



State Fair Community College Title IX Investigator Training

Mary Zabriskie, J.D.
November 15, 2024

Overview

Introductions and Ground Rules
Key Provisions - Title IX Regulations
Role of the Investigator
Bias/Conflict of Interest
Investigative Process
Trauma Informed Practices
Assessing for Relevance
Preponderance of the evidence
Preparing to Write Investigation Report

The logo for State Fair Community College features the words "State Fair" in a large, bold, serif font, with a thin black arc above the letters "a" and "i". A small five-pointed star is positioned above the letter "a". Below "State Fair", the words "Community College" are written in a smaller, bold, sans-serif font.

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Introductions

Meet Your Facilitator Mary Zabriskie, J.D. (she/her)

- ▶ Recognized leader in the areas of Title IX, ADA/504 compliance, student conduct, care teams, direct threat response, campus free speech, and more.
- ▶ Currently Equal Opportunity, Access, & Title IX Coordination Director for Southern Illinois University Edwardsville.
- ▶ Consultant - worked with colleges and universities across the country in all aspects of equity compliance.
- ▶ Districtwide Director of Equity Compliance at St. Louis Community College. (Title IX and ADA/504 Coordinator for the multi-campus system).
- ▶ Experienced lawyer - criminal trial attorney.
- ▶ From law to higher education - Director for Public Service Advising, Washington University School of Law. Undergraduates - student group conduct process, anti-hazing task force, student advisor conduct hearings, Title IX Hearing Officer.
- ▶ Regis College, Northeastern University School of Law (Boston, MA)



Ground Rules

- ❖ Ask questions/share perspectives
- ❖ NOT legal advice
- ❖ Keep it hypothetical
- ❖ Slides will be made available



Case Study

State Fair Community College
Title IX Investigator Training
(November 15, 2024 - Mary Zabriskie, J.D.)

Title IX – Case Study

Rachel met Ross at new student orientation in August, and they hit it off right away. They are in a couple of classes together this semester and spend time hanging out both on campus and off.

A student worker in your office, Joey, tells you that students (many of them members of the College soccer team) were partying in a wooded area on the edge of campus over the weekend. People were drinking and having a good time. Ross and Rachel were there and appeared to be really drunk. Ross and Rachel were seen by many “stumbling” into the woods together as the party broke up in the early morning hours.

Joey shares with you that several of his friends told him about the party (he didn’t attend) and shared with him rumors that Rachel and Ross had sex that night. Rachel is telling people she can’t remember much.

Students are texting one another about it, tik tok is blowing up with students who are upset that women aren’t safe at the College (referencing Rachel’s experience). The fact that Ross has a reputation for collecting guns, and is an avid hunter has people on edge.

Rachel meets with the Title IX Coordinator and wants to file a Formal Complaint against Ross. She says she doesn’t remember a lot about the incident but says she knows Ross touched her breast after she told him to stop.

