Title IX Higher Ed Level 2

Title IX Investigator Training

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Disclaimers

We can't help ourselves. We're lawyers.

- We are not giving you legal advice
- Consult with your legal counsel regarding how best to address a specific situation
- Feel free to ask general questions and hypotheticals
- If you did not receive your slides by email, we will post a link in the chat box. Please download and save them!

Presentation Rules

- Seriously – questions are encouraged!
- "For the sake of argument…"
- Be aware of your own responses and experiences
- Follow-up with someone if you have questions and concerns
- Take breaks as needed

Posting These Training Materials?

- Yes!
- Your Title IX Coordinator is required by 34 C.F.R. §106.45(b)(10)(i)(D) to post materials to train Title IX personnel on its website
- We know this and will make this packet available to your institution electronically to post

Additional information available at:

Title IX Resource Center at www.bricker.com/titleix

Find us on **Twitter** at **@BrickerHigherEd**

Required Training for Investigators

- Definition of Sexual Harassment (Level 1)
- Scope of Institution's Education Program or Activity (Level 1)
- How to conduct an Investigation
- Steps of the Grievance Process (Level 1)
- Serving Impartially and without Bias
- Issues of Relevance

Topics

- Change in role of investigators
- Bias and conflicts of interest
- Relevancy
- Investigative Techniques
- Mock Interview
- Writing a report
- Takeaways

Aspirational Agenda

Day 1
1:00-2:00 Introduction, Investigator's Role, Impartiality and Bias
2:00-2:30 Relevance
2:30-2:45 Break (Q&A with presenters available during break)
2:45-4:00 Relevance and Relevancy Hypotheticals

Day 2
9:00-10:00 Investigative Techniques
10:00-10:45 Live Interview Scenario
10:45-11:00 Break (Q&A with presenters available during break)
11:00-12:00 Investigative Techniques/Writing the Report

Changes to the investigator's role

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No single-investigator model

- The role of investigator and decision-maker MUST be separate.
- The investigator does not make decisions. This helps to prevent bias of information the investigator may have "gleaned" from the investigation process that is otherwise not relevant to the decision.

The investigation and report will consider more information

- The investigator has the burden of asking the parties for and collecting all relevant evidence.
- Relevant may be institution-determined, but we will discuss it further later today.
- Parties have the right to present fact and expert witnesses.
- Issues of relevancy will often not be made until the decision-maker is involved (after your involvement).

The Investigator's Roles

1. The gatherer of all relevant evidence.
2. The organizer of all relevant evidence.

Being Impartial and Avoiding Bias, Conflict of Interest, and Prejudgment of Facts

Impartiality and Avoiding Bias, Conflict of Interest and Prejudgment of Facts 1 of 2

Section 106.45 **requires** that investigators (and Title IX Coordinators, decision-makers, informal resolution officers and appeals officers)

- be free from **conflict of interest, bias,** and
- be trained **to serve impartially** and **without prejudging facts**.

(30053)

Impartiality and Avoiding Bias, Conflict of Interest and Prejudgment of Facts 2 of 2

- We will discuss each of these individually and provide examples, but some of the factors for each overlap.
- For example, being impartial is greatly aided by not pre-judging facts.

(30249-30257; 30496)

Impartiality

- Be neutral
- Do not be partial to a complainant or a respondent, or complainants and respondents generally
- Do not judge: memory is fallible [and it's contrary to your neutral role] (30323)

Bias: Concerns raised in comments in preamble

- Neutrality of paid staff in Title IX positions
- Institutional history and "cover ups"
- Tweets and public comments
- Identifying as a feminist

Perceived v. Actual Bias

- Both can lead to the same perception (30252)
- On appeal of decisions, the Department requires the bias "that could affect the outcome of the matter"

How the Department tried to prevent bias

No single-investigator model (34 C.F.R. 106.45(b)(7)(i)):

- Decision-maker (or makers if a panel) must not have been the same person who served as the Title IX Coordinator or investigator (30367)
- Separating the roles protects both parties because the decision-maker may not have improperly gleaned information from the investigation that isn't relevant that an investigator might (30370)
- The institution may consider external or internal investigator or decision-maker (30370)

Bias: Objective Rules and Discretion 1 of 2

"[R]ecipients ***should*** have objective rules for determining when an adjudicator (or Title IX Coordinator, investigator, or person who facilitates an informal resolution) is biased, and the Department leaves recipients discretion to decide how best to implement the prohibition on conflicts of interest and bias…" (30250)

Bias: Objective Rules and Discretion 2 of 2

- **Discretionary**: Recipients have the discretion to have a process to raise bias during the investigation.
- **Mandatory**: Basis for appeal of decision-maker's determination per 34 C.F.R. 106.45(b)(8)(i)(C).

