INVESTIGATOR TRAINING

The Five Colleges of Ohio

AUGUST 1, 2023

Bricker Graydon

Agenda

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Already Completed Today:

- Themes
- Issues related to Dating Violence, Domestic Violence, Sexual Assault, and Stalking – Investigations and Adjudications
- Overview of Policy/Process

Investigator Training

- Investigation: First Steps
- Trauma Informed Approaches
- Interviewing Skills
- Mock Interviews
- Preparing the Case File

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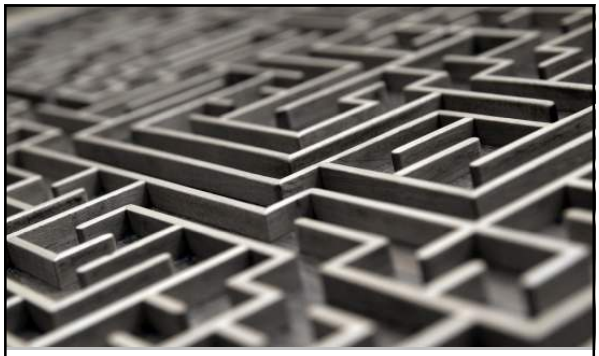

Overview of the Hypothetical

Charlie and Jesse

- Complainant: Charlie Chaste
- Respondent: Jesse Jacobs
- Allegations: "On October 13, 2022, my romantic partner, Jesse Jacobs, assaulted me during an argument. We were sitting in Jesse's car outside of my residence hall. Jesse grabbed my arm, leaving a bruise, and slapped me across the face."
- If true, this could constitute Dating Violence.

Investigation: First Steps

Investigators Lay the Foundation

- Starts the process
- Builds rapport to encourage engagement
- Gathers evidence
- Conducts interviews and prepares written summaries
- Requests records and evidence from other sources (e.g. police reports, security footage)
- Prepares a written report to summarize what you did and what you collected

Investigators Do NOT Make Decisions

- You do not make findings of fact
- You do not make decisions as to whether the policy was violated
- You do not make credibility determinations
- You do not offer your opinion to the decision-maker about whether Respondent "did it" or whether Complainant is not telling the truth (because your opinion is not evidence)
- You do not consult with the decision-maker as to what their finding should be

So… You're Free? (Uh, not exactly.)

- Free to engage with the parties in a way that lets them know you are there to help them record their side of the story.
- Free to compile the information and walk away without having to make the final decision.
- Free to form your own opinions in your head without sharing them – after you have finished your investigation (to avoid confirmation bias).

Email to Complainant (1 of 4)

Dear [Complainant],
My name is _____ and the Title IX Coordinator has assigned me to investigate your case. I would like to meet with you to discuss what you remember about your encounter. Do you have time to meet with me on March 10th at 12:30 in the conference room? You may bring an advisor of choice with you, so if that date and time is not convenient for both of you, please let me know a few times that would work better.

Email to Complainant (2 of 4)

There is nothing you need to do to prepare for our interview, but if you wish, you may want to begin gathering any evidence you may have, such as text messages or videos from the night in question. You may also want to think about potential witnesses that may be helpful for me to talk to. However, this isn't required to complete before we meet.

Email to Complainant (3 of 4)

If you are disabled and need reasonable accommodations to participate, or if you speak another language and would like an interpreter to be present, please let the Title IX Coordinator know and we can make those arrangements.

Email to Complainant (4 of 4)

When we meet, we can talk through any questions you may have for me about the process, and we will discuss the prohibition against retaliation against anyone that participates in the process. I am also happy to address any questions beforehand if you'd like. In the meantime, if you need any supportive measures, please contact the Title IX Coordinator.

What About Respondent?

- Don't leave the Respondent hanging.
- Make contact when you make contact with the Complainant.
- Remember: "What we do for one, we do for the other."