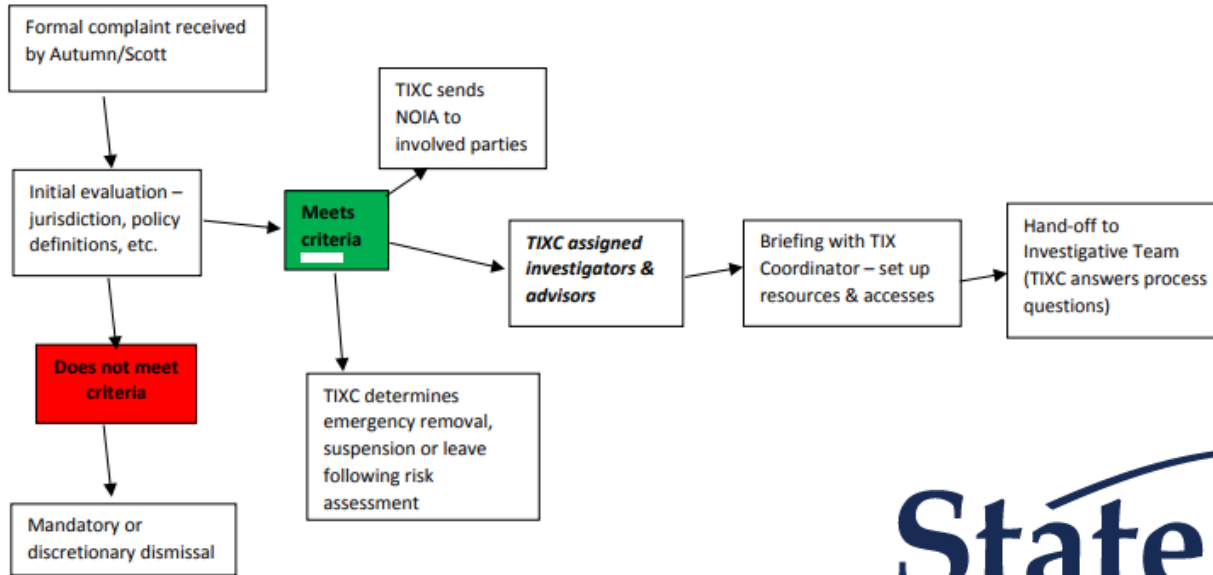
You’ve been assigned as the investigator on Rachel’s Title IX Formal Complaint.

As you begin Ross’ youth pastor is contacting you because he wants to tell you what he knows about this “young man of God”.

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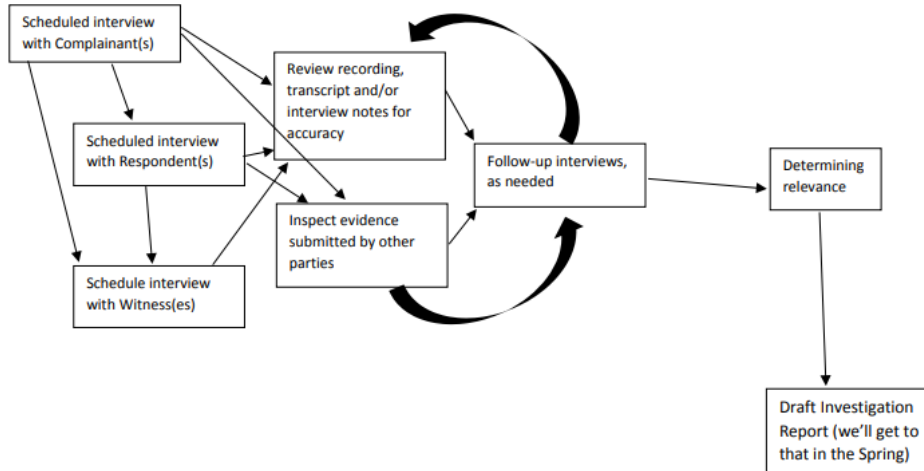
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Title IX Process Flow Chart



Investigation Workflow

When the Investigators take over...



Regulation 1211, Pages 33-34

- *The investigation is “normally completed within 60 days.”
- *Employees are required to cooperate as witnesses.
- *Interview conducted in-person, by phone or via online platform.
- *We intend to record all interviews.

Draft Investigation Report gathers, assesses, and synthesizes the evidence, accurately summarizes the investigation, and party and witness interviews, and provides all relevant evidence.

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Report v. Formal Complaint

The regulations distinguish a “report” from a “formal complaint.”

A “report” is simply the initial complaint, the allegations, which can be filed by anyone.

A “formal complaint” is a printed document or electronic submission filed by a Complainant (in person, by email, by mail or other method provided by District) that alleges sexual harassment and requests a school/district investigation of the allegation.

Responding to the Report

The report of sexual harassment may be verbal or in writing by the reporting party; a receiving administrator should document a verbal report.

The written report must go to the Title IX Coordinator.

Title IX Coordinator must promptly contact the Complainant, and if under 18, their parent/guardian to:

Discuss the Report;

Explain the Formal Complaint Process and provide the Complainant with information on the Title IX Formal Complaint Process;

Provide information about and availability of supportive measures; and

Consider the Complainant's wishes concerning supportive measures and whether to make a Formal Complaint.

