information in complete form
- Redact information that is not relevant or directly related
- Logical organization to align with report
- May choose to color-code relevant vs. directly related evidence

Enhancing User-Friendliness

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

Questions?



Association of
Title IX Administrators

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