



Fundamentals of Title IX Investigations | Cara Hardin

Title IX Policy Fact Sheet:

- <https://sites.ed.gov/titleix/policy/#fact-sheet>

Office for Civil Rights Policy Guidance website:

- <https://www2.ed.gov/about/offices/list/ocr/frontpage/faq/rr/policyguidance/index.html>

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5 ESSENTIALS TO TITLE IX INVESTIGATIONS

VIDEO COURSE HANDOUT

What does it mean to investigate?

To investigate is to gather the information, meaning evidence, about the allegations within a 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.

Five Key Investigator Skills

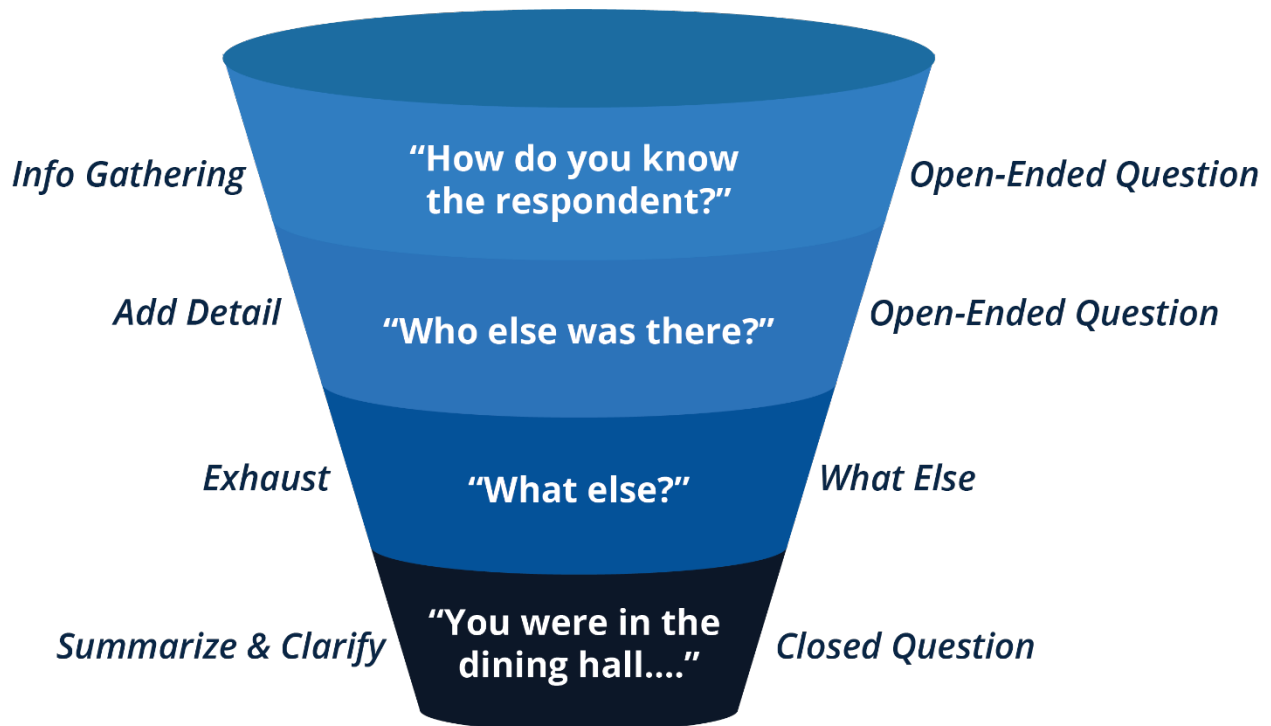
- 1) Building Rapport
- 2) Effective Questioning
- 3) Identifying and Collecting Physical Evidence
- 4) Determining Relevance
- 5) Preparing the Investigative Report

#1 – Building Rapport Tips

- 1) Greet the Interviewee Warmly
 - a. Establish a comfortable environment
 - b. Show that you are human and relatable
- 2) Find Commonality
 - a. Deescalate nervousness by finding common interests
 - b. Or ask questions about their their major or why they chose this institution
- 3) Share Expectations
 - a. Address them by their name
 - b. Share what they can expect during the interview
- 4) Provide Control
 - a. Allow them to take breaks
 - b. Give them time to speak with their Advisor
 - c. Answer any of their questions during the interview
- 5) Be Attentive
 - a. Use non-verbal cues to show you are listening
 - b. Head nods and eye contact are acceptable

#2 – Effective Questioning

- 1) Ask open-ended questions (i.e., who, what, where, when, how, why, explain, describe, etc.)
- 2) Solicit additional detail by narrowing the questioning
- 3) Exhaust the topic discussed by asking “what else?”
- 4) Summarize and/or clarify all the key details provided – especially if the narrative the witness provides is lengthy.



#3 – Identifying and Collecting Evidence

Remember to ask parties and witnesses about any physical evidence that they may have related to the allegations.

As an Investigator, you should:

- Have access to campus access card records and video surveillance camera footage,
- Ask for any form of electronic communication (between parties and witnesses) such as text messages, screenshots of messages on social media platforms, phone records, etc.,
- Inquire about the existence of police reports or medical documents such as a sexual assault nurse examiner (SANE) report (need to the patient’s written consent to obtain and include within the investigation),

- Physically observe, if you are able, to go to the location of the alleged offense.

