

Advanced Title IX Investigator Training and Certification

Welcome & Faculty Introductions



Rabia Khan Harvey, M.Ed., MSHR

Senior Program Manager

Academic Impressions

rabia@academicimpressions.com

March 24 – 25, 2021



1

1

RESOURCES

Welcome to Zoom and its features:

- A. Mics (keep muted please)
- B. Camera (option to keep on or off)
- C. Chat Box
 - Use to ask questions or respond
 - Send Rabia a private message for anonymous questions
 - To find downloadable files during the presentation
 - To send private messages to each other or host
- D. Recording (for quality purposes only – not for distribution)
- E. Participant List with Emojis
 - Change name option (hover over your name, select “more” then “rename” to change your name)

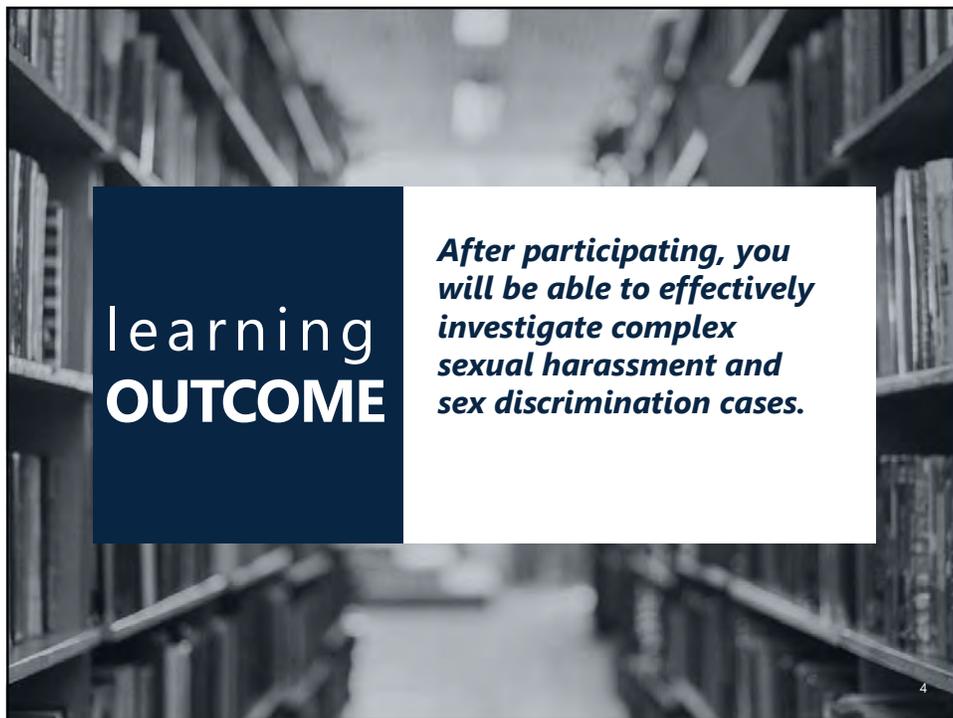


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Disclaimer

The information provided in this training does not, and is not intended to, constitute legal advice. Instead, all information, content, and materials available during this training are for training and general informational purposes only.

5



AGENDA

March 24, 2021

1. The New Era of Title IX Investigations
2. Intro of the Five Stages of Investigation and Scenario
3. Stage 1: Prepare
4. Stage 2: Gather
5. Autonomy, Neutrality, and Objectivity
6. Day One Q&A & Networking Reception

6



AGENDA

March 25, 2021

1. Understanding Witness Testimony Challenges
2. Confronting Interviewing Challenges
3. Small Group Activity: Mock Interviews
4. Stages 3&4: Compile and Assess for Relevance
5. Stage 5: Drafting the Investigation Report
6. Testifying at the Hearing
7. Final Q&A and Conference Wrap up

7

7

Welcome AI Members!

Agnes Scott College	North Carolina State University
Alamo Colleges District	North Hennepin Community College
Baylor University	Northwest College
Case Western Reserve University	Norwich University
Clarke University	Saint Leo University
Colorado State University – Pueblo	Sam Houston State University
Eastern Kentucky University	San Jose State University
El Camino Community College District	State Technical College of Missouri
Fayetteville State University	The Alamo Colleges
Flagler College	Tri County Technical College
Grand Valley State University	Troy University
Humboldt State University	Truckee Meadows Community College
Kentucky State University	University of California, Santa Barbara
Iowa Wesleyan University	UH Maui College
Lee College	University of Denver
Loyola University Chicago	University of Nevada, Las Vegas
Macalester College	University of Nevada, Reno
Marquette University	University of Phoenix
Mills College	Western Carolina University
Morgan State University	Wichita State University
	Yavapai College

8

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8

Meet Your Expert Faculty



Cara Hardin, J.D.
Title IX Deputy Coordinator
Marquette University
cara.hardin@marquette.edu



Christine H. Taylor, J.D., LL.M.
Executive Director, Office of Institutional Equity and Compliance
Wichita State University
christine.taylor@wichita.edu



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#1

The New Era of Title IX Investigations

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Investigative Process: 30,000-foot overview

Grievance Process (generally)

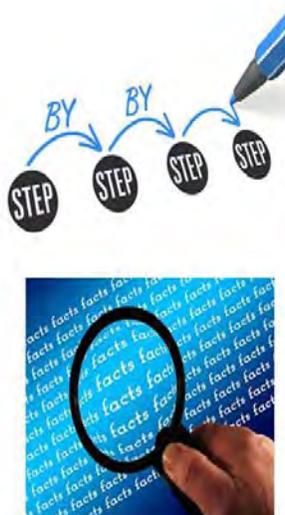
- The filing of a formal complaint of sexual harassment triggers the grievance process set forth in §106.45.
- The § 106.45 grievance process includes:
 - Informal resolution, if offered.
 - Investigation conducted by a neutral, objective investigator(s)
 - Live-hearing providing for cross-examination by the advisor for both parties
 - Appeal

11

11



Investigative Process – 1 to 3



1. Formal complaint filed.
2. Title IX Coordinator assigns a trained neutral/unbiased investigator to investigate the allegations.
3. Notice of Allegations sent to Parties. §106.45(b)(2)

12

12



Investigative Process – 4, 5, and 6

4. Investigator requests and conducts interviews with the complainant, respondent, and witnesses.
 - Interviews may be conducted virtually!
5. Investigator requests and obtains physical evidence.
6. The parties have equal opportunity to present witnesses and evidence.
 - The investigator may independently identify and interview witnesses and obtain evidence other than offered by the parties.

13

13



Investigative Process – 7 and 8

7. When the investigator finishes gathering the available evidence, the investigator compiles all the information *“directly related to”* the allegations raised in the formal complaint into the “Investigative File.” §106.45(b)(5)(vi)
8. The investigator sends the parties and their advisor the “Investigative File” for review and response (provide at least 10 days).
 - Party written responses are attached to the Investigative File and shared with other party and their advisor.
 - If responses offer new evidence, investigator may want to give the other party a brief period of time to respond—but only to the new evidence.

14

14



Investigative Process – 9 and 10

9. Investigator drafts an “Investigative Report” that fairly summarizes the relevant evidence and sends it to the parties and their advisors for review and response (provide at least 10 days).
 - Parties may submit a written response to the Investigative Report, which will be shared with the other party and their advisor and attached to the Investigative Report. §106.45(b)(5)(vii).
10. Down the road... Investigator likely testifies at the hearing. May be called as a witness by either party or decision-maker(s).

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15



Investigative Process – Drop the Mic!

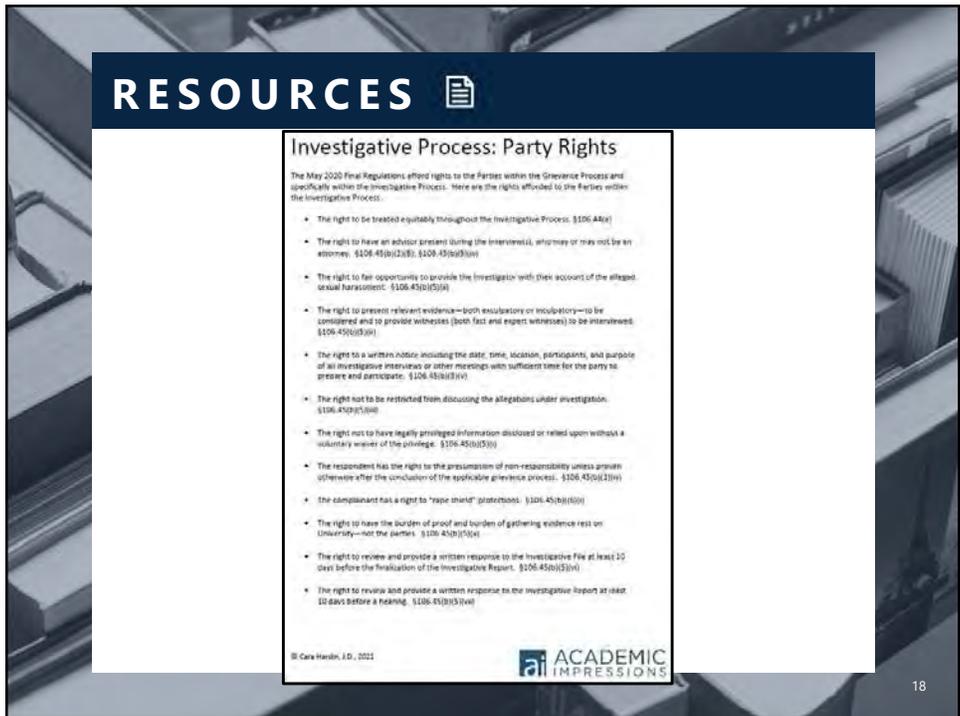


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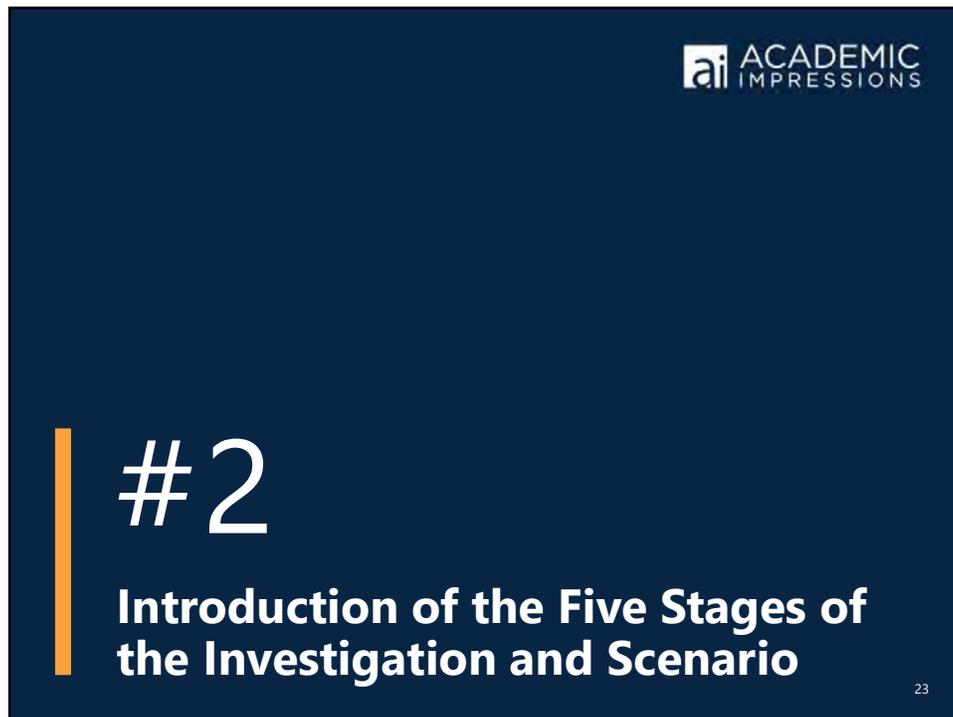
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22



ACADEMIC IMPRESSIONS

#2

Introduction of the Five Stages of the Investigation and Scenario

23

This slide features a dark blue background. In the top right corner, the logo for 'ACADEMIC IMPRESSIONS' is displayed. On the left side, a vertical orange bar is positioned next to the large white text '#2'. Below this, the title 'Introduction of the Five Stages of the Investigation and Scenario' is written in white. A small number '23' is located in the bottom right corner of the slide.