Conflict of Interest: Concerns raised in comments in preamble

- Financial and reputational interests of Title IX employee aligns with institution
- Past advocacy for a survivor's group
- Past advocacy for a respondent's group

Preamble Discussion on Bias and Conflict of Interest 1 of 3

- Final regulations "leave recipients flexibility to use their own employees, or to outsource Title IX investigation and adjudication functions, and the Department encourages recipients to pursue alternatives to the inherent difficulties that arise when a recipient's own employees are expected to perform functions free from conflicts of interest and bias." (30251)

Preamble Discussion on Bias and Conflict of Interest 2 of 3

- No *per se* prohibited conflicts of interest in using employees or administrative staff
  - including supervisory hierarchies (but see portion about decision-makers and Title IX Coordinator as supervisor)
- No *per se* violations for conflict of interest or bias for professional experiences or affiliations of decision-makers and other roles in the grievance process

(30352-30353)

Preamble Discussion on Bias and Conflict of Interest 3 of 3

- Example: it is **not** a *per se* bias or conflict of interest to hire professionals with histories of working in the field of sexual violence (30252)
- Cautions against using generalizations to identify bias and conflict of interest and instead recommends using a reasonable-person test to determine whether bias exists.

Example of Unreasonable Conclusion that Bias Exists

- "[F]or example, assuming that all self-professed feminists, or self-described survivors, are biased against men, or that a male is incapable of being sensitive to women, or that prior work as a victim advocate, or as a defense attorney, renders the person biased for or against complainants or respondents" is **unreasonable** (30252)

Training, Bias, and Past Professional Experience

This required training (that you are sitting in right now) can help protect against disqualifying someone with prior professional experience

(30252)

Department: Review of Outcomes Alone Does Not Show Bias

- Cautioned parties and recipients from concluding bias or possible bias "based solely on the outcomes of grievance processes decided under the final regulations."
- Explained: the "mere fact that a certain number of outcomes result in determinations of responsibility, or non-responsibility, does not necessarily indicate bias." (30252)

Examples of Bias

- An investigator used to supervise one of the parties;
- Information "gleaned" by the investigator is shared with the decision-maker outside the investigation report (in meetings to discuss pending cases, in passing while at work, etc.)

Avoiding Prejudgment of Facts at Issue

A good way to ensure impartiality and avoid bias:

- Keep an open mind and actively listen
- Each case is unique and different

Hypotheticals 1 of 2

Thinking about how to move forward with some issues of impartiality, conflict of interest and bias (perceived or actual).

Hypotheticals 2 of 2

Scenario for the next several hypotheticals:

You are an investigator for your Tile IX Office. You have just been handed a formal complaint to investigate. An initial review did not identify you as having any conflict of interest or bias. But you will need to assess the following situations based on additional information you have.

Hypothetical 1

You review the report and realize that the name of one of the parties seems familiar to you from a past and unrelated investigation. You don't have any real memory of the case or any thoughts you have of that party, but you realize that could change when you meet the party.

What should you do?

Hypothetical 2

Your institution's student conduct office, Title IX office, and Greek life office meet weekly to discuss student issues and potential issues. In these meetings, you discuss specific students by name for continuity of care for students and to ensure everyone is on the same page. As a result, you have heard other employees discuss the parties in the case handed to you and some of it seemed to indicate that the Complainant may be dramatic.

What should you do?

Hypothetical 3

The formal complaint you are handed includes a former coworker from the Title IX Office who now works in a different office at the institution. You do not like this former coworker. You do not know the other party involved.

What should you do?

Hypothetical 4

During your investigation, the Respondent's attorney accuses you of bias because of your former work as a victim advocate.

What should you do?

The Bottom Line

Be Human & Be a Blank Slate

Issues of Relevance

What is Relevant? 1 of 3

The new regulations don't really tell us directly.

The preamble discussion indicates that it may include: evidence that is "**probative of any material fact concerning the allegations**." (30343)

What is Relevant? 2 of 3

The preamble also tells us:

"evidence pertinent to proving whether **facts material to the allegations** under investigation are **more or less likely to be true** (*i.e.,* on what is relevant)" (30294)

What is Relevant? 3 of 3

Does this question, topic, evidence help **move the dial** under the standard of evidence?