Email to Respondent (1 of 4)

Dear [Respondent],

My name is _____ and the Title IX Coordinator has assigned me to investigate your case. My first step will be to meet with the other person to get more information about the formal complaint. I am in the process of setting that meeting up.

Once I have conducted that interview, I will reach back out to you to set up a time to interview you. You will be permitted to bring an advisor of choice to that interview.

Email to Respondent (2 of 4)

There is nothing you need to do to prepare for our interview, but if you wish, you may want to begin gathering any evidence you may have, such as text messages or videos from the night in question. You may also want to think about potential witnesses that may be helpful for me to talk to. However, this isn't required to complete before we meet.

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Email to Respondent (4 of 4)

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The Investigator Spiel

- Explain your role
- Explain how information will be shared in the process
- Explain the prohibition against retaliation
- Explain amnesty provision

Explain Your Role (1 of 2)

"As the investigator, my job is to gather evidence, interview witnesses, and prepare summaries of those interviews."

"Today, I'll be taking notes so that I can prepare a good summary of our conversation, but I want to make sure it's accurate, so I'll send you a copy for your review. You'll get the opportunity to suggest changes to make sure that it's complete and truthful, and that I've properly captured your side of the story."

Explain Info Sharing

"When the summary is finalized, it will go into the case file. Both parties are going to get a chance to look at the case file, so they will see what you tell me today. The summary will also be shared with the hearing officer, so if you get called as a witness to the hearing, it will be what people use to ask you questions. The more complete it is, hopefully the fewer questions they will need to ask you!"

Explain Your Role (2 of 2)

"In addition to drafting interview summaries, I'll also draft a report that summarizes what I've done to investigate, and the information I've collected. I do not make decisions about what happened or whether the policy was violated. A hearing officer has that job."

"The goal is for me to collect information to help the hearing officer understand what happened so that they can make a good decision in this case, which is why I'm very thankful that we're speaking today."

Retaliation Prohibition

"Our policy prohibits retaliation, and there's a technical definition for that. But listen – if anyone makes you uncomfortable because you've spoken with me or participated in this process, please tell me right away. It may not rise to the level of retaliation under the policy, but there are still things we can do to address it. And if you're feeling uncomfortable, chances are good that other folks are, too, so you'll be doing them a favor by reporting it."

Retaliation – More Oomph

"Please don't do one of these two things:

1) Re-read the policy and decide you don't need to tell me because you don't think it rises to the level of a policy violation; or
2) Decide that you are strong enough to handle it and don't tell me.

You might be strong, but maybe other witnesses are experiencing the same thing and they might not be strong enough. I'd rather help address things before they get too complicated, so please let me know."

Amnesty

Check your policy for your language.

"Our policy gives you amnesty for personal drug and alcohol use, and it gives amnesty for other witnesses and the parties also. So, if any part of your story involves people using drugs or alcohol, please know that we're not going to bring student conduct charges in this situation. We want you to feel comfortable telling us the whole truth about the evening, and this is more important than underage drinking or drug use."

To Record Or Not?

- Ohio is a "one party" state, which means as long as one party to the conversation is aware of the recording, you can record.
  - But failure to disclose this recording is likely not consistent with your institutional ethic of care.
- If you ask for consent and some witnesses refuse, what then?
- Your hearing officer will need either transcripts of the recordings, or they will need to review all of the videos. If you have a panel, they all will need to review this information.
- Recordings can be incredibly useful when a party or witness changes their story, and they can be helpful in lawsuits/OCR complaints.

Handling Difficult Advisors

- Must have FERPA release if students are involved and the advisor is not an employee
- Title IX Coordinator can help set expectations for advisors up front
- Communicate with the party and copy the advisor: "Your advisor asked ____, so I wanted to share my response directly with you."
- If the advisor submits the party's written statement, make sure the party adopts that statement as their own. Advisors don't typically get to submit evidence unless they are witnesses.

