

James Madison University: Advanced Investigator Training

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Disclaimers



- I am 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!
- This is an advanced investigator training and is not intended to satisfy your annual Title IX & Clery training requirements

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

Topics for This Training



- The role of the Investigator
- Relevancy & Relevancy Exercises
- Investigative Interview Techniques
- Writing a Report (& editing it)



The Investigator's Role

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JMU Policies



- EEO/Non-Discrimination
 - Policy 1302 – Equal Opportunity and Non-Discrimination
 - Policy 1324 - Discrimination and Retaliation Complaint Procedures (Other than Title IX Sexual Harassment (Policy 1346) and Sexual Misconduct (Policy 1340))
- Sexual Misconduct/Harassment
 - Policy 1340 – Sexual Misconduct Policy
 - Policy 1346 – Title IX Sexual Harassment

Ethic of Care



- The values you build into your conduct process
- The values you build into your community
- The way you treat members of your campus community
- The way you expect members of your campus community to treat each other

Note: Your ethic of care should be consistent across the institution.


JMU Policy/Process



EEO/Non-Discrimination:

The university seeks to resolve matters promptly. The time frame begins with the proper filing of the complaint. **The university strives to provide a final determination within 90 business days** of the complaint commencement date, and within ten additional business days following receipt of any appeal. **Timelines may be extended as necessary to ensure the integrity and completeness of the investigation and/or for good cause, though all major stages must occur within reasonably prompt time frames.** Reasons for extending the time frame may include, but are not limited to: **availability of witnesses; compliance with a request by law enforcement; case complexity; volume of information to be reviewed and analyzed.**

Formal Complaint Investigation Procedures (Sexual Misconduct/Title IX)



Phase 1

- Evidence Collection
- Est: 20 Business days

Phase 2

- Complainant & Respondent Review
- Est: 10 Calendar Days


Phase 3

- Draft DIR
- Est: 10 business days

Phase 4


- Complainant & Respondent Review of IR
- Est: 5 calendar days


The Investigation and Report




- The investigator has the burden of asking the parties for and collecting all relevant evidence.
- Parties have the right to offer evidence and witnesses to support or refute the allegations.
- The investigator has the responsibility of presenting the evidence to the parties and preparing a report.

The Investigator's Roles





Gatherer of relevant evidence



Organizer of relevant evidence

Your Role?



- Our court system is adversarial. Is that what your EEO/TIX process is?
- Do you have the equivalent of the police and the prosecutors, or is your process something different entirely?



Relevance

What is Relevant? Policy 1346 and Policy 1324



Evidence is relevant if it has any **tendency to make a fact more or less probable** than it would be without the evidence, and **the fact is of consequence** in determining the outcome of the case. Relevant evidence includes **evidence concerning the credibility** of a party or witness.

What is Relevant?

Preponderance of the Evidence

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





Does this help me in deciding if a fact is more likely than not true?

Does it make it more or less likely to be true?

Why or why not?



Under Title IX ... This means

-  Cannot exclude redundant evidence
-  Cannot exclude character evidence (but is it *relevant to something else?*)
-  Cannot exclude hearsay
-  Cannot exclude evidence where the probative value is substantially outweighed by the danger of unfair prejudice (30294)

Issues of Relevancy (Title IX) What isn't relevant?



Party's medical, psychological, and similar records (unless voluntary written consent)



Information protected by a legally recognized privilege

Relevancy (Title IX): 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 (Title IX): Legally Privileged Info – 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 (Title IX): What isn't relevant? – Rape Shield Provision



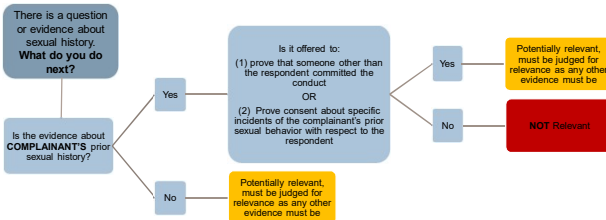
- Evidence about **complainant's** prior sexual history (must exclude) unless such questions/ evidence:
 - are offered to prove that someone other than the respondent committed the conduct, or
 - if the questions/evidence concern specific incidents of the complainant's prior sexual behavior with respect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

