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Title IX Investigator: Refresher and Skill-Building Training

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- Title IX Skills Refresher
- Case Studies
- Handling Nuanced Cases
- Report Writing
- Cultural Competency vs. Cultural Humility

Who's Here in the Room?

- What's your day job?
- Why do you do this work?
- What has been your experience as an investigator?
- What has been your greatest challenge as an investigator?



What are you hoping to get out of today's refresher?





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Basic Skills Refresher

Role of the Investigator

- Fair and unbiased review of matter
- Follow the Policy
 - Standard of proof
 - Avoid burden shifting
- Make a preliminary determination regarding the violation(s) and possibly recommend sanction(s)



Fact Gathering

Provided
Evidence

Interviews

Additional
Evidence



Interview Strategies

- Set a professional non-accusatory tone
- Introduce yourself and outline your role
- Acknowledge what emotions they may be experiencing
- Review the amnesty and retaliation policies
- Outline an expectation of truthfulness
- Discuss confidentiality

Effective Questioning

- Questions should be used to determine:
 - Who
 - What
 - When
 - Where
 - How
- Be mindful of how a question could be perceived and develop them with caution



Effective Questioning

- What is the purpose of an interview?
 - Hear the statements
 - Establish a timeline
 - Gather information to determine what is more likely than not what happened
- What is **not** the purpose of an interview?
 - Satisfying Curiosity
 - Collecting non-relevant information

Effective Questioning

- Ask open-ended questions to start the conversation
- LISTEN, ask follow-up questions at the end
- Don't be afraid of silence
- Don't be afraid to ask for clarification
- Take breaks if necessary
- Maintain your professionalism at all times

Evidence Gathering

- Consider all sources of information: video footage, social media, card swipes, Uber receipts, etc.
- Verify sources
 - iPhone texts
- Verify the role of identified witnesses
- Accept documentation parties are willing to provide and sift through to determine what is relevant
- Be cognizant of the difference between what was “heard” (hearsay), what can be assumed (circumstantial), and what was “witnessed” (facts)
- Impact statements can be included as attachments but should not be in the body of the report



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Difficult Assessments

Incapacitation

Cross-
Allegations

Dating &
Domestic
Violence

Incapacitation

- Physical and/or mental inability to make informed, rational judgments
 - Could the Complainant make rational, reasonable decisions ?
 - Could the Complainant appreciate the situation and address it consciously?
- More than mere intoxication or drunkenness



Impairment

- “Under the influence”

Intoxication

- “Drunkenness”

Incapacitated

- Incapable of understanding

Determining Incapacitation

- Incapacitation is a determination that will be made after the incident in light of all the facts available
- Assessing incapacitation is very fact dependent analysis of the incident in question
- Various forms of incapacity
 - Alcohol or other drugs
 - Mental/cognitive impairment
 - Injury
 - Sleep

Two-Part Incapacitation Analysis

Part One

- Was the Complainant incapacitated?

Subjective analysis based on the facts surrounding the incident

Part Two

- Did the Respondent know of the Complainant's incapacity?
 - Or would a Reasonable Person have known?

Objective analysis based on the facts surrounding the incident



Part One: Incapacitation Analysis

- Create a timeline starting when the Complainant began consuming alcohol
- Timeline should include:
 - What was consumed (e.g. wine, beer, or hard liquor)
 - How much was consumed
 - If any recreational or prescription drugs were used
 - Food consumption and sleep
- If witnesses:
 - What time did they see Complainant and how was Complainant acting at that time?

Behavioral Cues

- Evidence of incapacity may be:
 - Slurred speech
 - The smell of alcohol on the breath
 - Shaky equilibrium; stumbling
 - Outrageous or unusual behavior
 - Passing out
 - Throwing up
 - Appearing Disoriented
 - Unconsciousness
 - Periods of blackout

Part Two: Respondent's Awareness Analysis

- Did the Respondent know Complainant previously?
 - Had the Respondent and Complainant consumed alcohol together before?
 - Was Complainant acting very differently from previous similar situations?
- If the Respondent did not know Complainant previously,
 - Did the Complainant's behavior indicate incapacitation?
 - Did the Respondent provide Complainant with alcohol or watch Complainant's consumption?

Mutual Incapacitation

- Policy standard is from a reasonable person's perspective, so Respondent's intoxication cannot be used as a defense
- If the Respondent is alleging mutual incapacitation and there is evidence to support that both parties were incapacitated, the onus to obtain consent is on whoever initiates the sexual activity

Case Study



Dating & Domestic Violence

- Can include physical, sexual, emotional, or financial abuse or the threat of such abuse, among others
- Physical, verbal, or digital (social media)
- May include other acts of prohibited conduct

Threat Assessment

- Complainants may not wish to pursue an investigation due to safety concerns
- Strangulation is the most significant predictor for future lethal violence.*
- The presence of a gun in a domestic violence situation increases the risk of homicide by 500%.*

Leaving an Abusive Relationship

- Leaving a relationship is the most dangerous time for a victim of IPA
- Reasons an individual may stay:
 - Fear
 - Normalized the behavior
 - Lack of money and resources
 - Fear of being outed
 - Love
 - Cultural or religious reasons
 - Shame
 - Immigration status
 - Unwilling to leave pets
- An individual choosing to stay in or return to an allegedly abusive relationship does not preclude you from determining there is sufficient evidence to support a charge



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Case Study

Background

Sarah and Claire are undergraduate students who live off-campus together, and they have been in a relationship for the last six months. They are both on the women's swim team.