23



CHAT

What does it mean to "investigate?"

24

This slide has a background of overlapping grey papers. A dark blue square on the left contains the word 'CHAT' in white, with a white speech bubble icon below it. To the right of this square is a white rectangular box containing the text 'What does it mean to "investigate?"' in black. A small number '24' is in the bottom right corner.

24



Investigative Process: Evidence

To investigate a formal complaint is to gather the information (evidence) pertaining to the allegations in the formal complaint, including:

- Inculpatory information that tends to show the allegations are true, and
- Exculpatory information that tends to show the allegations are not true.

25

25



Examples of Evidence

Example of inculpatory evidence:

After the alleged sexual misconduct occurred, the respondent sent a text message to the complainant stating, "I'm sorry, I should have listened when you said no."

Example of exculpatory evidence:

The respondent is tall with short hair. The video from the scene of the alleged misconduct shows that the perpetrator is short with long hair.

26

26



Investigative Process: Five Stages

1. Prepare
2. Gather
3. Compile
4. Assess for relevance
5. Summarize relevant evidence



27

27



Scenario

FACT PATTERN

On October 31, 2020, Hall Director Mazie Martin contacted the Title IX Coordinator to report an incident potentially falling under the University's Sexual Harassment and Discrimination Policy (the "Policy"). Mazie explained that Foster-Harper resident, Alex Ahart, approached her about an altercation she observed involving another Foster-Harper resident, Bailey Benson. Alex shared the following information with Mazie.

On October 31, 2020, around 6:15 p.m., Alex walked from his residence hall room to the bathroom on the 5th-floor of Foster-Harper. As Alex passed the 5th-floor study room, Alex saw a physical altercation between Bailey and another student. Specifically, Alex saw Bailey on the ground, with the other student on top of Bailey. Alex made eye contact with the student. This caused the student to jump off Bailey. Alex said that Bailey was crying. Alex kept walking, unsure of what to think, went to the bathroom, and a couple of hours later contacted Mazie. Alex does not know the name of the student who was on top of Bailey but thinks it might have been Bailey's romantic partner.

The Title IX Coordinator contacted Bailey, who said that the altercation involved Bailey's ex-romantic partner, Quinn Quimby. Bailey told the Title IX Coordinator Quinn physically assaulted Bailey in the study room. During their meeting with the Title IX Coordinator, Bailey shared additional concerns about Quinn's behavior that occurred after they broke up.

The Title IX Coordinator discussed Bailey's rights under the Sexual Harassment and Discrimination Policy (the "Policy"), including Bailey's right to file a sexual harassment formal complaint and supportive measures designed to preserve or restore equal access to university education programs or activities.

On November 2, 2020, Bailey filed a formal complaint against Quinn Quimby, alleging that Quinn engaged in dating violence and hostile environment sexual harassment against them. Specifically,

- Bailey alleges that on October 31, 2020, Quinn placed Bailey in a chokehold, forced Bailey to the

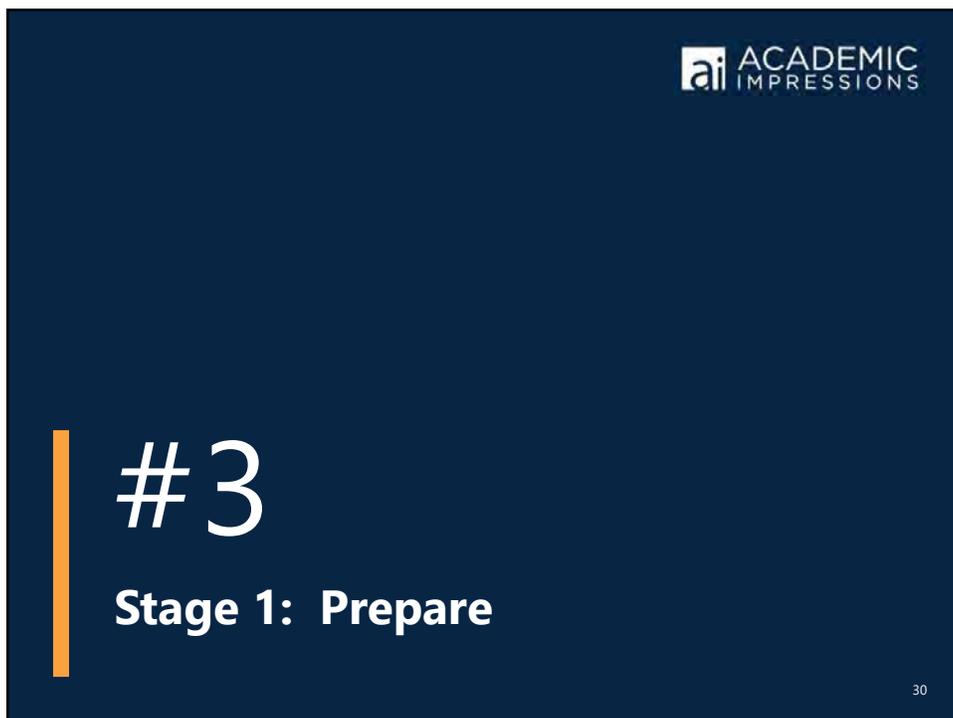
See Chat to
download
fact pattern

28

28



29



30



31



Stage 1: Prepare (Steps 1-3)

- I. Thoroughly review Notice of Allegations/Formal Complaint
- II. Who is involved? (Students, faculty, staff?)
- III. What Title IX/policy offense(s) are you investigating?
 - Quid Pro Quo Sexual Harassment
 - Dating violence
 - Hostile Environment Sexual Harassment
 - Domestic violence
 - Sexual Assault
 - Rape, sodomy, fondling, incest, statutory rape
 - Stalking
 - Sex Discrimination

32

32

 Stage 1: Prepare (Step 4)

IV. What are the “elements” of the offense(s) at issue?

Example: Rape

“Carnal knowledge”

1. The penetration of any sort
2. Of the penis and the vagina (attempt to do the same)

3. Without complainant’s consent → Review policy definition for consent

4. Including instances where the complainant is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental or physical incapacity.

Under legal age of consent or incapacitation (see policy for definition of incapacitation) ³³

33

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Fact Pattern

What offense(s) are implicated within the fact pattern?

Let's break down the elements of those offense(s).

34



Stage 1: Prepare (Step 5)

V. Evidence available pre-interviews

- Email reporting misconduct (i.e., from Hall Director, RA, Campus Safety)
- Campus video footage
- Campus access-card records
- Police reports

35

35

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Fact Pattern

What evidence may be available pre-interviews?

36

36



Stage 1: Prepare (Steps 6-7)

VI. Interview list

- Complainant
- Respondent
- Witnesses

VII. What information are you seeking from each person?

VII. Order of interviews

37

37

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Fact Pattern

- **Preliminary interview list (will be updated as you progress)**
- **What information are you seeking from each person?**
- **Order of the interviews?**

38

38



Stage 1: Prepare (Step 8)

VIII. Create Investigator Log

FIDUCIARY STATE UNIVERSITY – TITLE IX OFFICE

INVESTIGATOR INVESTIGATION LOG

Complainant: Bailey Berman Title IX Coordinator: Carmen Sandiego

Respondent: Quinn Quimby Investigator: Cara Hardin, Title IX Deputy Coordinator

Date	Recorded By	Notes
3/15/21	CBH	Received and reviewed Notice of Allegations.
3/16/21	CBH	Emailed parties Notices of Interview and calendar appointments for Microsoft Teams video meeting.
3/17/21	CBH	Received email from Complainant with the selection of and contact information for their advisor. Sent advisor (copied Complainant) information about the advisor role within the Investigative Process.
3/20/21	CBH	Interview with Complainant. Advisor present. Reviewed investigative process. Conducted questioning and requested/obtained physical evidence.
3/21/21	CBH	Emailed interview transcript to Complainant and their advisor for review, edit, and approval.
3/25/21	CBH	Interview with Respondent. No advisor present. Reviewed investigative process, including right to an advisor. Conducted questioning and requested/obtained physical evidence.
3/26/21	CBH	Emailed interview transcript to Respondent for review, edit, and approval.
3/28/21	CBH	Respondent emailed redlined additions and clarifications within interview transcript.

39

39



Stage 1: Prepare (Step 9)

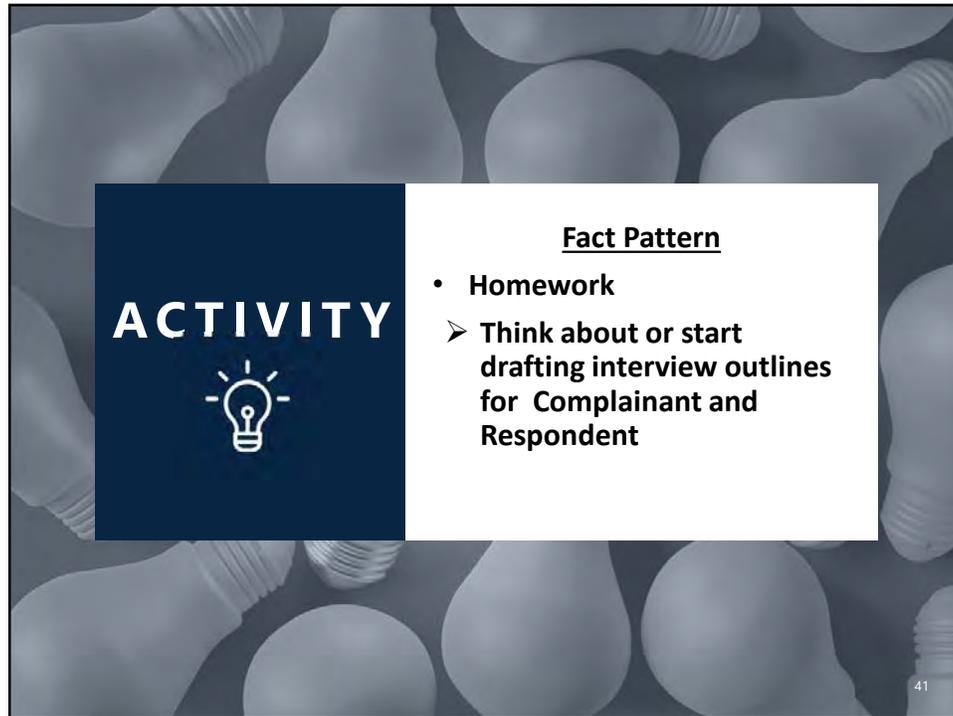
IX. Outline party/witness interviews

Complainant's interview outline

- Build rapport
- How know the respondent?
- What happened?
 - Where?
 - When?
 - How? Penetration of genitalia?
 - Consent? (Actions/words? Incapacitation? Force?)
 - Response to conduct?
- Witnesses (Eyewitnesses? Who saw before and right after? Who talk to before and right after?)
- Physical evidence (Electronic communications? Pictures? SANE report? Police report?)