- ***Preponderance of the evidence***: a fact is more likely than not to be true (30373 fn. 1409)
- ***Clear and convincing***: a fact is highly probable to be true (30373 fn. 1409)

Issues of Relevancy (NOT Rules of Evidence) 1 of 2

- The Rules of Evidence do **NOT** apply and **CANNOT** apply
- "The Department appreciates the opportunity to clarify here that the final regulations **do not allow a recipient to impose rules of evidence that result in the exclusion of relevant evidence**; the decision-maker must consider relevant evidence and must not consider irrelevant evidence." (30336-37)

This means: 1 of 2

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

This means: 2 of 2

- Cannot rely on a statement against a party interest (30345)
- Cannot rely on a statement of deceased party (30348)

Issues of Relevancy (NOT Rules of Evidence) 2 of 2

"[A] **recipient may not adopt rules excluding certain types of relevant evidence** (e.g., **lie detector test results**, or rape kits) **where the type of evidence is not either deemed "not relevant"** (as is, for instance, evidence concerning a complainant's prior sexual history) or otherwise barred for use under 106.45 (as is, for instance, information protected by a legally recognized privilege)."

Issues of Relevancy: What isn't relevant?

- Information protected by a legally recognized privilege
- Party's medical, psychological, and similar records unless voluntary written consent
- Party or witness statements that have not been subjected to cross-examination at a live hearing

Relevancy: Medical treatment and Investigations

Section 106.45(b)(5)(i): when *investigating* a formal complaint, recipient:

- **"[C]annot access, consider, disclose, or otherwise use a party's records that are made or maintained by** a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in the professional's or paraprofessional's capacity, or assisting in that capacity, and which are made and maintained in connection with the provision of treatment to the party, **unless the recipient obtains that party's voluntary, written consent to do so for a grievance process under this section**."

Relevancy: Legally Privileged Information

Section 106.45(b)(1)(x):

- A **recipient's** grievance process **must…not require, allow, rely upon, or otherwise use questions or evidence that constitute, or seek disclosure of**, information protected under a legally recognized privilege, unless the person holding such privilege has waived the privilege.

Relevancy: Legally Privileged Information – What does this include?

- Preamble identifies medical and treatment records.
- Jurisdiction-dependent
  - Attorney-client communications
  - Implicating oneself in a crime
  - Confessions to a clergy member or other religious figures
  - Spousal testimony in criminal matters
  - Some confidentiality/trade secrets

Issues of Relevancy: What isn't relevant? – Rape Shield Provision

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

Issues of Relevancy: What isn't relevant? – Rape Shield Provision

- Rape shield protections do not apply to Respondents
- "The Department reiterates that the rape shield language . . . does not pertain to the sexual predisposition or sexual behavior of respondents, so **evidence of a pattern** of inappropriate behavior by an alleged harasser **must be judged for relevance as any other evidence must be**."

Additional information for the Investigator regarding relevancy

- There are more considerations for decision-makers regarding relevancy that are not an issue for investigators.
- Of note, if a party or witness's statement is not subject to cross-examination at the hearing, the decision-maker cannot consider that statement

Retaliation

When parties elect not to participate, a recipient cannot retaliate against them (30322)

- It is the right of any party or witness not to participate in the investigation

Relevancy and the Investigator

The gatherer of all relevant evidence

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

Relevancy and the Investigation and Report 1 of 2

"The requirement for **recipients** to **summarize** and evaluate **relevant evidence**, and specification of certain types of evidence that must be deemed not relevant or are otherwise inadmissible in a grievance process pursuant to section 106.45, appropriately direct **recipients** to **focus investigations** and adjudications **on evidence pertinent to proving whether facts material to the allegations under investigation are more or less likely to be true** (i.e., on that is relevant.)" (30294)

Relevancy and the Investigation and Report 2 of 2

1) The gatherer of all relevant evidence.

2) The organizer of all relevant evidence.

Relevancy Hypotheticals for the Investigator

Relevancy Hypotheticals

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

Relevancy Hypotheticals: Scenario Review

- The following hypotheticals are all based upon the scenario we provided in advance of today. We will go through it together now before we go through the hypotheticals.
- You are the investigator who has been handed this information from the Title IX Coordinator.