Supportive Measures

Supportive Measures are non-punitive, non-disciplinary services that are offered, as available and without a fee, to both the Complainant and the Respondent.

Supportive Measures are available with or without the Report being elevated to the level of a Formal Complaint.

Supportive Measures should be documented, kept confidential, and may be changed as the situation warrants or as the Complainant and Respondent request.

Can include:

- . Emergency removal of a student per the regulations
- . Administrative leave with pay for an employee

Dismiss or Proceed Formal Complaint?

- ▶ If the conduct **does not** meet the definition of sexual harassment, the claim will normally be dismissed.
 - ▶ The conduct can then be investigated and addressed under other policies and regulations.
- ▶ If the conduct **does** meet the definition of sexual harassment, the claim must be discussed with the Complainant.
 - ▶ Complainant decides whether to elevate the report to a Formal Complaint (or not).
 - ▶ Title IX Coordinator can also elevate the allegations to a Formal Complaint if it would be necessary to do so to ensure the District/School is not deliberately indifferent.

Other Reasons for Dismissal

Mandatory Dismissal:

- When the conduct does not meet the regulatory definition of sexual harassment.
- When the allegations did not occur against a person in the United States; or
- When the allegations did not occur in the College's education program or activity.

Discretionary Dismissal:

- If a Complainant notifies the Title IX Coordinator in writing that they would like to withdraw the Formal Complaint or any allegations in the complaint;
- If the Respondent is no longer enrolled in or employed by the District;
- If circumstances prevent the College from gathering evidence sufficient to reach a determination as to the formal complaint or allegations; or
- If the Complainant no longer has any involvement with the College

Regulations Set Out “Benchmarks” for Responding to Formal Complaint of Sexual Harassment



Written Notice of Formal Complaint

- ▶ Upon receiving a Formal Complaint, Title IX Coordinator must provide written notice to the known parties which includes:
 - ▶ Description of the process, including informal resolution process
 - ▶ Allegations involved - must supplement the notice each time new allegations are opened for investigation.
 - ▶ Statement of presumed innocence of the respondent
 - ▶ The parties' right to an advisor of their choice (who may be an attorney)
 - ▶ Parties' right to inspect evidence relevant to the allegations
 - ▶ Notice any provision in the code of conduct that prohibits knowingly making false statements or providing false information.

Investigate Formal Complaint

- ▶ Investigator must:
 - ▶ Identify the allegations under investigation and gather relevant evidence.
 - ▶ Provide parties with equal opportunity to have others present during any complaint proceeding.
 - ▶ Provide to any involved party advance written notice of all interviews, meetings or other proceedings, with sufficient time for the party to prepare.



Investigate Formal Complaint

- ▶ Investigator must:
 - ▶ Provide equal opportunity to both parties to inspect and review evidence obtained as part of the investigation (including evidence which the institution does not intend to rely on).
 - ▶ Create an investigative report summarizing relevant evidence.
 - ▶ Parties provided opportunity to review and submit written response.