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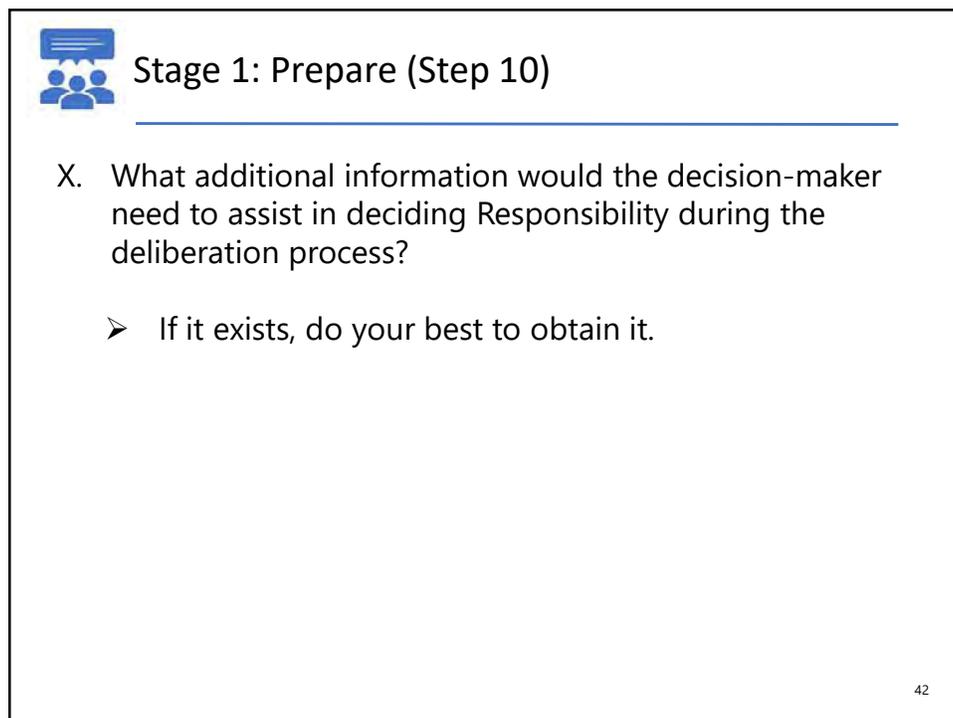


Fact Pattern

- **Homework**
 - **Think about or start drafting interview outlines for Complainant and Respondent**

41

41



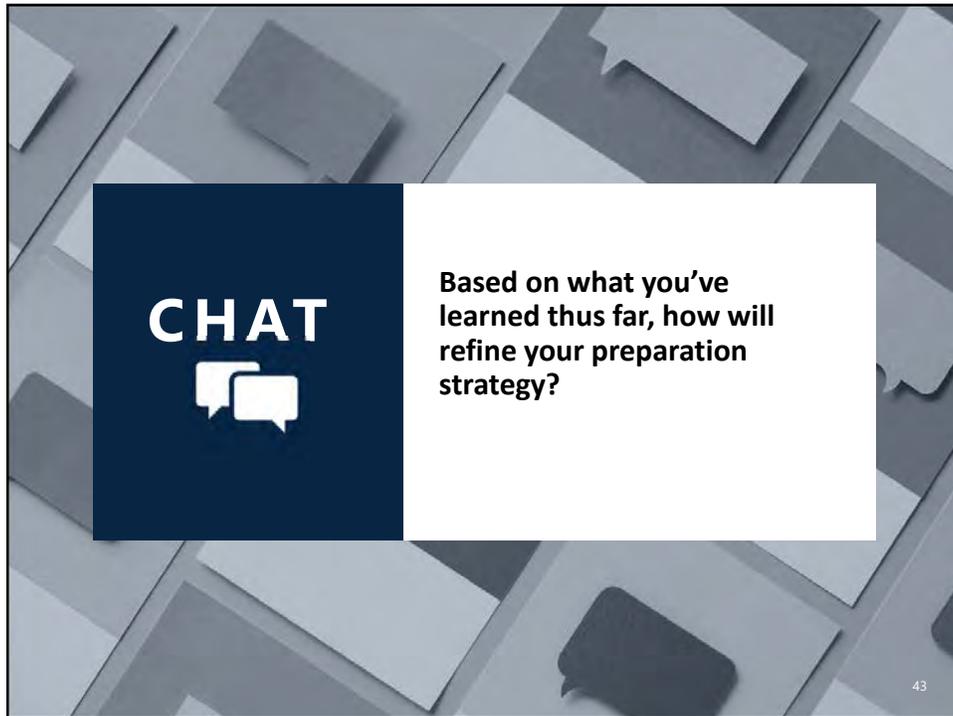
 **Stage 1: Prepare (Step 10)**

X. What additional information would the decision-maker need to assist in deciding Responsibility during the deliberation process?

- If it exists, do your best to obtain it.

42

42



43



44



45



46



Stage 2: Gather - Evidence

- Testimonial Evidence
 - Party/witness interviews
 - Expert witnesses
 - Party/witness statements within electronic or other type of communications
- Non-testimonial evidence
 - Documents
 - Photographs
 - Video
 - Screenshots of electronic or other communications
 - Police reports
 - SANE reports (need signed release to obtain and rely on)

47

47



Stage 2: Gather – Party/Witness Interviews

Party/witness interviews

1. Build rapport
2. Effective questioning
3. Identifying and obtaining physical evidence

48

48



Stage 2: Gather – Building Rapport

1. Build rapport

- Identify mutual interests or commonalities between the investigator and the interviewee
- Attentive
- Transparent about the investigation process and the investigator's role within it
- Provide control
- Answer questions

49

49

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Rapport Building Demos

1. What went well?
2. What could be improved?

50

50



Stage 2: Gather – Effective Questioning

2. Effective questioning

- The funnel method

51

51

Closed v. Open-Ended Questions

Closed Questions

You went to the party with the Complainant and your roommate



Open-Ended Questions

Who went with you to the party?

You said “no” when the Respondent kissed you.



How did you respond when the Respondent kissed you?

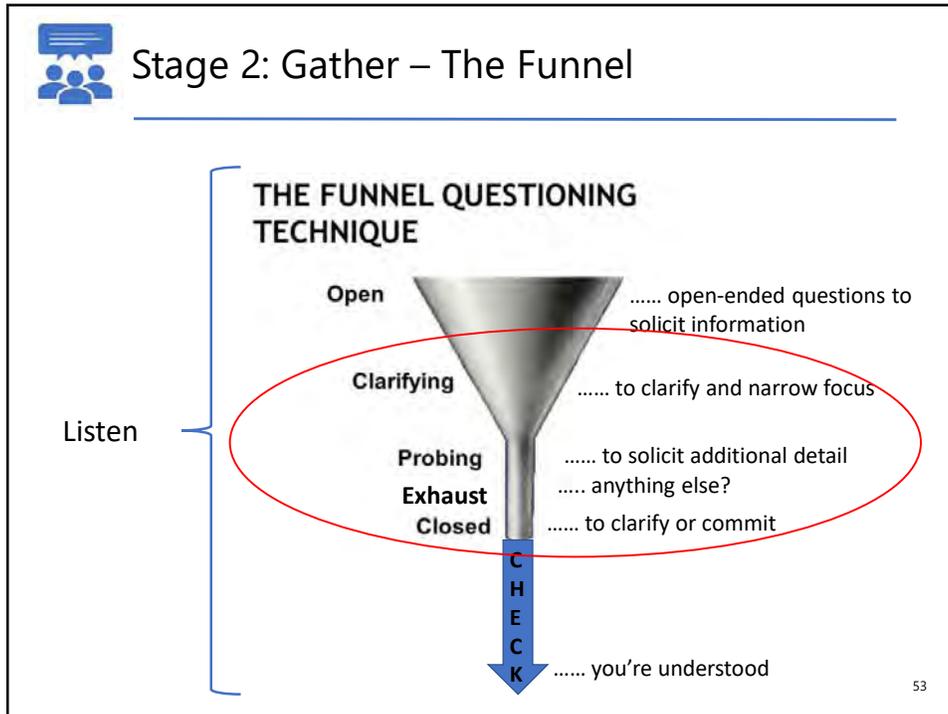
After you said “no,” you shoved the Respondent to the ground



What happened next?

52

52



53

Stage 2: Gather – Pitfalls to Avoid

2. Effective questioning

Interviewing pitfalls

- Careful not to ask an open-ended question in a leading/closed manner.

"Did you go to the police right after you left Respondent's apartment?"

"Were you scared when your partner's hands were around your neck?"

54

54



Stage 2: Gather – Avoid compound questions

2. Effective questioning

Interviewing pitfalls

- Avoid compound questions

“Describe what you saw, what you heard, and what you did?”

One question at a time: *“What did you see?”*

“What did you hear?”

“What did you do?”

55

55



Stage 2: Gather – Interview Pitfalls

2. Effective questioning

Interviewing pitfalls

- Failing to clarify complex answers.