Trauma-Informed Approaches

Helping people get their story out

Role Reminders

- If your friend tells you something terrible happened to them, it's not your job to interrogate them or figure out what happened.
  - In this situation, be supportive and listen.
- If you are in your role as a Title IX team member and someone tells you something terrible happened to them, it might actually be your job to ask detailed questions and make a determination regarding a policy violation.
  - The institution still provides support to people during the process.
  - That being said, you may still be required to ask tough questions and make tough decisions.

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Goal: Don't Make This Any Harder

- The process is difficult.
- Telling your story is difficult. Telling your story *multiple times* is difficult.
- Reliving trauma is difficult.
- Being accused of something is difficult.
- Everyone brings their own burdens into the process. They also bring their own history into the process—including past trauma that may be triggered.
- Our goal is to get the best evidence on the table for consideration when a decision is made. How can we do that when *everyone* we talk to may be traumatized?

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First: Make No Assumptions

- Treat everyone as though they may be traumatized, so you aren't picking and choosing who you *think* may be responding to trauma—and then subconsciously holding them to different standards.
- Different people who undergo trauma may present and behave differently. Some may cry, or be angry, or be calm. This makes demeanor a poor indicator as whether someone is traumatized, particularly because people can display all of these traits for other reasons.
- Title IX Coordinators - don't assume only those who are crying or angry need supportive measures!

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Second: They Are Not You

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- There is no "right way" to behave.
- If you think there is a "right way" to behave, you are imposing your own values and judgments—informed by your background—on others, when you should be neutral.
- A value judgment is different than evaluating the *plausibility* of behavior. Compare:
  - Complainant cried during the sexual encounter. (plausible)
  - Complainant said nothing during the sexual encounter. (plausible)
  - Complainant had a Facetime conversation with a third party during the sexual encounter, but that person had no indication that Complainant was engaged in sexual activity. (Huh? We have questions.)

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Third: Neurobiology of Trauma Is A Thing

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- Individuals who experience a traumatic event may have difficulty processing the event as it is happening and after it is happening.
- Trauma may make it difficult to sequence events in a chronological order.
- People can have these same issues for many other reasons not related to trauma.
- Signs of trauma ≠ policy violation
- No signs of trauma ≠ no policy violation
- Being aware of the effects of trauma gives us a broader definition of what behavior might be *plausible* in a particular situation.

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So… What Does This Mean, Practically?

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- Make interviewees comfortable and offer to take breaks when needed.
- Give *everyone* the space to tell their own narrative in their own way.
  - "What happened? And then what happened? What happened next?"
  - "Tell me more about…"
- Once the person has completed their monologue, ask follow-up questions for clarification.
- If details are still unclear, ask specific yes/no questions. (Write down the question and the answer.)
- When someone has trouble giving details, sensory cues are sometimes helpful.

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Emotions During Interviews

- Individuals may experience a range of emotions being interviewed, including sadness, frustration, and anger (maybe at you!). It's normal.
- The goal is to keep the emotional temperature turned down to the point that the interviewee feels able to engage and provide information.
- Recognize that certain topics may trigger negative responses (e.g. what someone was wearing, alcohol/drug use). Introduce these topics by explaining why the information is needed in the context of your investigation.
- If an individual's emotions become a barrier, consider taking a break, explaining why you are asking what you are asking, and restarting.
- Main goal: keep people talking and sharing their stories.

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First Interview vs. Second Interview

- The first interview is space to tell a person's story. Get all the details. Be curious.
- Often, a second interview may be necessary where other information significantly contradicts that person's story—which can be hard for that person to hear. Again, get all the details and be curious.
- Always walk into an interview assuming there are logical explanations for everything. This keeps you asking questions, and it keeps people answering them (because you don't maintain an accusatory tone!).
- Above all – keep your interviewees talking. The more information they give, the more helpful it will be to your decision maker.