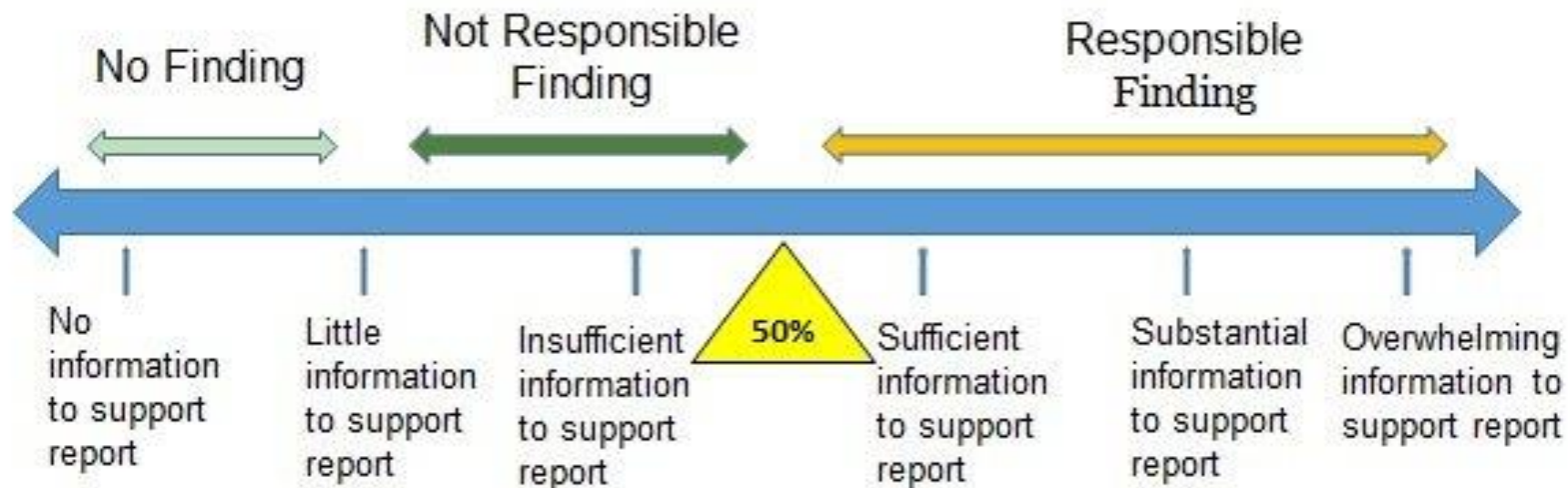
Investigate Formal Complaint

▶ Finally, Investigator must:

- Provide the final investigation report and evidence to the Title IX Coordinator to provide to Decision Maker.
- Decision maker cannot be the Title IX Coordinator or the Investigator of the allegations.

Preponderance of Evidence Standard

*A Requirement that **More than 50%** of the Evidence Points to Something*



About the “Rape Shield” Provision

- ▶ Questions and evidence about a Complainant’s sexual predisposition or behavior are categorically not relevant to a Title IX Investigation, unless:
 - Evidence is offered to prove someone other than the Respondent committed the alleged conduct
 - Evidence concerns the Complainant’s prior sexual history with the Respondent and is offered to prove consent.

Title IX Sexual Harassment - Prohibited Conduct

Conduct on the basis of sex meeting one of the following conditions:

- An employee conditioning the provision of an aid, benefit, or service on an individual's participation in unwelcome sexual conduct (Quid Pro Quo);
- Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the recipient's education program or activity;
- Acts of Sexual Violence: "Sexual assault", "Dating violence", "Domestic violence" "Stalking"
- Retaliation prohibited

Role of Investigator

Neutral Fact Finder

Review complaint and allegations

Create investigation timeline

Conduct investigative interviews (parties, witnesses)

Evidence gathering

Document, Document, Document!

(record of investigation, timeline, and all communications)

Complete Final Investigative Report

Review all evidence

Synthesize and analyze relevant evidence

Send final report to parties for review and written response at least 10 days prior to hearing

Attend hearing



Autonomy, Neutrality, and Objectivity

Title IX 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.

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.



Bias Defined

“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.

As an Investigator

- . Not on anyone's side
- . Presumption 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.



Neutrality

“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 apartment?"

Appearance of Neutrality

- Meeting with one party more than the other without explanation
- Number of witnesses on either side does not determine outcome
- Perception of neutrality throughout the College



Objectivity

“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?





Conflict 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

Recuse yourself if there is a conflict of interest

Situational: Investigators know parties, pre-existing relationship (teacher/student)

Positional: Investigator role at institution creates bias

Any other reason that would prohibit investigator from being neutral

Bias and Prejudice

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 nonstereotypical response

Check your assumptions!

There is NO finding or assumption of responsibility made, until the conclusion of the process.