Hypothetical Compliance System Report

Compliance System Report

Reporter Name: Anonymous
Received: January 23, 2020 at 11:43 P.M.
Intake Format: Email
Parties Identified: Riley Roberts and Cameron Clawson
Narrative: Riley Roberts is a PREDATOR!!!! Riley posted a video having sex with their ex, Cameron Clawson, a revenge for their ex breaking up with them. It's all over their Snapchat story and even in an online forum for a class both Riley and Cameron have together. You must do something…Cameron is distraught and talking about suicide!

Hypothetical One

You sit down to interview Cameron. Cameron tells you that she heard that after she broke up with Riley, Riley assaulted several other people. Cameron identified a couple of these other people for you to interview about Riley's sexual history.

Is this relevant?

Hypothetical Two

In your interview with Riley, Riley tells you that they have hired an expert witness who will provide a report stating that there is no way that Riley could have sexually assaulted Cameron.

Is this relevant?

Hypothetical Three

In your interview with Cameron, Cameron disclosed to you that they have proof that they have post-traumatic stress disorder from Riley's actions. Cameron states that they have medical treatment records to prove this, but does not want to provide them to you.

Is this relevant?

Hypothetical Four

In your interview with Cameron, Cameron mentions that before she started dating Riley, she heard that Riley was nearly expelled from high school for threatening a teacher with physical violence.

Is this relevant?

Hypothetical Five

Assume for this hypothetical only that Riley alleges a counterclaim of sexual assault for the night in question against Cameron. Riley states that Cameron cheated on him and may have sexually assaulted two other witnesses who Riley identifies.

Is the information from those witnesses relevant?

Hypothetical Six

In your interview with Cameron, Cameron tells you that they have consulted with a psychic who is willing to state that Cameron was sexually assaulted by Riley.

Is this relevant?

Hypothetical Seven

In your interview with Riley, Riley tells you that they have been unable to sleep since Cameron filed the report and would like to provide treatment records to support the effects of Cameron's report on Riley. Riley is willing to sign a waiver.

Is this relevant?

Introduction to Investigative Techniques

Initial Review

- Review notes and information collected by the Title IX Coordinator
- Review Notices to Complainant and Respondent
- Review Policy/Code of Conduct
- Define Scope of Investigation
  - What elements do you think will be disputed?
  - Agreed upon?

Begin Evidence List

- If there is a criminal investigation, work with law enforcement to collect and preserve evidence

Types of evidence

- Electronic communications
- Security information
- Pictures, videos, audio
- Police reports
- Personnel files
- Prior complaints against respondent

Begin Witness List

- If there is a criminal investigation, work with law enforcement to ensure permission to question witnesses
- Who should be included?
- Who should NOT be included?
- In what order should the witnesses be interviewed?
- Be flexible

Craft Questions for Each Witness

- Refer to the policy
- Consider what information they are likely to have related to each element
- Consider what information they are likely to have that may assist the decision-maker in determining credibility
- Be flexible

Organizing for the Interview

- What should you have with you?
  - Intake Report
  - Written notice with allegations
  - Investigation log
  - Investigation notes cover sheet
  - Pre-prepared questions
  - Evidence you may need to reference or show witness
  - Policy or Handbook

Note-taking Tips

- Use predictable symbols in the margin to easily skim during the interview:
  - **?** ← Follow-up questions
  - ***** ← Potential evidence
  - **W** ← Potential witness
- Try to record exact quotes when possible
- Interview notes are now required to be produced as part of the record

Remember: The gatherer of relevant evidence

- To ensure burden of proof and burden of gathering evidence is not on the parties (106.45(b)(5)(i))
- To provide an equal opportunity for the parties to present witnesses, including fact and expert witnesses, and other inculpatory or exculpatory evidence (106.45(b)(5)(ii))
- Not restrict the ability of either party to discuss the allegations under investigation or to gather or present relevant evidence (106.45(b)(5)(iii))

Setting Up the Interview 1 of 2

- Identify yourself, your role, and a general outline of what you're investigating
- Consider requesting the TIX Coordinator check in with those who fail to respond or refuse to participate
- Don't give up on the interview till you've tried at least 3 times, in at least 2 different methods

Setting Up the Interview 2 of 2

You must now provide any party whose participation you seek, with written notice (email) with "sufficient" time to prepare:

- Date
- Time
- Location
- Participants
- Purpose of interview or meeting

(106.45(b)(5)(v))

Set the Stage

- Make introductions
- Be hospitable
- Give overview of why they are being interviewed
- Explain retaliation policy
- Invite questions

Begin Broadly

- Elicit a monologue about the incident
  - What happened earlier that day before the incident?
  - What happened with regard to the incident?
  - What happened next?