Claire's Allegations

Claire reports to the Title IX Coordinator that she and Sarah got into a verbal argument the previous evening about their relationship. Claire stated that as she was trying to leave the apartment to cool off, Sarah blocked the door and pushed her, causing Claire to fall back onto the ground. Claire stated that when she stood up, Sarah took her phone from her pocket and threw it at the wall, causing it to crack, to prevent Claire from calling for help. Claire said that Sarah then yelled at her, called her a “bitch,” and then walked into their bedroom. Claire said she left the apartment once Sarah went into the bedroom and stayed at a friend’s house for the evening. Claire said she hit her head when she fell and is going to the doctor because she is concerned she has a concussion. Claire said she wants the case investigated because she does not want Sarah on the team



Sarah's Response

Sarah said that she and Claire argued after Claire accused her of cheating with a mutual friend. Sarah reported that during the argument, Claire said she was going to get revenge against her by outing her to her family and moved towards the door to leave the apartment. Sarah said that her family does not know that she is a lesbian, and since they are very religious, she is concerned about telling them. Sarah said her parents support her financially, and they would no longer support her if they knew her sexual identity. Sarah said that she blocked Claire from leaving the apartment because she did not want Claire to go to her family's home. Sarah said that she and Claire scuffled at the door and Claire fell backwards. Sarah said she is unsure how Claire fell but asserted that she did not push her and thought Claire lost her balance.



Sarah's Response (Continued)

Sarah stated that after Claire fell, Claire pulled her cell phone out of her pocket and threatened to call Sarah's family. Sarah said she did take Claire's phone and threw it across the room because she was afraid of Claire calling her parents. Sarah said that she wanted to file a report against Claire because Claire threatened to tell Sarah's family about her sexual orientation which would harm Sarah's ability to be enrolled due to financial reasons.



Tasks

1. Identify which policies are implicated
2. Develop an investigation plan:
 - Who do you want to speak with?
 - In what order?
 - What sources of evidence are available?
3. Draft questions for each party



Additional Facts

- The TIX Coordinator works with the Swim Coach to place Claire and Sarah on interim suspension from the swim team pending the outcome of the investigation.
- After providing her initial statement to the TIX Coordinator, Claire obtains an attorney.
- Another team member on the swim team makes a public post about Claire and Sarah and their interim suspension. The post gets picked up by the media and now the local news station is contacting you for updates. What do you do?
- A member of Sarah's family sees the public post and news story and is contacting you to ask for details about their daughter's case. How do you respond?



Cross-Allegations or Multiple Complainants/One Respondent

- Can be assigned to one investigator
- Separate investigations and investigation reports
- Determine **separate** conclusions based on evidence



Factors in High Profile Cases

- Incident type
 - Hazing
 - Title IX
 - Bias Motivated Incident
- Involved parties:
 - Celebrities
 - Athletes
 - Children of celebrities, politicians, etc.
 - Donors
 - Well-known attorneys representing the parties
- Institutional setting:
 - Urban area – national media
 - Rural area – local papers



Potential Concerns in High Profile Cases

- Lawsuits
 - EEOC
 - OCR
 - Civil Suit
- Reputational Damage
 - Decreased enrollment
 - Donor loss

“ [United Educators] and 104 of its member institutions spent more than \$17-million from 2011 to 2013 defending against and resolving students’ claims, including lawsuits and federal complaints, in cases of alleged sexual assault.”

Who Should You Contact?

- TIX Coordinator
- Media/Public relations
- Legal Affairs
- USG System Office
- Support offices (FSL, Women's Center, etc.)

What Should You Do?

- Follow the process
- Keep individuals up-to-date
- Maintain accurate records
- Utilize support resources
- Things to keep in mind:
 - Social Media
 - Open Records