- *“Tell me if I understand you correctly, you said...”*

- *“I am not sure that I understand, what does that mean?”*

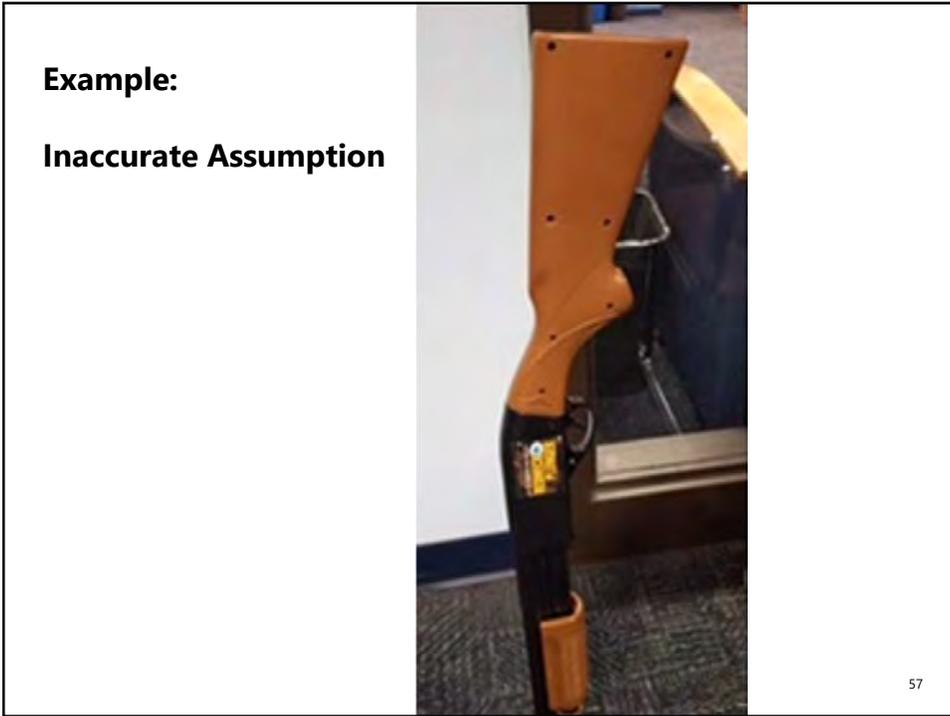
- Assuming you know what the witness means.

“I talked to Jane last night.”

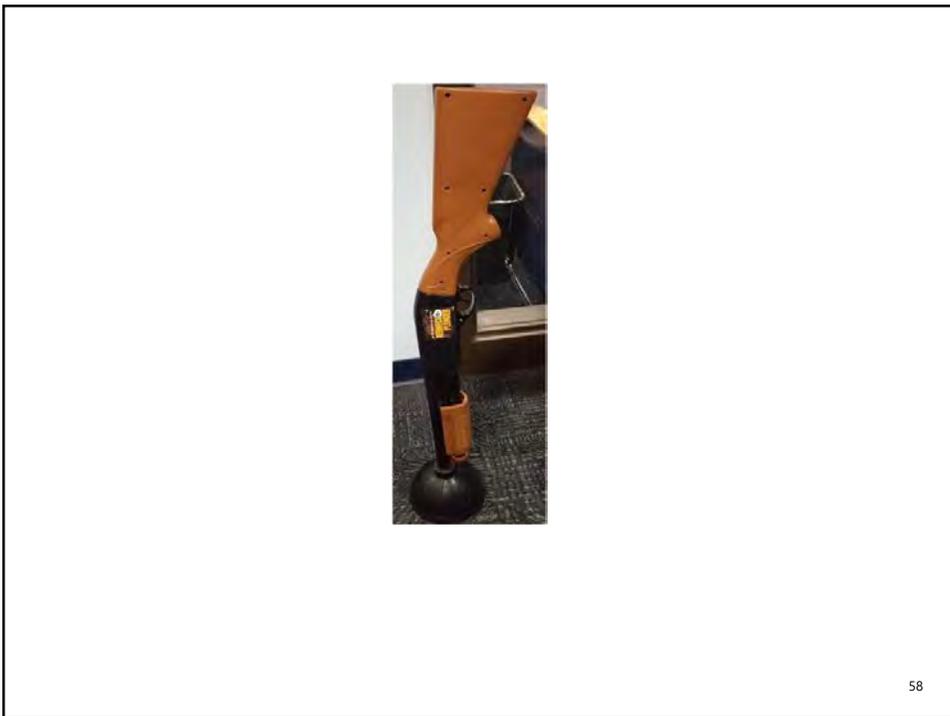
- Assumptions about what happened, generally.

56

56



57



58



Stage 2: Gather – Pitfalls, cont.

2. Effective questioning

Interviewing pitfalls

- Failing to use understandable (“normal”) language.

“Are you and Jane intimate with one another?”

“Did your fingers penetrate Jane’s labia majora?”

59

59



Stage 2: Gather – Pitfalls, cont.

2. Effective questioning

Interviewing pitfalls

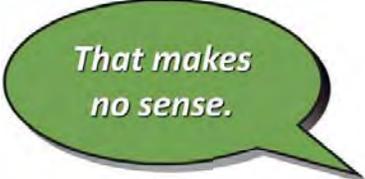
- Interrupting the witness.
- Harmful spoken or body language in response to answers to questions.

60

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 Stage 2: Gather – Example #1

Possible Investigator Reactions to an Interviewee Response

<u>Actual Thought</u>	vs.	<u>Professional Speak</u>
 <p><i>That makes no sense.</i></p>		 <p>What you just explained is a bit confusing to me. Let's go over it again...</p>



61

61

 Stage 2: Gather – Example #2

Possible Investigator Reactions to an Interviewee Response

<u>Actual Thought</u>	vs.	<u>Professional Speak</u>
 <p><i>You're such a liar!</i></p>		 <p>Help me understand why 3 other people recall things differently</p>

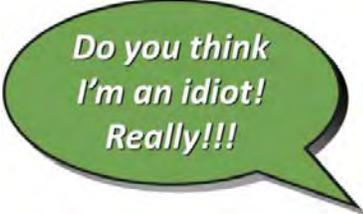


62

62

 Stage 2: Gather – Example #3

Possible Investigator Reactions to an Interviewee Response

<u>Actual Thought</u>	vs.	<u>Professional Speak</u>
 <p><i>Do you think I'm an idiot! Really!!!</i></p>		 <p>In my experience, I generally find ...</p>

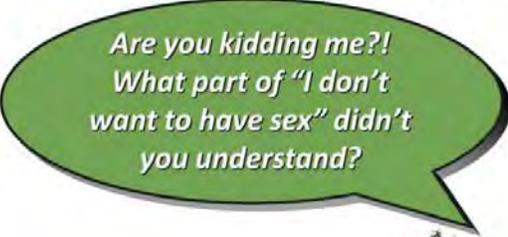


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 Stage 2: Gather – Example #4

Possible Investigator Reactions to an Interviewee Response

<u>Actual Thought</u>	vs.	<u>Professional Speak</u>
 <p><i>Are you kidding me?! What part of "I don't want to have sex" didn't you understand?</i></p>		 <p>Tell me about your thought process when ...</p>



Co-investigators

64

64



Stage 2: Gather – Obtaining Narratives/Evidence

2. Effective questioning



- a. Obtain a narrative (facts may not be relayed chronologically)
 - Can allow the interviewee to choose where to begin
- b. Start with most critical or damning evidence
 - A photograph
 - Video

65

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Stage 2: Gather – Advanced Questioning

2. Effective questioning

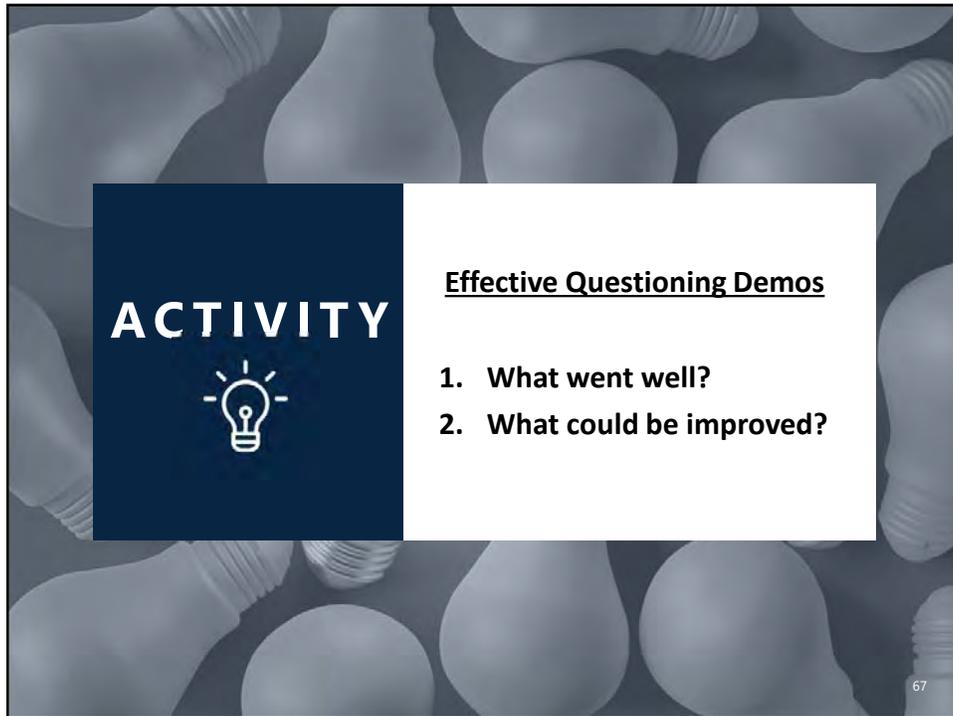
- Clarifying and additional exploratory questioning that follows the trail of information...



- Probing for additional or omitted details.
- Refreshing the memory of a party/witness.
- Addressing interviewing challenges (stay tuned...)
- The “catch-all”

66

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A slide with a background of various lightbulbs. On the left, a dark blue square contains the word "ACTIVITY" in white, bold, uppercase letters, with a white lightbulb icon below it. To the right, a white box contains the text "Effective Questioning Demos" in bold, underlined, black font. Below this, there is a numbered list with two items: "1. What went well?" and "2. What could be improved?". A small number "67" is visible in the bottom right corner of the slide.

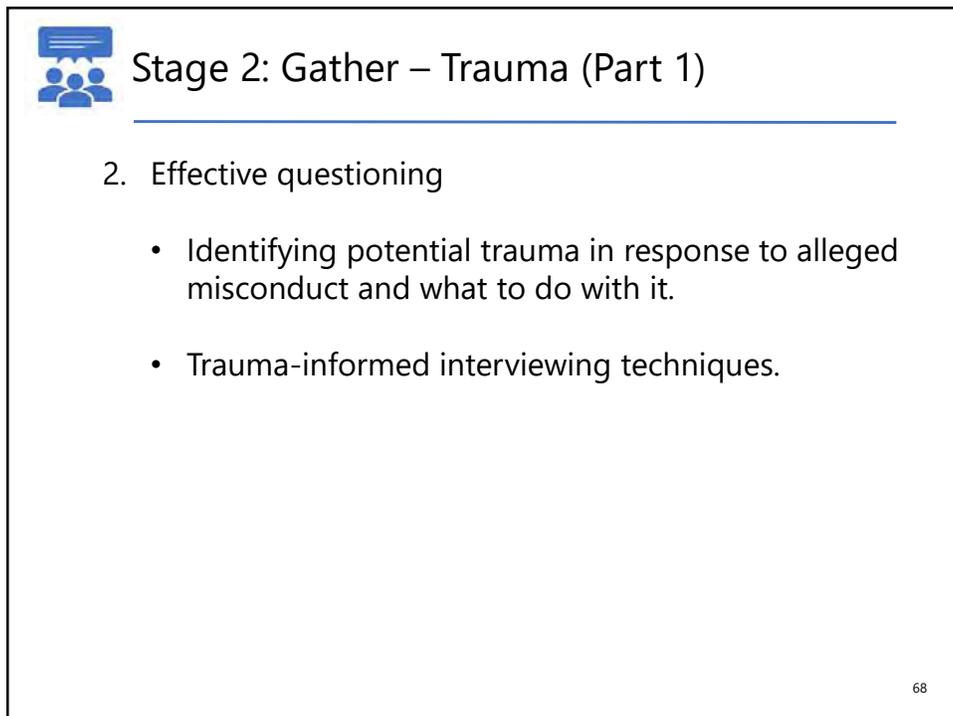
ACTIVITY

Effective Questioning Demos

- 1. What went well?**
- 2. What could be improved?**

67

67

A slide with a white background and a black border. On the left, there is a blue icon of three people with a speech bubble. To the right of the icon, the text "Stage 2: Gather – Trauma (Part 1)" is written in black. A horizontal blue line is positioned below the text. Below the line, there is a numbered list starting with "2. Effective questioning", followed by two bullet points: "• Identifying potential trauma in response to alleged misconduct and what to do with it." and "• Trauma-informed interviewing techniques." A small number "68" is visible in the bottom right corner of the slide.