Ask Follow-Up Questions

- Re-review your notes
- Re-review the elements of each charge
  - Have you elicited all of the information this witness might have about each element?
  - Do you have an understanding of how the witness obtained the information they shared?

Freeze Frames

- Ask the witness to “freeze” on the moment and describe details
  - What could they see? Feel? Smell? Taste? Hear?
  - Where was the other person? How were they positioned?
  - Where were you? How positioned?
  - What did you say to the other person? Them to you?
  - Describe other person’s tone, demeanor, body language

Credibility

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

When Consent is at Issue

- Consider the wording and tone of your questions
- Utilize “freeze frame” strategy
- Ask questions about what happened to determine whether there was unspoken consent
- Ask questions to identify whether alcohol/drugs may have played a role regarding consent
- See Level 1 slides for a list of questions to get you started

Closing the Interview

- Closing questions
- Request copies of all evidence potentially available to the witness
- Discuss confidentiality - but do not prohibit a party from discussing allegations
- Inform the witness of next steps and how to reach you

After the Witness Leaves 1 of 2

- Update investigation log
- Review notes, make corrections/clarifications
- Update witness list
- Update list of evidence to be obtained
- Write down questions to ask other witnesses
- Consider whether appropriate to send email

After the Witness Leaves 2 of 2

- Consider whether there are additional allegations that you need to bring to the Title IX Coordinator
  - Remember: notice of allegations must be sent out before you can ask questions of a respondent.
- Ensure you are not leaving the burden of proof on any party or witness alone (106.45(b)(5)(i))

Physical Evidence

- Follow up on anything identified during interviews
- Is law enforcement involved? Could they be?
- Ensure physical evidence is in a secure location and documented in the investigation log. Chain of custody is important!

What about advisors or support persons in interviews?

Must provide parties the same opportunity to be accompanied by the advisor of their choice

- Nothing in the preamble prohibits support persons in the interview process (this is different at the hearing)
- Allowed to limit participation of advisor in process
- Whatever rules your institution selects, apply them equally to both parties

(106.45(b)(5)(iv))

Inspection and Review of Evidence

Provide ALL Evidence to both parties and advisors

- Include everything related to allegations, even if you don't expect decision-maker to rely on it
- Allow 10 days to review
- Allow written response
- Follow up where necessary
- Consider responses when preparing report

(106.45(b)(5)(vi))

Create Investigative Report

- Summarize **facts**
- No determination
- Provide to parties and advisors
- Allow 10 days to review prior to hearing
- We will discuss report writing later today

Mock Interviews

Hypothetical Compliance System Report. Same as previous.

Compliance System Report

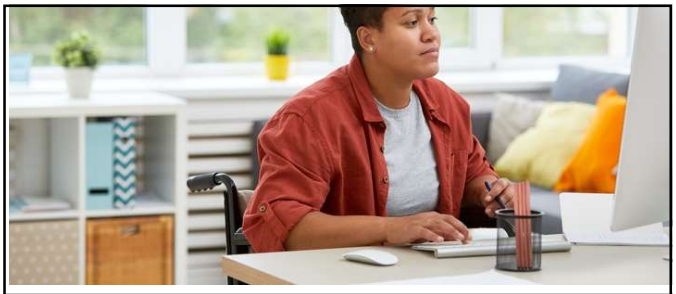
Reporter Name: Anonymous
Received: January 23, 2020 at 11:43 P.M.
Intake Format: Email
Parties Identified: Riley Roberts and Cameron Clawson
Narrative: Riley Roberts is a PREDATOR!!!! Riley posted a video having sex with their ex, Cameron Clawson, a revenge for their ex breaking up with them. It's all over their Snapchat story and even in an online forum for a class both Riley and Cameron have together. You must do something…Cameron is distraught and talking about suicide!

Key Takeaways 1 of 2

- Study your updated grievance procedures
- Know the definition of sexual harassment and keep the policy language in mind as you interview parties and witnesses
- Identify when/if another policy such as anti-bullying is in play

Key Takeaways 2 of 2

- Make sure you understand potential biases (actual or perceived)
- Trauma may affect how someone responds to an incident
- Prepare for your interview with questions and statements
- Start with open-ended questions
- Obtain any documentary evidence that you can



Writing the Report

Remember: The organizer of all relevant evidence. 1 of 2

- Your second role, after gathering all relevant evidence, is to organize all relevant evidence for the parties and the decision-maker.
- Here are some tools for how to best organize all the relevant evidence.