Issues of Relevancy (Title IX): 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**."
- See Also, JMU's Sexual Misconduct Accountability Process
 - "Evidence of a pattern of conduct similar in nature by the Responding Party, either prior to or subsequent to the conduct in question may be relevant. Pattern evidence may be deemed relevant if the previous or subsequent incident(s) was substantially similar to the present allegation and the information indicates a pattern of behavior by the Responding Party"

Rape Shield Provision Flowchart



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).” ”

2020 Title IX Preamble, 30331

Relevancy and the Investigation and Report

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✓

Summarize

✗

Evaluate

“ 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.) ”

Relevancy Recap

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- Does the evidence speak to a fact in dispute?
- Does the evidence speak to credibility/consistency/plausibility?
- Does the witness have personal knowledge?
 - If no personal knowledge, is the witness an outcry witness (i.e., did Complainant or Respondent speak to the witness about their experience)? Or does the witness speak to credibility/consistency/plausibility?
- Is the evidence repetitive or duplicative, but still relevant? i.e., is there a possibility that the evidence could provide an account that corroborates or refutes another account? Does the evidence shows that the party has been consistent or inconsistent over time?
- Must** the evidence be excluded?

Relevancy Recap

INCompliance


Relevance

≠

Weight



Relevancy Hypotheticals for the Investigator



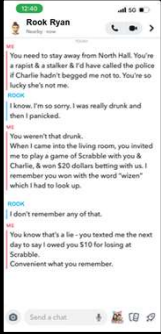
Relevancy Hypotheticals

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.

Hypothetical Report

Reporter Name: Charlie Chun
Received: January 10, 2023 at 9:12 A.M.
Intake Format: Compliance System Report
Parties Identified: Charlie Chun and Rook Ryan

Narrative: Rook sexually assaulted me early in the morning of January 5, 2023. Rook STALKED me too, they contacted me after I told them to STOP. I even blocked them, and they showed up outside of my dorm and aggressively approached me. So, I had to act in self-defense to get away from them. I retreated to my room and hid in there for several days, which made me miss class. Here is a screenshot of a Snapchat conversation with my roommate Wendy and Rook. Rook is a PREDATOR!!!!



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Notices of Allegations

January 10, 2023

Title IX Office sent Notices of Allegations to the parties that Charlie had filed a formal complaint that Rook engaged in prohibited conduct that could violate Title IX for sexual harassment and stalking and that the Title IX Office was initiating an investigation

Charlie

1. Sexual Harassment

2. Stalking

Rook

INCompliance

Hypothetical Report #2

January 11, 2023

After receiving the Notice of Allegations, Rook came to the Title IX Office and filed a formal complaint against Charlie alleging that she engaged in prohibited conduct under Title IX for sexual harassment and dating violence

Charlie

1. Sexual Harassment

2. Dating Violence

Rook

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Hypothetical One

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

Is this relevant?

FACT: _____

LESS LIKELY

MORE LIKELY

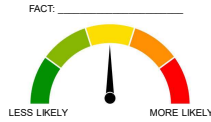
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Hypothetical Two



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

Is this relevant?

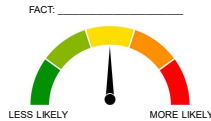


Hypothetical Three



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

Is this relevant?

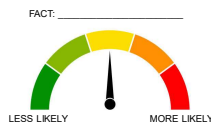


Hypothetical Four



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

Is this relevant?

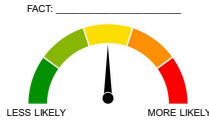


Hypothetical Five



Rook states that Charlie cheated on them and may have sexually assaulted two other witnesses who Rook identifies.

Is the information from those witnesses relevant?