 **Stage 2: Gather – Trauma (Part 1)**

2. Effective questioning
 - Identifying potential trauma in response to alleged misconduct and what to do with it.
 - Trauma-informed interviewing techniques.

68

68



Stage 2: Gather – Trauma (Part 2)

“Trauma is defined as an event that combines fear, horror, or terror with actual or perceived lack of control.”

- Trauma is subjective. What may be traumatic to one person may not be to another.

Source: Understanding the Neurobiology of Trauma and Implications for Interviewing Victims, Wilson, Lonsway, Archambault, Hopper, November 2016

69

69



Stage 2: Gather – Trauma (Part 3)

The neurobiology of trauma

What does trauma look like during the event (Defense Circuitry)?

- Fight
- Flight
- Freeze
- Dissociation
- Tonic immobility

“When the defense circuitry takes over, the part of the brain that makes logical choices is impaired.”

Source: Understanding the Neurobiology of Trauma and Implications for Interviewing Victims, Wilson, Lonsway, Archambault, Hopper, November 2016

70

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Stage 2: Gather – Trauma (Part 4)

The neurobiology of trauma

What does trauma look like during post-event?

- Memory loss
- Intense emotional reaction (or not)
- Trouble focusing
- Lack of linear memory
- Confused



71

71



Stage 2: Gather – Trauma Informed Interviewing (con't)

- What is the relevant evidentiary value of a possible trauma response? Impact corroboration, maybe? What about credibility? **CAUTION**
- The presence of trauma (fight, flight, freeze, disassociation, etc.) does not prove that the misconduct occurred nor does the lack of trauma provide a reason to disbelieve.
- However, we know that if there is evidence of trauma in response to alleged misconduct, it could explain a gap in memory or the interviewee's odd response to the misconduct or a period of hyper-focus.

72

72



Stage 2: Gather – Trauma Informed Interviewing (con't)

W2: Asked if Complainant was okay
 Complainant: "Yeah, I think so, I have to use the bathroom."
 W2: "Did he [Respondent] touch you?"
 Complainant: "I don't think so, because I don't feel sad." See Exhibits 4 & 14.
 W2: "Are you sure nothing happened and you are ok?"
 Complainant: "I don't know."
 W2: "Why, what do you think happened?"
 Complainant: "He violated me."
 W2: "Did he hurt you?"
 Complainant: "I think so."

When the Complainant said she was violated she became "upset" and began to cry.

73

73



Stage 2: Gather – Trauma Informed Interviewing (Part 1)

What are trauma-informed interviewing techniques?

- **Building rapport is the first step in interviewing victims in a trauma-informed way.**
 - Acknowledge the difficult situation
 - Explain process and investigator's role
- **Set forth expectations for interview:**
 - Investigator will ask detailed questions (may be personal)
 - May ask clarifying questions
 - No judgments will be made
 - There is no wrong answer

74

74



Stage 2: Gather – Trauma Informed Interviewing (Part 2)

- Provide some control to victim (water, breaks, etc.)
- Use a conversational approach rather than a rapid series of questions
 - “Where would you like to start?”
 - “What happened?”
 - “Tell me about . . .”



75

75



Stage 2: Gather – Trauma Informed Interviewing (Part 2)

- Be cognizant of “sensory” responses: sight, sound, smell, feelings
- Be aware of sensitive questioning to avoid **victim blaming** and **rape myth beliefs**.
 - Both of these practices can function to re-victimize the survivor.
 - Explain your reasoning behind difficult questions.

76

76



Stage 2: Gather – Trauma Informed Interviewing (part 2)

2. Effective questioning

- Trauma-informed interviewing techniques are helpful with any party or witness, not just complainants.
- Result is to obtain better information and to have the interviewee leave the interview feeling respected rather than victimized by the interview experience.

77

77



Stage 2: Gather – The Expert Witness

2. Effective questioning

- The expert witness

An expert witness is a person who has specialized or scientific knowledge, skill, experience, or proficiency in a particular field that is relevant to the case.

- Expert witnesses are *supposed* to provide independent, impartial, and an unbiased opinion about evidence in the case

78

78



Stage 2: Gather – Expert Witness Intro

I. INTRODUCTION

- Name and profession
- Qualifications - What makes this person an “expert?”
 - Education
 - Special Training
 - Experience
 - License/Certification
 - Publications
 - Teaching or speaking experience
 - Experience as an expert witness
 - Ever testified as an expert witness?
 - Ever been disqualified as an expert witness?

79

79



Stage 2: Gather – Expert Witness Assignment

II. EXPERT’S ASSIGNMENT

- What have you been asked to do/examine/compare in the case?
- Are you receiving compensation for your opinion and testimony? If so, how much and by whom?
- Did you reach an opinion?
- What information did you receive and rely on to make an opinion?
- What techniques, methodology, or process did you use on the information received?
- Is this the type of information relied on by experts in their field?

80

80



Stage 2: Gather – Expert’s Opinion

III. EXPERT’S OPINION

- What is your opinion?
- How did you arrive at your opinion?
- Did you make any assumptions based on the information? If you change your assumption, does your opinion change?
- Why are you sure of your opinion?
- Are there alternative techniques or methods that could result in a different opinion?

81

81



Stage 2: Gather – Physical Evidence

3. Identifying and obtaining physical evidence

Examples of how physical evidence can be critical to your case:

- ✓ The text message that the Respondent allegedly sent to the Complainant’s roommate admitting to the misconduct.
- ✓ The medical report noting the injury that the Complainant claims to have sustained during the alleged misconduct.
- ✓ Campus building access report that shows the Complainant was not in the library on the date and time of the alleged misconduct.

82

82

 **Stage 2: Gather – Examples**

Party/witness interviews

3. Identifying and obtaining physical evidence

- Ask parties/witnesses if physical evidence available and, if so, can you have it.
- Investigators should have access to campus access card records and video surveillance camera footage.

83

83

 **Stage 2: Gather**

Party/witness interviews

3. Identifying and obtaining physical evidence

- Documents from third-party sources
- Boots on the ground!

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Stage 5: Autonomy, Neutrality, and Objectivity

- 34 C.F.R. 106.45(b)(1)(iii)

Requires that any individual designated by a recipient as a Title IX Coordinator, investigator, decision-maker, or any person designated to facilitate the informal resolution process may not have a conflict of interest or bias either for or against complainant, respondent, or individual parties.

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Stage 5: Regulations and Investigators

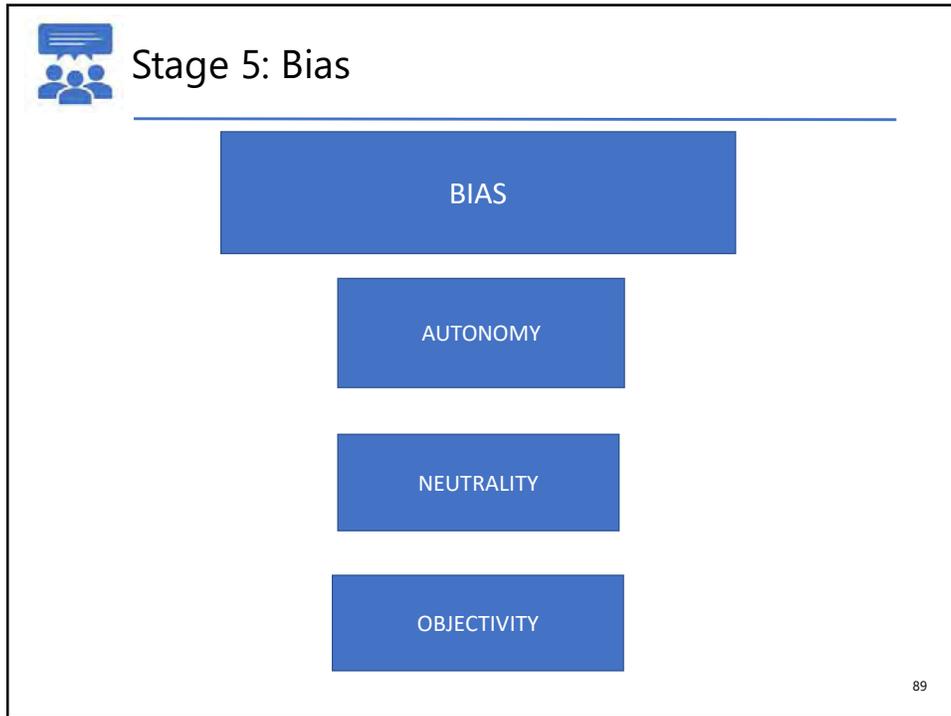
As the Final Regulations apply to Investigators:

Investigators are neutral, objective, and impartial. An impartial investigation performed by a bias and conflict-free investigator is the substantive foundation of the entire grievance process.

Note: The Regulations establish a low floor without defining what the terms "impartial investigation, bias and conflict free".

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 Stage 5: Bias defined

Defined as: *An inclination toward (or away from) one way of thinking, many times, based on how you were raised.*

➤ Examples:

- Assuming that Complainants or Respondents are generally more likely to tell the truth
- Assuming the Complainant "had it coming" based on what they were wearing, how much they had to drink, or because they were at a fraternity party

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Stage 5: Bias (con't)

As an investigator:

- Not on anyone's side
- Presumption of non-responsibility
- You are helping the decision-maker(s) decide responsibility/non-responsibility based on reliable and relevant evidence
- You are an advocate for the process – not either party
- Credibility is determined by specific factors, not a party's status as a complainant or respondent.