Remember: The organizer of all relevant evidence. 2 of 2

The new Regulations provide that the investigator must create a report that:

- Fairly summarizes relevant evidence

(106.45(b)(5)(vii))

What does this mean?

Start with the basic information

Identify with just factual information:

- Complainant
- Respondent
- Investigator
- Witnesses
  - Perhaps organize by fact v. expert witnesses or by party whom requested the witness

Consider general organization

Natural and neutral organization suggestions:

- Chronological order
- By topic or allegation
  - Perhaps by chronology within each topic or allegation
- By chronology of how the information came in to the investigation
- By witness summary

Explain how organized

Explain your structure. Example:

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

Other basic information to include

- Basic description of charges
- How did the complaint make its way to an investigation?
- Witnesses Interviewed
- Witnesses Not Interviewed (and why)
- The procedure followed, step-by-step
- Any procedural anomalies that need explained?

Identification of witness sign-off

If this is your practice:

"Each person interviewed was provided with a written copy of a summary of their interview, and was given an opportunity to provide feedback and approve the accuracy of the summary."

- Did everyone do so?

A statement regarding relevant evidence

"All relevant information gathered during the course of the investigation has been included in this report."

- Identify if you thought something was not relevant and why – consider still including in attachment for decision-maker
- Provide a table or list of all relevant evidence gathered and attach that evidence

Identify and include all alleged policy violations

- Definition of prohibited conduct alleged from applicable policy
- Related definitions as appropriate (e.g. consent, incapacitation) or any code of conduct included if done together
- Include verbatim, in entirety

Give an overview of evidence collected

and

Attach as appendices any statements and important evidence

Be helpful to reviewers – keep it transparent 1 of 2

Citations to the record – always

- Be helpful for your fact-finders!

Hearing packet or exhibits – helpful to number the pages sequentially for easy citation

Be helpful to reviewers – keep it transparent 2 of 2

- Insert into the report screenshots of text messages and pictures where relevant
- If information is attached but not referred to in a summary, may want to drop a footnote explaining why not

What not to include in report (but note requested and why not included) 1 of 3

The specific type of evidence deemed not relevant in the Regulations:

- Information protected by a legally recognized privilege
- Party's medical, psychological, and similar records unless voluntary written consent
- Rape Shield protection for Complainant

What not to include in report (but note requested and why not included) 2 of 3

If evidence is requested by a party and/or you determine it is not relevant, always explain that it was requested and why you determined it was not relevant.

What not to include in report (but note requested and why not included) 3 of 3

If you determined evidence was not relevant because of matters outside of the specific reasons identified in the regulations—i.e. because you did not think it was probative of material fact—explain and consider attaching in an Appendix

Helpful synthesis

If you can, synthesize the information from multiple parties and witnesses

Where the stories diverge:

- "Information from [Complainant]"
- "Information from [Respondent]"

Summary of Information 1 of 2

Don't forget to summarize impact on complainant if the charges require consideration as an element

- "The investigator notes that this incident and the process may have had an impact on [Respondent]. However, to determine whether sexual harassment occurred, the hearing panel will be required to review the impact of the reported behavior on [Complainant]. This is the reason that the information here focuses solely on [Complainant]."

Summary of Information 2 of 2

Undisputed Facts

- Series of numbered sentences

Disputed Facts

- Series of numbered sentences

Make sure you have facts for each element of each charge.

Do not make credibility determinations.

Bad vs. neutral and clear writing examples

Writing examples

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

Example 1

Bad example: Complainant was very believable when they said they had been attacked by Respondent.

Neutral and clear correction: Complainant stated they were attacked by Respondent on Saturday. Complainant provided the names of witnesses and contact information for those witnesses.

Example 2

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

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

Example 3

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

Neutral and clear correction: Respondent provided the following information at the interview: that Respondent was at the party from 7-8, that Respondent was not at the party at 7:30, and that Respondent may not have been at the party.

Example 4

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

Neutral and clear correction: Respondent requested the investigator follow up with her roommate. The investigator scheduled an interview with the roommate to follow up on any additional information the roommate may have. The roommate's account of events at the interview, provided in Exhibit C, is consistent with Respondent's statement regarding the time period between 12 and 2 on the date of the allegation. The roommate was not present outside of that time frame and had no additional information.

Questions?

Thank you for attending!

Remember – additional information available at:

Title IX Resource Center at www.bricker.com/titleix

Find us on **Twitter** at
@BrickerEdLaw