Continued Hypos



- Complainant asks you to interview his best friend, who was not present when the incident occurred, but whom Complainant spoke to the following week. You have already interviewed two of Complainant's fraternity brothers who he spoke to the day following the incident with Respondent.
- Respondent asks you to interview his supervisor, to whom he reported that he complained about Complainant's work performance three months ago. Respondent has already provided emails demonstrating that he spoke to his supervisor about Complainant's work.
- Complainant provided screenshots of texts between her and Respondent spanning three years.
- Respondent asks you to interview her best friend to whom she has never spoken about Complainant.


Continued Hypos



- Respondent suggested seeking surveillance footage from Converse Hall, as Complainant and Respondent reportedly walked through the courtyard on their way to Shenandoah Hall following the football game but before the sexual assault at Shenandoah two hours later. Respondent said the video would show that Complainant was holding Respondent's hand and Complainant was not stumbling.
- Respondent suggests pulling swipe records from Shenandoah Hall and Converse Hall. Respondent says that the records will corroborate Respondent's account of the evening's timeline, and refute Complainant's. Complainant reports the swipe records are irrelevant because Respondent is a liar.
- Complainant and Respondent both provide email history from January 1, 2024 to date of NOI.
 - What if Respondent alleges Complainant faked or altered emails.




Introduction to Investigative Techniques

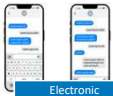
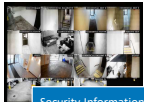




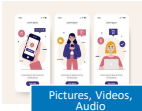
Initial Review

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



Begin Evidence List

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

Setting Up the Interview 2 of 2



- 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 (if available)

Setting Up the Interview 2 of 2



- Your role in the process
- Their role in the process
- Who will see their information?
- Amnesty (if relevant)
- Retaliation prohibition
- Confirm receipt of NOI

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?

Open-ended follow-up questions

Specific questions

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?

When do you ask a follow-up question?



- The statement lacks clarity.
- The statement lacks specificity.
- The statement does not provide information relevant to the charged policy violation.
- The statement is missing helpful context.
- The statement contains internal inconsistencies or is inconsistent with other statements in the record.
- Information from other party or from witness gives rise to new allegation of prohibited conduct.

Would you follow up? 1 of 3

- Complainant reported they were "creeped out" because Respondent kept looking at Complainant during the meeting.
 - What does "creeped out" mean? What was happening during the meeting? How long did Respondent look at Complainant? What was it about Respondent's look that made Complainant feel uncomfortable? Did Respondent speak to Complainant? Had they had interactions before or after this?
- Respondent said Complainant had "repeated" work performance concerns.
 - What were those concerns? Were those concerns communicated to Complainant? When? Why not? Have other people been counseled for performance concerns? Why/Why not? What were those folks protected characteristics.

Would you follow up? 2 of 3

- Respondent said Watkins was present for Complainant's October 30, 2024 performance counseling. Complainant said during the counseling, Respondent used a "slur."
 - What was the "slur"? Does Witness Watkins recall the October 30 counseling? What does Watkins recall? Did Watkins hear the slur? What does Respondent recall of that counseling? Had Watkins heard Respondent use a slur before? When? How many times? What was the impact?
- Watkins said Respondent's demeanor was "threatening and offensive."
 - What was threatening? Why does Watkins think this? What was offensive about the incident?

Would you follow up? 3 of 3

- Complainant said Respondent touched their private areas.
 - Where? What did Respondent do when Respondent touched them? How long? Where were they when this happened? Were Witnesses present? Did Complainant view the touching as sexual? Why?

Asking difficult question



- Explain why you need the information before you ask it
- Remind the person of amnesty, if applicable
- If you accidentally offend, be human, apologize, and reset
- “You said this happened, and then you said it didn’t happen.” Which follow-up question do you like? Do you not like any of these?
 - “Help me reconcile those two statements.”
 - “Help me understand what you meant.”
 - “Which is true?”
 - “Which is not true?”
- Trauma?