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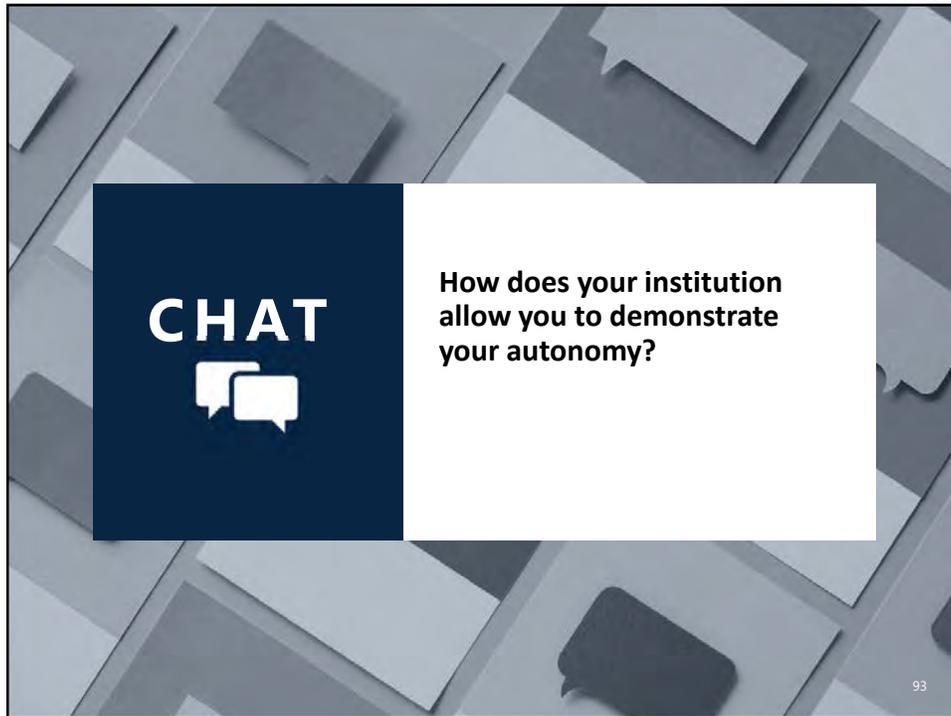
Stage 5: Autonomy

Defined as: *Independence or Freedom*

- Are you able to conduct the investigation without internal or external interference or influence?
 - High profile cases
 - Media influence

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CHAT

How does your institution allow you to demonstrate your autonomy?

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Stage 5: Neutrality

Defined as: *Not aligned with or supporting a side or position.*

- Understand and respect the rights of both parties
- Facts are presented as gathered – allow parties and witnesses to review and revise their statements
- Questioning conducted using non-judgmental language:
 - "Do you remember how much you drank before you went to the house party?"
 - Not: "Were you thinking about how much you were drinking before you left your residence hall room?"

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Stage 5: Appearance of Neutrality

- Meeting with one party more than the other without explanation
 - Does your policy address this?
- Number of witnesses on either side does not determine outcome
- Perception of neutrality throughout the university

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Stage 5: Objectivity

Defined as: *Not being influenced by personal feelings, interpretations, or prejudice.*

- How do you act or respond to a party or witness you find obnoxious, conceited, or generally unlikable?
- How do you act or respond to a party or witness you find likable?

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Stage 5: Conflicts of Interest

- Exist when the investigator has a personal or professional interest in the matter, and prevent the investigator from discharging their duties in a fair, neutral, and impartial manner
- Arise depending upon the investigator's relationship to a party, or witness

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Stage 5: Strategies

- We all have biases
 - Evaluate/Recognize when you are having a biased or stereotypical thought
 - Identify the reasons behind the thought
 - Replace the biased/stereotypical thought with a non-stereotypical response

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Stage 5: Strategies (con't)

- Improve Decision Making
 - Slow down
 - Ask: What assumptions have I made about the gender identity, religious beliefs, athletic status?
 - What evidence supports the conclusions I draw and how have I challenged the "unsupported" assumptions
- Practice - and be present.

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QUESTIONS?

ACADEMIC
IMPRESSIONS

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ACTIVITY

A white line-art icon of a lit lightbulb with rays emanating from it, positioned below the word 'ACTIVITY' in the dark blue box.

NETWORKING RECEPTION

We invite you to turn on your cameras and mics to ask any remaining questions and to network with each other.

101

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AGENDA

March 25, 2021

1. Understanding Witness Testimony Challenges
2. Confronting Interviewing Challenges
3. Small Group Activity: Mock Interviews
4. Stages 3&4: Compile and Assess for Relevance
5. Stage 5: Drafting the Investigation Report
6. Testifying at the Hearing
7. Final Q&A and Conference Wrap up

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ACTIVITY



Refresh & Reset

Please share one investigation strategy that you learned yesterday that you can begin applying right away.

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#6

Understanding Witness Testimony Challenges

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CHAT

As an investigator, what are the challenges you face when eliciting testimony?

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#7

Confronting Interviewing Challenges

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Stage 7: Interviewing Challenges

- Three Categories of Witnesses
- Witnesses who have difficulty articulating their story
- Determining if a witness is lying

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Stage 7: Categories of Witnesses

- Willing to cooperate
- Reluctant to cooperate
- Refusal to cooperate

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Stage 7: Reluctance (Reasons)

- Fear of getting involved
 - Includes fear of getting in trouble
 - Guilty of something
- Mistrust of the University, the investigation process, the investigator
- Fear of retaliation
- Fear of not being believed
- Fear of re-traumatization (complainant)
- Fear/discomfort with subject matter

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Stage 7: Reluctant Complainants

- May have important information connected to their own safety or campus safety
- Specific reasons:
 - Uncomfortable/trauma
 - Not wanting to get anyone (respondent) in trouble
 - Pressure not to report
 - Concern their report is “not serious enough” or their report will not meet the policy violation threshold
 - May not understand the investigation and grievance process

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Stage 7: Reluctant Respondents

- Secured legal counsel
 - Advised not to give a statement
- Concern their testimony will not be believed
- May not understand the investigation and grievance process

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Stage 7: Reluctant Witnesses

- Fear of getting involved
 - Includes fear of getting in trouble
 - Guilty of something
 - Taking sides
- Mistrust of the University, the investigation process, the investigator
- Fear of retaliation
- Fear of not being believed
- Fear/discomfort with subject matter

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Stage 7: Reluctant Party/Witness Interview Preparation

- Importance of your initial contact
- Professional, respectful, and equitable for all parties involved
- Prepare for the interview- thought out- open ended questions
- Format of the interview: Zoom, Teams, or in-person – wherever they are most comfortable

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Stage 7: Control the Room

Whoever is in the room, or not in the room can impact the interview – consider:

- How many investigators are present
- Advisor
- **Non-Advisor parent or other person**

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Stage 7: Transparency

Explain	Explain your role as the investigator
Explain	Explain the process and their role
Do Not Make	Do not make promises you cannot keep and keep your promises
Set	Set realistic timelines and update
Explain	Explain you may need to follow up with them or re-interview them
Explain	Explain school policies about drug & alcohol use as well as any amnesty policy.

14

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Stage 7: Getting Parties and Witnesses to Talk

- Make an attempt to establish a personal connection
- If this is an in-person interview – candy
- Begin with the positive
- Appreciate their time and their assistance will help establish what happened or prevent another similar incident
- Flexibility
- Most people are comfortable in familiar settings and convenient times.
- If possible, give parties and witnesses the option of where/what format and when they will be interviewed.
- Record or not record – reluctant parties/witnesses do not like to be recorded. Ask permission!

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Stage 7: Getting Parties and Witnesses to Talk (con't)

- Remind a reluctant witness this isn't about them – it's about improving campus safety/workplace issues.
- Remind them the decision to participate is completely theirs – you are providing them with a degree of influence and control over the process.
 - Except – employment issues (depending upon your institution), one of the conditions and expectations of employment is to cooperate.
- Draw diagram of the room, direction, distance, access, location
 - Leads to points of reference and allows for more detailed discussions

16

16



Stage 7: The Hard Questions

- Allow the party/witness to finish their story before you push-back
- Say, "I want to back through this part slowly, so I understand."
- When asking the hard questions:
 - Say, "I would like to ask some hard questions, is that ok with you?"
 - Explain why you are asking the question.
 - Wait to confront the party/witness with adverse evidence – it may make them less willing to continue talking.
 - Let the party/witness know you are attempting to figure out what doesn't track and why.
 - Don't accuse
 - Don't ask "why?"

17

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Stage 7: The Lying Witness

How do you know?

- What physical evidence do you have?
 - Video
 - Card swipe information
 - Text messages with date/time stamp

Treat each party and witness equitably and on face value unless the evidence suggests otherwise.

18

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Stage 7: Confronting inconsistent or contradictory statements

Cara's and Chris' three "C's" to confronting inconsistent or contradictory statements

1. Catch the inconsistent statement (statement that is different than the statement given before or different from the physical evidence)
2. Commit the interviewee to the statement being made
3. Confront with the inconsistency or contradiction using the prior statement or physical evidence

19

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Stage 7: What Not to Do

- Use the "bad cop" approach. If the party or witness is reluctant, find out why.
- Get into a conflict with a party or witness about their reluctance to participate.
- Flattery when establishing rapport – it never goes well.
- Use the 20 questions approach.
- Cut off a statement so you can move on to your next pre-arranged question.

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Stage 7: Finally

- Take what you can get
 - Phone call conversations
 - Written statement

- An effective investigator can turn reluctance into cooperation with a non-combative and empathetic approach.

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QUESTIONS?