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Trauma and Decision Making

- Decision Makers will focus on corroboration, consistency, and plausibility when they read your report and ask questions at the hearing. They will need to understand:
  - Is there anything else in the file that backs up this assertion?
  - Has the person been consistent over time (recognizing that it is hard to say exactly the same words when telling the story multiple times)?
  - Is the person's story plausible?
- We suggest not relying on demeanor, as there are too many reasons—including cultural norms—that may affect how some people behave and how you perceive it.
- These are good practices regardless of whether anyone may be traumatized.

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Interviewing Skills

Preparation, Attention to Detail, and Being Human

Start with your Scope

- This should be documented in the Notice of Allegations
- The NOA should also include information about which policies are at issue
  - Double-check – is the correct policy cited?
- Break down the provisions to elements.

Elementary, My Dear Watson

- For example:
  - ✓ Unwelcome conduct
  - ✓ On the basis of sex
  - ✓ That a reasonable person would determine to be:
    - ✓ So severe, pervasive, and objectively offensive that
    - ✓ It effectively denies a person equal access to the recipient's education program or activity.

Elements as Questions: Brainstorm

- For example:
  - ✓ Unwelcome conduct
  - ✓ On the basis of sex
  - ✓ That a reasonable person would determine to be:
    - ✓ So severe, pervasive, and objectively offensive that
    - ✓ It effectively denies a person equal access to the recipient's education program or activity.

Outline Your Thoughts

- Prepare a bullet point list of things you want to explain at the outset
- Have your policy language at the ready
- Bring any evidence that you may want them to review and comment on
- Prepare an outline of questions
  - Don't forget to ask the complainant about impact if it's an element of your policy language!

Setting the Stage

- Private location – be cautious of windows, traffic in the area, distractions
- Comfortable seating that provides equal positioning for interviewee, interviewer, and advisor (if any)

Things We Always Cover

- What is my role?
- Who will read your information?
- No retaliation
- How to access supportive measures (always for parties – as needed for witnesses)
- "Do you know what I've called you to talk about today?"

Start with Relationships

- What year are you? Where are you from originally? What is your major? Where do you live on campus?
- What is your title/position here? How long have you worked here?
- Who did you meet first, C or R? How? When?
- Relationships with other key people in the case (to help assess potential bias)

Get a Timeline

- "What do you remember regarding this situation?"
  - Give them a starting point or let them choose
  - "And then what happened? And what happened next?"
  - Let them deliver a monologue
- Think in terms of a timeline for your report
  - What section headings will help you tell the story chronologically?
  - Are you clear as to which parts of their monologue fit under which section?

Ask Follow-Up Questions

- Go back to each incident on your timeline and flesh out the details.
- If the witness was alleged to have done or said something in particular, check to see if that's accurate
- Cover every element that the individual could have information about
  - Remember: is impact an element in my case?

Consent – Explicit?

- "They gave consent" → "What did you say to them, and what did they say to you?"
- Did you have any conversation about sexual activity?
- Did the other person say anything to you that suggested they were consenting?
- Did the other person do anything that suggested they were consenting?
- Who initiated the sexual activity?

Consent – Implicit?

- Who took off your clothes? Who took off the other person's clothes?
- Was there a condom? Who provided it? Was there any conversation about using protection?
- Did you touch the other person? If so, where?
- Did they touch you? If so, where?

Questions for Respondent

- What did the other person say to you to show consent?
- What actions did the other person do to show consent?
- Were they making any noises during the encounter?
- Did they help position their body during the encounter?
- Did they move your hands during the encounter?

Incapacitation

- Remember: amnesty.
- "I want to understand the role that drugs or alcohol may have played in this situation."
- "I want to understand whether you were capable of giving consent, or whether you were incapacitated due to drugs or alcohol."
- "I want to understand whether the other person was sober enough to understand and consent."
- "I am trying to get a sense of how intoxicated the person may have been when you saw them."