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

When Consent is at Issue



- **Common concern of Title IX Coordinator: investigators not asking the questions to get details needed for incapacitation analysis**
- 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

Credibility



- Gather facts to assist **decision-maker/Panel**
- Your job: 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

Questions about Credibility - Bias



- Bias: (a) lay witnesses and (b) experts.
- Relationships (friendship and romantic)
- Experts: getting paid for testimony
 - You charge fees based on an hourly rate?
 - You were paid to produce a written report?
 - Based on this report, you're testifying today?
 - You're charging money for each hour you're here?

Questions about Credibility – Perception and Recall



- What is the witness's perception of the facts?
 - Has **time** impacted recall or ability to remember clearly?
 - How many times has the **witnesses talked to the other party** about this case?
 - Was there **anything** that impacts the person's physical or mental ability to perceive or recall facts accurately?
- Does the witness form a conclusion without knowing certain information?

Questions about Credibility – Inconsistency in Statements



Only happens if you interview the parties or witnesses multiple times

- If a fact was very important, why is the hearing the first time it has come up?
- What possible reasons might the witness have for changing their testimony?
- Did a witness receive coaching from the party or others between making one statement and another?
- Has the witness's perspective or motive changed between statements?
- Does changing this fact help the other party's case?

Questions about Credibility – Example



• **Example: Intoxication level information from witness.**

- You did not see the consumption, or keep track of how long the party was consuming alcohol?
- You did not measure the alcohol poured by ____ or the party?
- Your statements are based on information provided by others? the other party?
- Party's statements were made after they had been drinking alcohol (consuming other drugs, etc.)?

Remember: Is the person speaking from personal knowledge?

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))

Choices for Interview Summaries

- Include procedural discussions?
- Include questions with answers?
- Chronology of interview vs. Chronology of events?
- Incorporate feedback from the student/witness?
- Can you structure the summaries along consistent subheadings so that they can be easily compared?

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!

Summaries Are Not Art



- "Witness stated..."
- "Witness stated..."
- "Witness stated..."
- "Witness stated..."
- "Witness stated..."
- "Witness stated..."
- "Witness stated..."

Inspection and Review of Evidence (Title IX)



Provide ALL Evidence to both parties and advisors

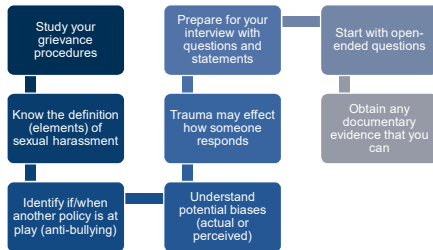
- Include everything related to allegations, even if you don't expect decision-maker to rely on it
 - Allow 10 days to review
 - Allow written response
 - Follow up where necessary
 - Consider responses when preparing report
- (106.45(b)(5)(vi))

Create Investigative Report



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


Key Takeaways




Writing the Report




The Investigator's Roles






Gatherer of relevant evidence




Organizer of relevant evidence


Start with the basic information




Identify factual information:




Complainant



Respondent




Investigator



Witnesses

- Perhaps organize by fact v. expert witnesses or by party whom requested the witness

Investigation Reports



- Summarize **facts**
- No findings of fact; No determinations
- Provide to parties and advisors at least 10 days before the hearing
- Did you create a draft and share it with the parties when you shared the evidence?
 - If so, make sure to distinguish between the DRAFT report and the FINAL report because the FINAL report must address your consideration of the feedback provided

Things to Keep in Mind



- Two stories
- Each case includes at least TWO stories, maybe more
 - (1) The underlying case
 - (2) The investigation of the underlying case

Things to Keep in Mind



- Each case includes at least TWO stories, maybe more
 - (1) The facts of the underlying case
 - On August 25, 2020, Complainant and Respondent attended a party together at Thompson Point Residence Hall
 - Complainant reports A, B, and C
 - Respondent reports X, Y, and Z

Things to Keep in Mind



- Each case includes at least TWO stories, maybe more
 - (2) The investigation of the underlying case
 - On August 30, 2020, Complainant filed a formal complaint
 - On September 5, 2020, Complainant spoke with Investigator
 - On December 10, 2020, Complainant shared the Investigation Report with Witnesses 1, 2, and 3

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

- ALWAYS INCLUDE
- 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

Be helpful to reviewers – keep it transparent!