 ACADEMIC
IMPRESSIONS

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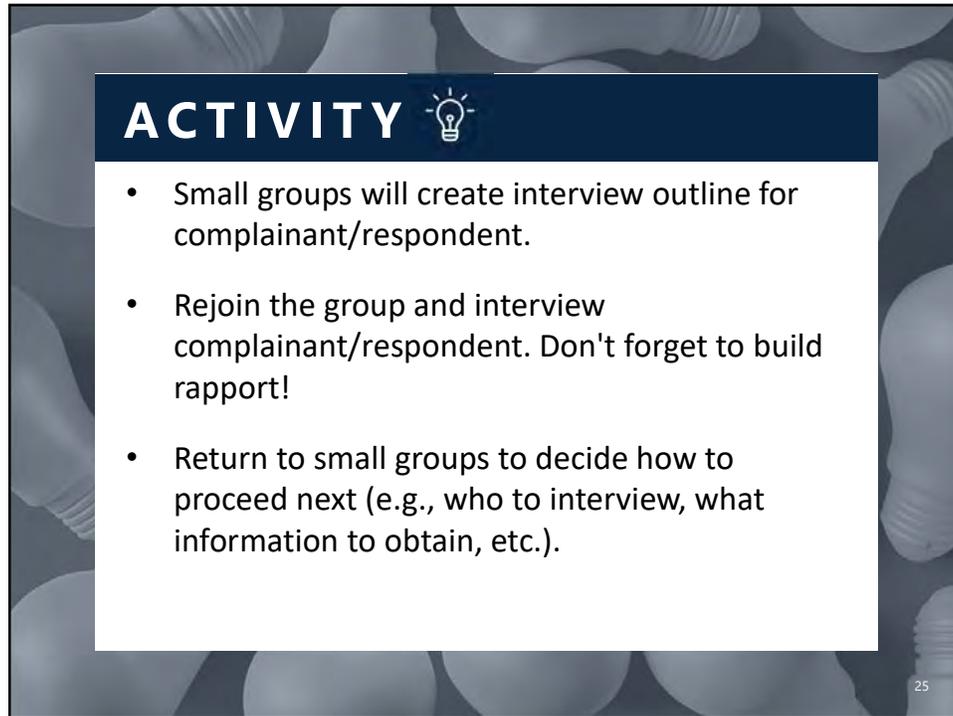
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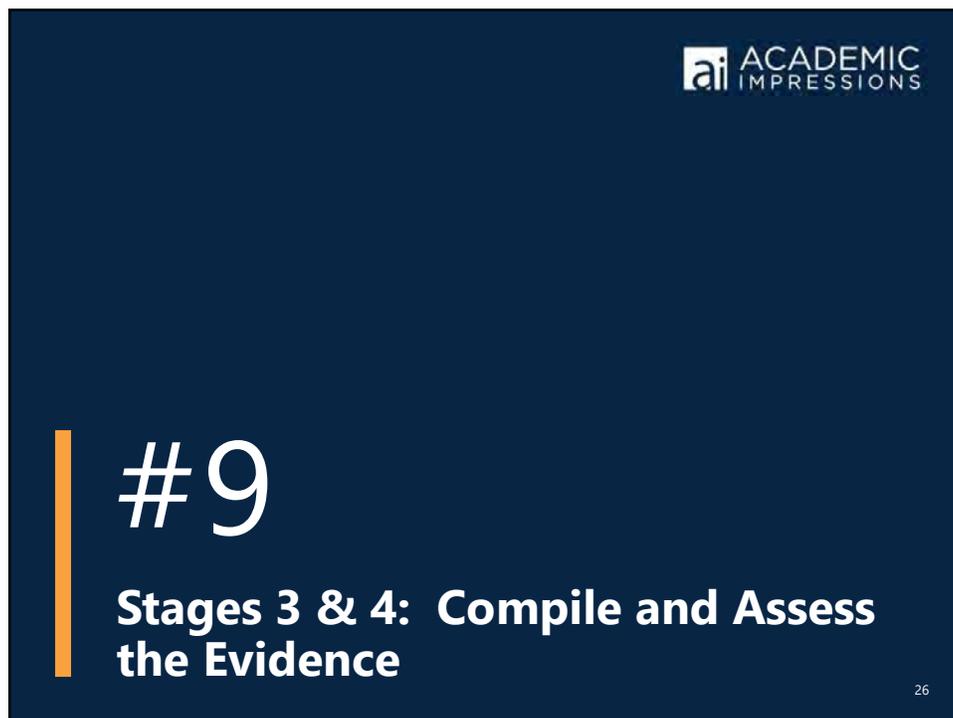
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ACTIVITY

- Small groups will create interview outline for complainant/respondent.
- Rejoin the group and interview complainant/respondent. Don't forget to build rapport!
- Return to small groups to decide how to proceed next (e.g., who to interview, what information to obtain, etc.).

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ai ACADEMIC IMPRESSIONS

#9

Stages 3 & 4: Compile and Assess the Evidence

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Stage 3: Compile the Evidence

Putting together the Investigative File

- When the investigator finishes gathering the available evidence, the investigator compiles all the information *"directly related to"* the allegations raised in the formal complaint into the "Investigative File." §106.45(b)(5)(vi)
 - The Investigative File is provided to the parties and their advisors for review and response (provide at least 10 days for review and response).
 - Party written responses attached to Investigative File and shared with other party and their advisor.

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CHAT

Share a challenge you face when compiling the Investigative File. How did you overcome it?

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Stage 4: Assessing evidence "directly related to" allegations

Assessing the evidence to determine whether the evidence is "directly related to the allegations."

- "Directly related to" undefined within the Final Regulations.
- Evidence directly related to the allegations isn't necessarily relevant evidence.
- Includes evidence that the school does not intend to rely on in reaching a determination.

29

29

ACTIVITY

Scenario 1: Assessing for evidence "*directly related to*" the allegations

Complainant alleges that Respondent sexually harassed him on Saturday, October 31, 2020, in his dorm room.

In response to this allegation, the Respondent provides the investigator her United Airlines itinerary showing the Respondent flew home the morning of October 31. Respondent says that she went home to undergo a medical procedure. Respondent returned to campus on November 3, as reflected on the flight itinerary.

Respondent provides the medical procedure appointment confirmation for November 2, 2020, and the discharge summary from the medical procedure.

Complainant was found responsible for an academic integrity infraction (i.e., plagiarism), last semester.

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ACTIVITY

Scenario 2: Assessing for evidence “directly related to” the allegations

Complainant alleges that the Respondent raped her last Saturday night in her dorm room after she'd been drinking alcohol. She provides a picture of what she claims to be a spot of blood on her bedsheet. She also provides a copy of her SANE report (with written consent) noting injuries in and outside the Complainant's genitalia.

Investigator has visitor log for Complainant's dorm. Complainant checked in and out two different males, within two hours of one another, the second being the Respondent.

Investigator interviews first male. He says he and the Complainant had sex while in the Complainant's dorm room on Complainant's bed. They split up after they returned to the party.

Respondent testifies that he had sex with the Complainant on the floor of her dorm room and the sex was consensual. Complainant walked the Respondent out of the dorm.

31

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ACTIVITY

Scenario 3: Assessing for evidence “directly related to” the allegations

Complainant alleges that the Respondent (a fellow faculty member) persistently calls her pet names like “angel,” “love,” “honey,” and “sweetie,” and he twice told her that he pictured her as a dominant in bed.

Respondent says that he calls all his close friends pet names and does so to offer comfort and reassurance. Respondent denies the allegation that he told the Complainant that he pictures her as a dominant in bed.

Three faculty members in the department, 2 females and 1 male (who are effeminate males), testify that the Respondent has called them pet names like “angel,” “love,” “honey,” and “sweetie.” Another male colleague, former college football player, testified that the Respondent has called him only “bro” and “dude.”

One colleague testifies that the Respondent, unsolicited at a department meeting, asked him if he was a dominant or submissive in bed.

Another colleague testifies that the Respondent has a record of sexually harassing behavior at the Respondent's prior institution.

32

32

 Stages 3 & 4: Piles of Evidence

The Evidence



Evidence “directly related” to the allegations

Investigative File



Relevant evidence

Summarized in the Investigative Report



Other evidence

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 Stages 4: Assessing evidence for relevance

Assessing evidence for relevancy

- “Investigative Report” summarizes ONLY the relevant evidence

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Stage 4: What is "Relevant Evidence?"

RELEVANCE

Evidence is relevant if:

- (a) *It has the tendency to make a fact more or less probable than it would be without the evidence; and*
- (b) *The fact is of consequence in determining the action.*

A better definition of relevance:

Does the item of evidence tend to prove or disprove the fact (or element) sought to be proved? If yes, then the evidence is relevant.

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Stages 3 & 4: Relevance, cont.

RELEVANCE

Evidence is also relevant if:

- Provides context surrounding the allegations.
- It serves to bolster or diminish a person's credibility when a party or witnesses' credibility is an issue in the case.

36

36



Stages 3 & 4: Not Relevant

Evidence that is NOT relevant or is otherwise precluded from the grievance process:

- i. A Party's treatment records, unless have consent. §106.45(b)(5)(i)
- ii. Information protected by a legally recognized privilege, unless have consent. §106.45(b)(1)(x)

37

37



Stages 3 & 4: Prior Sexual Behavior

- iii. Questions or evidence about a Complainant's sexual predisposition, or about a Complainant's prior sexual behavior unless it meets one of two limited exceptions. §106.45(b)(6)(i)-(ii):
 1. That someone other than the Respondent committed the conduct alleged by the Complainant, or
 2. If the questions and evidence concern specific incidents of the Complainant's prior sexual behavior with respect to the Respondent are offered to prove consent.

38

38



Stages 4: Cannot exclude relevant evidence

"...A recipient may not adopt a rule excluding relevant evidence because such relevant evidence may be unduly prejudicial, concern prior bad acts, or constitute character evidence."

Final Regulations, preamble, p. 834-835 (Federal Register Version)

Relevance v. Weight



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ACTIVITY

Scenario 1: Assessing for "Relevance"

Complainant alleges that Respondent sexually harassed him on Saturday, October 31, 2020, in his dorm room.

In response to this allegation, the Respondent provides the investigator her United Airlines itinerary showing the Respondent flew home the morning of October 31. Respondent says that she went home to undergo a medical procedure. Respondent returned to campus on November 3, as reflected on the flight itinerary.

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ACTIVITY

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ACTIVITY

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#10

Stage 5: Drafting the Investigation Report

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Stage 5: Drafting the Investigative Report

- Investigator drafts an “Investigative Report” that fairly summarizes the relevant evidence and sends it to the parties and their advisors.
 - It is the investigator’s role within the Investigative Process to determine what is “relevant evidence.” Decision-maker(s) will do the same at and after the hearing.
 - Parties may submit a written response to the Investigative Report, which will be provided to the other party and attached to the Investigative Report (must have at least 10 days to respond). §106.45(b)(5)(vii).

46

46

 Stage 5: Investigative File v. Investigative Report

Investigative File v. **Investigative Report**



INVESTIGATIVE REPORT
PERSONAL AND CONFIDENTIAL

I. Introduction

[University] is a recipient of Federal funding and must comply with Title IX of the Higher Education Act of 1972. Title IX is a federal civil rights law that prohibits discrimination based on sex in any federally funded education program or activity. It applies to students, faculty, and staff members of the university.

[University] Sexual Harassment and Discrimination Policy (the "Policy") prohibits Sexual Harassment and Sex Discrimination in the university's Programs and Activities. The Policy complies with the mandates set forth under Title IX, including the May 2020 Final Regulations issued by the United States Department of Education's Office for Civil Rights. Sexual Harassment is a broad term encompassing behaviors based on sex, including: (1) Quasi Pro-Quasi Sexual Harassment, (2) Hostile Environment Sexual Harassment, (3) Sexual Assault, (4) Dating Violence, (5) Domestic Violence, and (6) Stalking.

According to Title IX and the Policy, when [University] has actual knowledge of Sexual Harassment, or allegations thereof, and upon the filing of a Formal Complaint alleging Sexual Harassment, it must respond by following the Grievance Procedure and Grievance Process outlined within the Policy.

II. The Formal Complaint

The Complainant filed a Formal Complaint against Respondent. The Formal Complainant alleges that the Respondent engaged in Sexual Harassment, specifically [name offense(s)], in violation of the [University] Sexual Harassment and Discrimination Policy.

III. Jurisdictional Statement

The [University] has jurisdiction over a Formal Complaint attaches when the alleged Sexual Harassment occurred within a University Education Program or Activity and against a person in the United States. The Parties are both [University] students. The Complainant alleges that the Respondent sexually harassed them connected with and surrounding their participation within a university Program or Activity [name specific program or activity]. Accordingly, the Policy has jurisdiction over the Formal Complaint.