#4 – Determining Relevance

In academic or legal terms, evidence is relevant if it has any tendency to make a fact or consequence more or less probable than it would without the evidence. Basically, evidence is relevant if the evidence is useful or helpful in determining what may or may not have likely occurred, provides context surrounding the allegations, or that serves to bolster or diminish a person’s credibility when a party or witnesses’ credibility is an issue in the case.

The May 2020 Title IX Final Regulations specifically state what evidence is NOT relevant or that is otherwise precluded from the grievance process.

- (i) A Party’s treatment records, unless you have the party’s prior written consent. §106.45(b)(5)(i)
- (ii) Information protected by a legally recognized privilege, unless you have the party’s prior written consent. §106.45(b)(1)(x)
- (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): those exceptions are:
 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.

To determine if evidence is relevant, you need to ask yourself:

1. Does the information provide context to the matter at issue? If yes, it’s relevant.
2. Does the information sought, or shared help support or refute what is alleged to have occurred? If yes, it’s relevant.
3. Does the information strengthen or diminish the credibility of the interviewee? If yes, it’s relevant.

#5 – Preparing the Investigative Report

The Investigative Report must neutrally and fairly summarize only the relevant evidence collected. This stage is where the Investigator identifies and sifts out the relevant evidence from the investigative file. Remember the investigative file contains the evidence “directly related to” the allegations. All evidence that is directly related to the allegations isn’t necessarily relevant.

According to the May 2020 Title IX Final Regulations, the parties must have at least 10 days to review and respond to the investigative file before the Investigator completes the Investigative Report. There is a difference between the Investigative File and the Investigative Report. The **Investigative File** contains all the evidence collected by the Investigator, including interview transcripts with the parties and witnesses, and the physical evidence collected, that is directly related to the allegations. The **Investigative Report** is the Investigator's written summary of only the relevant evidence contained within the Investigative File.

The Final Regulations require the Investigative Report include the following information:

- A jurisdictional statement relating to the applicability of your Policy,
- An explanation of the alleged conduct,
- The applicable offenses,
- A description of procedural steps taken during the investigative process,
- The evidence obtained by the Investigator and the witnesses interviewed,
- Whether supportive measures were provided, and
- A summary of the relevant evidence.

You can **structure** the relevant evidence as follows:

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, here is an example of how to neutrally and objectively summarize relevant undisputed facts, disputed facts, and corroborating or refuting facts in **paragraph form**.

"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. The Respondent insisted they had no idea the Complainant was too drunk to engage in sexual activity 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."

Closing Suggestions

Always follow your own institution's policy and procedures as it relates to your Title IX investigative protocol.

This video course is not an exhaustive training – please visit www.academicimpressions.com for upcoming comprehensive Title IX Investigator training programs and events.

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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) Quid Pro Quo 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 Complaint 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's] 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.¹

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.

¹ See 2020 Title IX Regulations, 34 C.F.R. § 106.30.

IV. Applicable Offense(s)

- List offenses and their definitions

V. Supportive Measures

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

VI. Investigative Process Procedural Steps

- This section is drafted from the investigator's point of view. Include:
 - Date Title IX Coordinator assigned the case to the investigator
 - Dates the parties received Notices of Interview
 - Dates parties were interviewed
 - Dates witnesses were interviewed
 - List the correspondence with the parties and witnesses during the investigative process (e.g., "Sent Complainant interview transcript for review and approval.)
 - Date Parties received the Investigative File for review and approval
 - Date Parties received Investigative Report for review and approval
 - Date investigator received written responses from Parties in response to Investigative File and Investigative Report
 - Any other information memorializing the investigator's actions during the investigation.
 -

VII. Evidence Obtained

- List the witnesses interviewed at the request of the Complainant
- List the witnesses interviewed at the request of the Respondent
- Additional witnesses interviewed by the Investigator
- Evidence provided by Complainant
- Evidence provided by Respondent
- Other evidence obtained by Investigator
- Evidence requested by the Investigator, but not obtained and reason not obtained.

VIII. The Alleged Conduct

- Copy and paste allegations set forth in the Notice of Allegations into this section of the Investigative Report.

IX. Purpose of Investigative Report and Definition of "Relevant Evidence"

The May 2020 Title IX Final Regulations and the Policy require the investigator to draft an Investigative Report that summarizes the Relevant Evidence obtained during the Investigative Process. The Policy defines Relevant Evidence as evidence that “has the tendency to make the existence of any fact that is of consequence to the determination of the action more or less probable than it would be without the evidence.”

The Parties received the Investigative File containing the evidence “directly related to” the allegations for review and response. The Relevant Evidence is taken from the Investigative File and is for the decision-maker(s) to rely upon when at the hearing and when determining Responsibility.

The following is the Investigator’s summary of the Relevant Evidence in this case concerning each allegation outlined in the Notice of Formal Complaint and Allegations.

- X. Summary of Relevant Evidence
 - Summarize the relevant evidence
- XI. Referral to Title IX Coordinator

The investigator makes no determination as to whether violations of the Policy have occurred. Rather, the investigator refers this Investigative Report, in its final form, to the Title IX Coordinator to determine next steps.