Investigative Process - 5 Stages



Prepare



Gather



Compile



Assess for relevance



Summarize relevant evidence



Step 1 Prepare Investigation Plan

- ▶ Review Carefully Notice of Investigation/Allegations
- ▶ Focus of the investigation is only what is contained in the notice. (Other issues arise - confer with the Title IX Coordinator)
- ▶ What are the elements of the policy Complainant is alleged to have violated?
- ▶ What are undisputed and disputed facts (list may change over time)?
- ▶ Who will you talk to?
- ▶ What evidence is out there?
- ▶ Use your investigation plan to begin sketching out your investigation report as you go.

Investigation Plan Elements

Sexual Harassment, as an umbrella category, includes the offenses of sexual harassment, sexual assault, domestic violence, dating violence, and stalking, and is further defined as conduct on the basis of sex that satisfies one or more of the following:

Quid Pro Quo Harassment: An employee, conditions the provision of an aid, benefit, or service of the recipient, on an individual's participation in unwelcome sexual conduct; or

Sexual Harassment: Unwelcome conduct based on sex determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the school's education program or activity; or

Sexual Assault: Rape, Fondling, Incest, Statutory Rape, Domestic Violence, Dating Violence, Stalking

Prepare - Interview List

- ❖ Complainant

- ❖ Respondent

- ❖ Witnesses

- ↳ What information are you seeking from each person?

- ↳ Order of interviews?



Step 2: Gather Evidence

- ▶ Burden of proof & burden gathering evidence is on the College.
- ▶ Investigator must gather *all evidence sufficient to reach a determination regarding responsibility*.
- ▶ Gather information (evidence) pertaining to allegations. Inculpatory and exculpatory evidence.
- ▶ Inculpatory - information that tends to show the allegations are true.
- ▶ Exculpatory information that tends to show allegations are not true.



Step 2: Gather Evidence

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.



Examples of Evidence

- ▶ Testimonial evidence
 - ▶ Party/witness interview
 - ▶ Expert witness
- ▶ Non-Testimonial Evidence
 - ▶ Documents
 - ▶ Photographs
 - ▶ Video
 - ▶ Screenshots of electronic or other communications

Testimonial Evidence - Overview of Interview Meeting

Purpose

- a. Obtain any relevant information interviewee has related to allegations

Setting the stage

- a. Establish rapport
- b. Ensure the interview location is a *neutral*, private space
 - i. Check your surroundings- put away any private/confidential notes, etc.
 - ii. What is your space conveying?
- c. Review Advisor Role
- d. Review process
- e. Answer any questions party may have before starting interview
- f. Necessary accommodations

Review of Statement

Managing Expectations

Role of advisor

Timeline

Process

Confidentiality/privacy



▶ Respondent/Complainant allowed:

- ▶ ONE Advisor permitted during interview
- ▶ Nonparticipating supportive role
- ▶ Advisors cannot answer for party
- ▶ Parties can request breaks and/or time to consult with advisors
- ▶ *Role will differ during hearings (explain to party)*
- ▶ *Witnesses not allowed advisor (unless approved by TIXC in advance)*
- ▶ Interpreters (ADA signers or language)
- ▶ *If advisors are disruptive - investigators will remind them of their role one time. If advisors continue to disrupt interview investigators will ask the advisor to leave the interview and give the party the opportunity to reschedule*