IV. Applicable Offense(s)

- List offenses and their definitions

V. Supportive Measures

- Explain supportive measures discussed and those put in place for each party.

See 2020 Title IX Regulations, 34 C.F.R. § 106.35.

47

47

 Stage 5: Report Outline

Outline of Investigative Report

- Explanation of alleged misconduct
- Applicable offenses
- Description of procedural steps taken during investigation*
- Evidence obtained
- Witnesses interviewed
- Supportive measures (whether they were/were not provided)
- Jurisdictional statement
- Summary of relevant evidence



- OR -

§106.45(b)(5)(vii).

48

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Stage 5: Report Must Include

- Identify undisputed facts, corroborated facts and contested/disputed facts, and/or
- Analysis of the relevant evidence, including a credibility analysis, and/or
- Recommended findings or conclusions.

CAUTION: It is important that investigators not unduly influence the hearing outcome.

49

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Stage 5: Investigator's Recommendation

"The Department does not wish to prohibit the investigator from including recommended findings or conclusions in the investigative report. However, the decision-maker is under an independent obligation to objectively evaluate relevant evidence, and thus cannot simply defer to recommendations made by the investigator in the investigative process."

Final Regulations, preamble p. 1059 (Federal Register Version).

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Stage 5: Summarizing – Example #1

How to summarize the relevant evidence within the Investigative Report:

1. Explain the allegations.
2. Explain the context surrounding the allegations.
3. Explain the undisputed facts relating to the allegations.
4. Explain the contested facts, or facts in dispute relating to the allegations.
5. Explain the evidence that appears to corroborate or refute the allegations.

- OR -

51

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Stage 5: Summarizing – Example #2

“Both parties agree they walked to the Complainant’s dorm room together and shortly after that engaged in sexual activity. The Complainant claimed they were too drunk to consent to sexual activity. The Respondent insisted they had no idea the Complainant was too drunk and claims that the Complainant walked independently, without assistance, to the dorm room just before engaging in sexual activity. However, the Respondent’s claim is inconsistent with the video footage from the hallway leading to the Complainant’s room. The video shows the Respondent holding the Complainant upright to assist the Complainant, who was stumbling and staggering, as they walked to the dorm room.”

52

52

RESOURCES

See Sample Outline for Investigative Report in your Resources

INVESTIGATIVE REPORT
PERSONAL AND CONFIDENTIAL

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IV. Applicable Offense(s)

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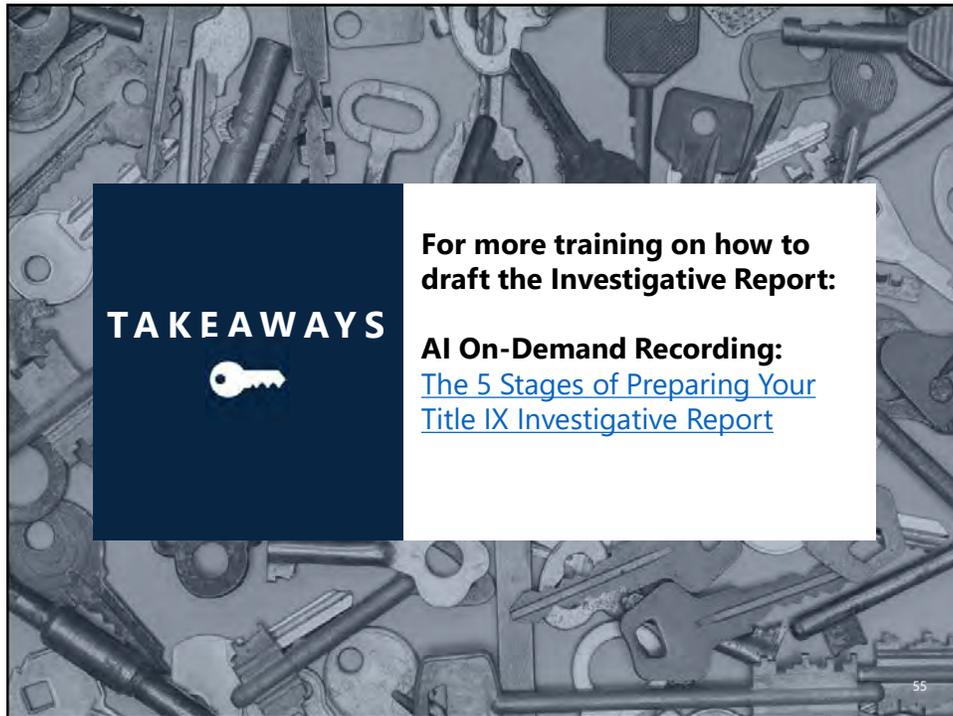
Stage 5: Title IX Coordinator's Review

Title IX Coordinator Review of Investigative Report. After the parties have reviewed and responded to the investigative report, the Title IX Coordinator will review the investigative report and written responses and determine next steps.

- Following the investigative process, formal complaints of sexual harassment may:
 - Be dismissed entirely or just certain allegations (§106.45(b)(3)(i, ii)),
 - Be resolved through the informal resolution process, or
 - Proceed to the hearing process.

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TAKEAWAYS



For more training on how to draft the Investigative Report:

AI On-Demand Recording:
[The 5 Stages of Preparing Your Title IX Investigative Report](#)

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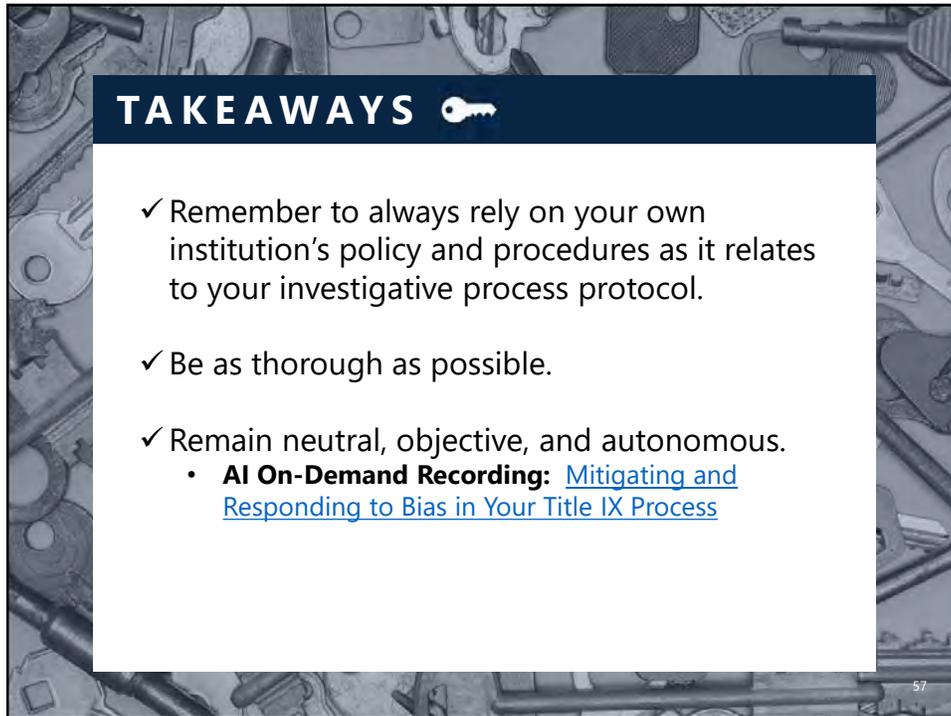


QUESTIONS?



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TAKEAWAYS 

- ✓ Remember to always rely on your own institution's policy and procedures as it relates to your investigative process protocol.
- ✓ Be as thorough as possible.
- ✓ Remain neutral, objective, and autonomous.
 - **AI On-Demand Recording:** [Mitigating and Responding to Bias in Your Title IX Process](#)

57

57



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IMPRESSIONS

#11

Testifying at the Hearing

58

58



Testifying at the Hearing

Investigators will likely testify at the hearing.

- Investigators may be questioned by the decision-maker(s).
- Investigators may be questioned and cross-examined by party advisors.



59

59



Testifying at the Hearing: Cross-Examination

What is cross-examination? Questioning designed to:

- Allow the parties to probe/challenge the credibility, plausibility, and reliability of statements asserted by parties/witnesses.
- Give the decisionmaker(s) the opportunity to observe parties and witnesses answer questions, including those challenging credibility, to serve the truth-seeking purpose of an adjudication.
- Permit parties to pose questions intended to promote the asking party's perspective with respect to the allegations at issue and bring out additional facts and details about the alleged incident.

60

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Cross-Examination: Leading Questions

- Attorney advisors will typically conduct cross-examination by using leading questions.
 - Leading (or closed) questions generally solicit a “yes” or “no” answer and essentially suggests the answer to the question.

“You were texting while driving at the time of the accident, correct?”

61

61



Cross-Examination: Credibility Challenge

- Cross-examination is also a method of challenging credibility.

Question: *In your statement to police, immediately following the incident, you said the respondent sexually assaulted you in the bathroom at the bar.*

Answer: Yes.

Question: *You told the investigator, a week later, that the respondent sexually assaulted you in your dorm room.*

62

62



Testifying at the Hearing: Investigator Witness

The investigator as a witness:

- May testify about the procedural steps taken during the investigation.
- May be asked why the investigator did or did not interview a specific witness, pursue a specific topic during the questioning of a party or witness, or obtain certain evidence.
- May be asked about observations made during the evidence collection phase of the investigation.
- Should not be asked for opinion on outcome.

63

63



5 Tips for Testifying and Surviving Cross-Examination

1. Prepare
2. Answer the Question Asked
3. Be Positive and Confident
4. Responding to Leading Questions
5. Control Yourself



64



#1 – Prepare

- Review all the evidence you collected during the investigation.
- Review the procedural steps taken during the investigation.
- No need to memorize! Bring information with you to the hearing and ask to refer to it if necessary.

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#2: Answer the Question Asked

- Listen carefully to the questions you are asked and answer that question. Explain yourself, if necessary.
- If you don't understand the question, have it repeated or clarified before you answer.
- Remember: Wait to answer questions from advisors until decision-maker tells you to do so.

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#3: Be Positive and Confident

- Give definite answers
- Avoid speculation by saying, "I think," "I believe," or "in my opinion," if you can answer positively.
- If you don't know, say you don't know.
- If you don't recall, say you don't recall. (If there is information available to refresh your recollection, ask to review that information before answering the question.)

67

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#4: Responding to Leading Questions

- If questions can't be fully answered with a "yes" or "no," it's okay to explain your answer.
 - If advisor tries to cut you off before you finish your answer, ask the Hearing Officer to allow you to finish answering the question.

68

68



#5: Control Yourself

- Stay calm, cool, and collected
- Avoid arguing with the decision-maker(s) or advisors
- Take nothing personally
- Remain courteous but firm if your professional competency or your work product is challenged

69

69

ACTIVITY

Demo cross-examination of investigator

Advisor: Cara Hardin

Investigator: Christine Taylor

70

70



71



72