Incapacitation Questions (1 of 2)

- How much alcohol? Any drugs?
- Any medications that may have affected your ability to stay awake, or that might have interacted with alcohol?
- "They were drunk" → What did "drunk" look like?
  - Slurring? Clumsy? Uncoordinated?
  - Able to walk on their own? Need assistance to navigate or complete tasks?
  - Vomiting?
  - Able to carry on a conversation?
  - Oriented to who/what/where/when/why?

Incapacitation Questions (2 of 2)

- Was it a cup or a CUP?
- How many “fingers” of alcohol on the solo cup?
- What type of alcohol was consumed?
- What did they eat? When?

Respondent’s Awareness

- Was Respondent there?
- Did Respondent see when Complainant was [fill in symptom]?
- Did Respondent bring Complainant any alcohol/drugs?
- Did Respondent say anything about Complainant’s level of intoxication?
- Was any planning done to take care of Complainant? Was Respondent part of that conversation or plan?

Incapacitation: Timeline

- Drinks
- Drugs
- Food
- Complainant’s own recall
- Behavioral observations from other
- Electronic information – texts, videos, audio files
- Security footage
- Cards swipes

Sensory Questions

- What do you remember hearing, smelling, tasting, feeling?
- Where was the other person's hand, leg, body weight, etc.?

Paraphrase Questions

- "So, what I heard you saying is…"
- "Let me make sure I understand…"
- "It sounds like… do I have that right?"

Strategic Questions

- "Would it surprise you to learn…"
- "Witness X said…. Do you agree?"
- "Here you said X, but today, you said Not X. Can you help me reconcile those things?"
- "Witness X said this and Witness Y said that. Can you help me understand why they might have different information?"
- "Let's look at this [evidence] together so I can get a better understanding…"

Final Questions

- Is there anything you thought I would ask you about that we haven't discussed?
- Is there anything else you'd like to tell me?
- Is there anything else you think I should know?

Drafting Interview Summaries

- Virtually every sentence should start with, "Witness stated…" or "Witness recalled…"
- Use direct quotes whenever possible and appropriate.
- Don't use adjectives or adverbs unless they are direct quotes from the witness.
- Avoid pronouns, as they can make a sentence ambiguous.

Break & Preparation for Practice Session

Preparing the Case File

Redactions

- Sexual predisposition or prior sexual behavior of complainant
- Privileged information where privilege has not been waived
- Medical records where no consent has been granted

What do you include?

- Interview summaries
- Evidence gathered
- Do you prepare a draft report to go with the evidence for review?

How do you share it?

- Technology – can limit ability to print, share, download, screenshot?
- Use watermarks for Complainant/Respondent file?
- In-person review?
- Non-disclosure agreements for technological access?
- How can advisors access it?

Draft Report

- "Fairly summarizes relevant evidence"
  - What you summarize is likely narrower than what you include in the file for review

Report Includes?

- Procedural History
- Summary of Allegations
- Relevant Policy Language
- Investigation Overview
  - Witnesses – Who you spoke with, who declined to participate, who never responded, who was requested wasn't relevant (and why)
  - Evidence – What you gathered, what you tried to gather but couldn't, what you were asked to gather but didn't (and why)

Summary of Information

- Do you want to detail what each witness said?
- Do you want to synthesize and summarize undisputed facts?
- Do you want to do a combination, depending on whether a particular issue is disputed or undisputed?
- Do you want to intersperse evidence, or make it a separate section?
- Do you organize it chronologically or by source?
- Do you organize it chronologically by story or gathered date?
- Do you use complete sentences or bullet points?

Report Attachment

- Put it in a single PDF.
- Make a table of contents.
- Bonus: Make the table of contents clickable.
- Refer to relevant documents when you write your summary.
  - Ideal world: Every sentence has a citation to the attachments.

Party Responses

- Do you need to conduct follow up interviews or request additional evidence?
- (Do you need to then circle back and do another round of evidence review/response?)
- Integrate relevant portions of the responses into your summaries.
- Attach the responses.

Questions?

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