Citations to the record – always

- Be helpful for your fact-finders!

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

Include screenshots/pictures in the report?**YES (and also in appendix)**

Pros: can be illustrative and forefront; reviewer doesn't have to flip to the appendix

Cons: can make the report bulky

NO (just include in appendix)

Pros: can keep the report neat and concise

Cons: may lose impact if the viewer doesn't jump back and forth between the appendix and text, which can also be annoying for reviewers

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]”

Are there any areas of agreement?

Synthesis 101



Look for opportunities to logically combine related facts

- Undisputed facts at the beginning
 - May give a framework without creating repetition
- Disputed facts
 - Facts may be related by:
 - Timing
 - Source
 - Topic

Synthesis Example #1



Logically combine related facts to tell a story

Pre-Gaming at Apartment 12

Complainant and Witnesses A, B, and C, reported that they each took 3 shots of vodka when they arrived at Apartment 12. Appendix, pp. 6-9. Witnesses agree that approximately two hours after Complainant and Witnesses A, B, and C arrived and took vodka shots, Respondent arrived at Apartment 12 with Witness D. Appendix, pp. 4-9. During his Title IX interview, Respondent reported that he did not take any shots of vodka and had a clear memory of the night. Respondent also reported that he did not observe Complainant take any shots of vodka that night, did not see Complainant stumbling when she walked around the apartment, and did not hear Complainant slur her speech at any time. Appendix, p. 7.

Synthesis Example #1 - Takeaways



Several things worth noting in this example:

- The information is presented under a topic heading
 - "Pre-Gaming at Apartment 12"
- Information comes from different sources and is blended together
 - Parties and witnesses
 - References to appendix suggest that the information came from several different interview summaries

Synthesis Example #2



Logically combine related facts to tell a story

Report that Respondent choked Complainant

As previously mentioned, Complainant reported four separate acts that might rise to the level of a policy violation. First, Complainant reported that Respondent choked her during their argument on September 1, 2020. Formal Complaint, p. 1. When Complainant described this incident to the Title IX investigator, she said that Respondent used his hand to encircle her throat and then squeeze, preventing her from breathing or talking. (Sept. 10th Interview of Complainant). Complainant submitted photographs of her neck during the Title IX investigation, which are included in the Appendix to this Report on pages 10 and 11. Two witnesses, Witness A and Witness B, reported to the Title IX investigator that they observed bruising on the Complainant's neck when they saw the Complainant the morning of September 2, 2020. (Sept. 12th Interview of Witness A; Sept. 20th Interview of Witness B). Respondent denied that he choked Complainant. In his statement to the Title IX Investigator...

Synthesis Example #2 - Takeaways



Can you apply these takeaways in your cases?

Several things worth noting in this example:

- The information is presented under a topic heading
 - “Report that Respondent Choked Complainant”
- Information comes from different sources and is blended together
 - Parties and witnesses
 - References to multiple interview summaries and photographs
 - When things cannot be logically combined, begin a new paragraph (“Respondent denied...”)

Analysis of Disputed & Undisputed Facts



Be careful to avoid drawing any conclusions

Complainant and Respondent's Accounts of Events

A. Areas of Agreement

B. Areas of Disagreement

Common Writing Mistakes: Empathy and Tone

Empathy

- Stay away from charged words of advocacy
 - Clearly/obviously
 - Innocent/guilty
 - Victim/perpetrator
- Watch your use of adjectives and adverbs – unless they are in a quote
 - “really drunk”
 - “forcefully pushed”

Tone

- Be non-judgmental
- Recognize the impact of your words

Common Writing Mistakes: Cite Your Source

Failing to include sources of information

- If explaining this in every sentence (“Bob stated this happened”) weighs down your writing, use footnotes to add clarity.
- Citing the source of your information helps the reader and underscores your neutrality

Confusing Quotation Marks

- Is the quoted language from the interviewee?
- Is the quoted language actually a quote from someone else?
 - Footnote 10: The quoted language was attributed to Respondent by Complainant during Complainant’s October 10, 2020 Title IX interview.