Role of Advisor



Investigative Interview

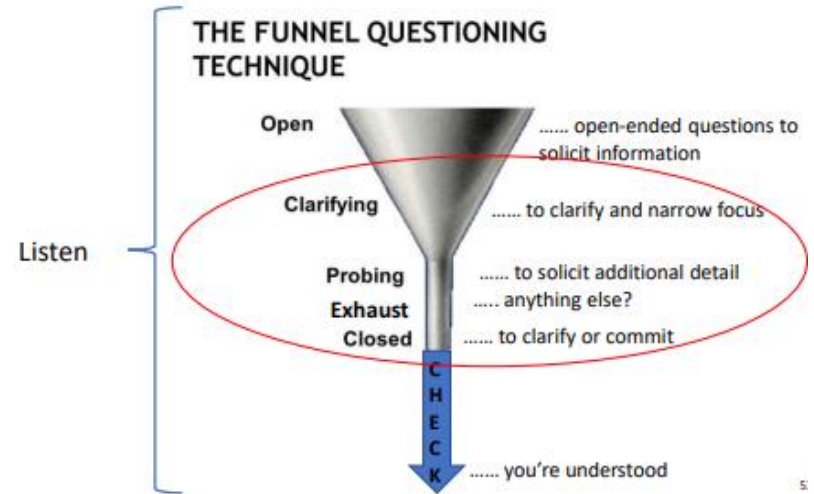
- ▶ Questioning:
- ▶ Be Prepared!
 - ▶ Review case file in advance
 - ▶ Prepare questions in advance and review with co-investigator
 - ▶ Make sure note taker has questions in advance
 - ▶ Strategize who will ask what- with co-investigator
 - ▶ ***Be flexible***
 - ▶ Schedule enough time (for interviews)
 - ▶ 2.5-3 hours for Complainant/Respondent (depending on allegations, length of complaint)
 - ▶ Witnesses 1.5 hours (depending)



Investigative Interview

- ▶ Outline party/witness interview
 - ▶ How long have you known the Respondent?
 - ▶ Where? When?
 - ▶ How? (Penetration of genitalia?)
 - ▶ Consent? (actions/words? Incapacitation? Force?)
 - ▶ Witnesses/Eyewitnesses? Who saw just before? During? Immediately after?
 - ▶ Communication - before and after
 - ▶ Physical evidence (texts, messaging social media, call records, SANE report, photos, police report)

Funnel Questioning Technique



Trauma Informed Interviewing

“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

Trauma Informed Interviewing

Neurobiology of Trauma

What does trauma look like during the event?

- Fight
- Flight
- Freeze
- Disassociation
- Tonic immobility

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

Trauma Informed Interviewing

What does trauma look like during post-event?

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

Trauma Informed Interviewing

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.

Trauma Informed Interviewing Techniques

Building rapport is first step in interviewing in trauma informed way

- . Acknowledge the difficult situation
- . Explain process and investigator's role

Set forth expectations for the interview

- . Investigator will ask detailed questions (may be personal)
- . May ask clarifying questions
- . No judgments made
- . There is no wrong answer

Provide some control (water, breaks, etc.)

Trauma Informed Interviewing Techniques

Use a conversational approach rather than rapid series of questions

- . Where would you like to start?
- . What happened?
- . Tell me about?

Be cognizant of “sensory” responses: sight, sound, smell, feelings

Be aware of sensitive questioning to avoid victim blaming and rape myth beliefs

- . Explain your reasoning behind difficult questions

Effective questioning for everyone involved - obtain better information and interviewee leaves feeling respected.

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

Establish qualifications (what makes “expert”)

- What asked to do?
- Are you receiving compensation? By whom? How much?
- Did you reach an opinion?
- What techniques, methodology, process did you use?
- Is this the type of information relied on by experts in field?

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Step 3 - Compile Information

Review and revise Investigation Plan throughout process

Assess what you have and consider what you need

Discuss investigation with investigating partner, Title IX Coordinator

Recognize there may be information you want to have but may not be able to obtain in the time you have.

Step 4 - Assess for Relevance

“Investigative Report” summarizes ONLY the relevant evidence

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.

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.

Step 4 - Assess for 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.

Review and revise Investigation Plan throughout process

What about character evidence? Is it relevant?

Go back to definitions

Limited use - primarily considered at sanctioning phase (if there is a finding of responsibility)

Step 5 - Summarize Relevant Evidence

1. All evidence that is both relevant and directly related to the complaint
 - . Once finalized, this evidence should be provided to the Parties/Title IX Coordinator/Decision Maker(s) within the investigation report.
2. Only evidence that is directly related to the case but is determined by the investigator to not be relevant.
 - . Once finalized, this evidence should be provided to the Parties/Title IX Coordinator/Decision Maker(s) in a separate folder.
3. All evidence that is neither relevant nor directly related to the to the complaint.
 - . Evidence should be maintained by the investigator but disregarded for purposes of the process.

QUESTIONS?