Common Writing Mistakes: Structure

Topic sentences and transitions

- Provide a roadmap in your introduction and under new headings
- Sentences should flow from one-to-another
- Remember – telling two or more stories to someone unfamiliar with the case

Pronouns

- Be careful of pronoun usage so that the reader always knows who is saying or doing what
- When using pronouns, make sure you are using the right pronouns for the individual

Common Writing Mistakes: Miscellaneous



Typos

- They happen to everyone, but
- Typos in every sentence undermine the integrity of a summary/report

Run-on sentences/Sentence fragments

- Make sure each sentence has a subject and a verb
- If combining multiple independent clauses, consider whether to separate sentences

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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.

Editing Checklist



- ✓ Spelling (run spell checker).
- ✓ Review for run-on sentences and long/ run-on paragraphs.
- ✓ Revise sentences that sound conclusory (e.g., "Jack ran into Complainant on purpose." versus "Complainant reported Jack ran into them on purpose.")
- ✓ Review for vague/confusing pronoun usage. Are you using the correct pronoun? (e.g. "He said that he said a slur" versus "Complainant said that Jack used a slur")
- ✓ Confirm same font/font size/font color.
- ✓ Confirm same indentation styles (i.e., no indent or .5 indent – not both).
- ✓ Confirm same justification throughout (either left aligned or justified—not both).
- ✓ Confirm consistent identification of parties/witnesses (Complainant not the Complainant; Wesley Williams v. Williams v. Wesley v. Wes v. Dr. Williams v. Professor Williams).
- ✓ Are there any footnotes or explanations needed to ensure clarity for the reader?
- ✓ If you have used a template:
 - ✓ Have you confirmed language in the template applies to your case?
 - ✓ Have you updated that language?
 - ✓ Have you removed all references to parties and witnesses from the original case?
- ✓ Double check that quotes are accurate (policy, evidence, etc.)
- ✓ Is all evidence provided accounted for?
- ✓ Is every witness suggested/mentioned accounted for?

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.

Report Exercise 1



- **Witness Non-Participation**
 - The Investigator contacted Witness Williams on October 1, October 7, and October 14, 2024, to request an interview. Williams responded on October 15, 2024, declining participation. Williams explained, "This incident happened three years ago, I have very little memory of the exact interaction and do not want to participate."
- **Witness Not Relevant**
 - Respondent requested that the Investigator interview his childhood best friend, Wes Worthington. On August 1, 2024, the Investigator asked Respondent what information Worthington would provide that was relevant to the investigation. Respondent said he did not speak to Worthington about the investigation, but Worthington "kn[ew] Respondent better than anyone, and could speak to Respondent's character." The Investigator declined to interview Worthington as Worthington did not have personal knowledge of the reported conduct and did not have information that would speak to credibility, consistency, or plausibility.

Report Exercise 2



- **Party didn't provide promised evidence.**
 - During the investigation, Claimant reported they had a video of Respondent pouring Claimant three shots of Fireball and of Respondent "forcing [Claimant] to take the shot even though [Claimant] was clearly intoxicated." The Investigator asked Claimant to provide that evidence during the investigation. As of the date of this report, the Investigator has not received the video.

Example 1



Bad example: Rook was very believable when they said they had been attacked by Charlie.

Neutral and clear correction: Rook stated they were attacked by Charlie outside of North Hall. Rook provided the names of witnesses and contact information for those witnesses.

Example 2



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

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

Example 3



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

Neutral and clear correction: Rook provided the following information at the interview: that Rook had 3 whiskey sours, that Rook had at least 2 whiskey sours, and that Rook may not have had any whiskey sours.

Example 4



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

Neutral and clear correction: Charlie requested the investigator follow up with her roommate, Wendy. 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 Charlie's statement regarding the time period between 8 and 9am on January 6, 2023. The roommate was not present outside of that time frame and had no additional information.



Questions?