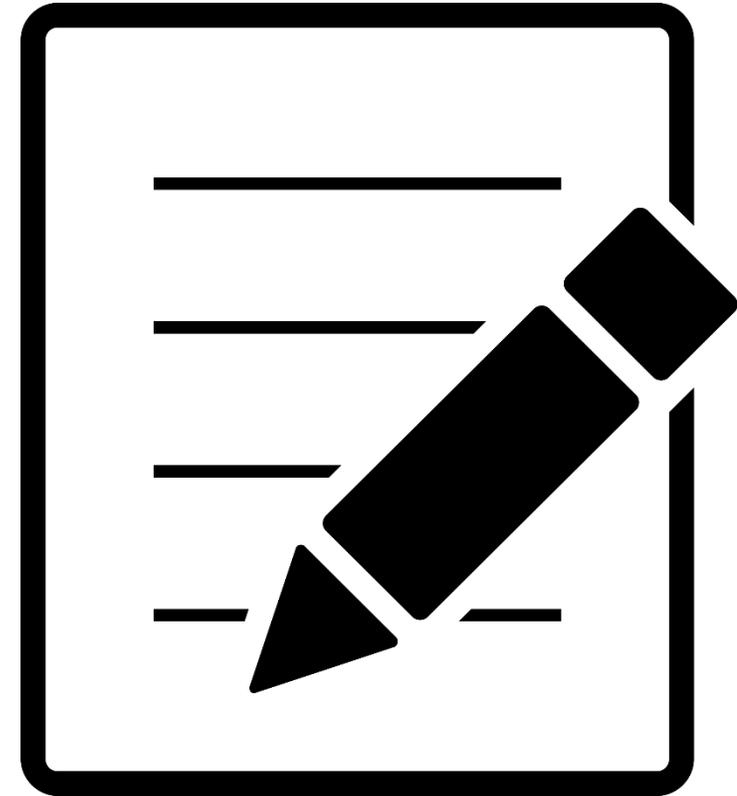


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Report Writing

The Investigation Report

- Executive Summary
- Relevant Policy Provisions
- Information Gathered During the Investigation
- An Analysis of the Information Gathered
- Recommendations for Informal Resolution OR Conclusion
- Investigation Timeline
- Necessary Attachments



Executive Summary

- Big picture investigation information
 - Who reported the incident?
 - To whom did they report?
 - When did they report?
 - Who was assigned to investigate?
 - How was the investigation conducted?
 - What were the overall findings of the investigation?
- Noteworthy occurrences

Information Gathered

Dos

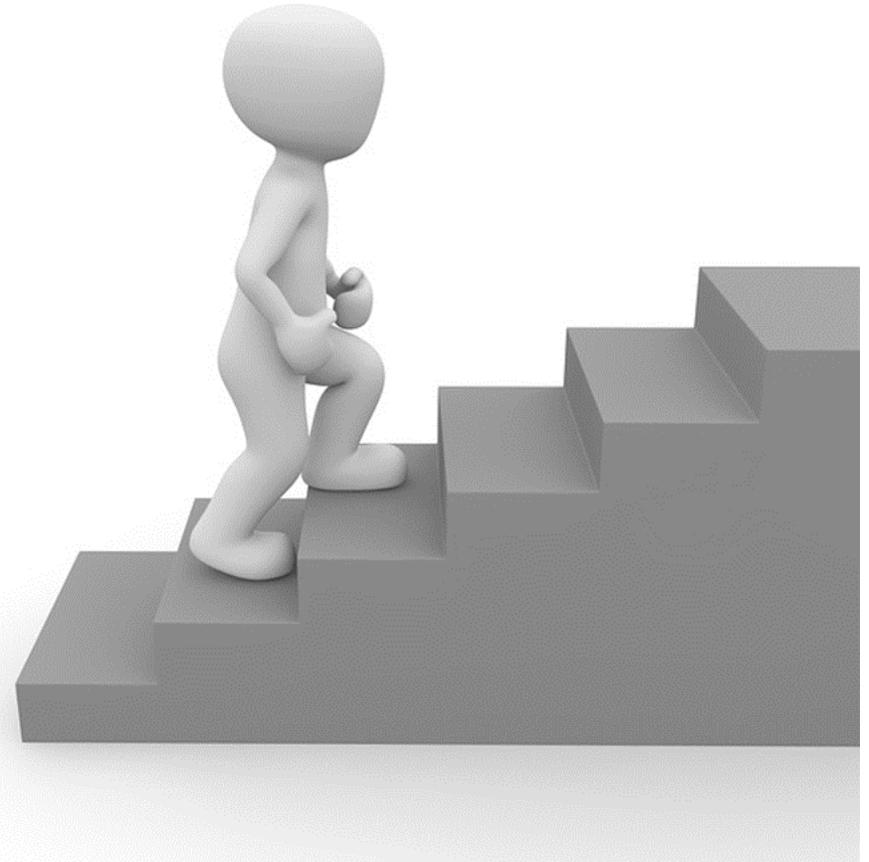
- Each statement should read as a cohesive narrative
- Utilize footnotes for clarity
- Begin statements with an identification of who made the statement/how the investigator got this information
 - “The Complainant stated...”

Don'ts

- Merely transcribe the interview
- Assume reader knowledge
- Employ different writing styles

Analysis

- Must assess each segment of the prohibited conduct definition
- Be specific about the evidence you are using to support your argument
 - “Witnesses agree” versus “Witnesses Smith, Hayes, and Barnett reported...”
- Assess ALL sides of the evidence





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Cultural Competency vs. Cultural Humility

What is Culture?

- Shared system of meanings, beliefs, values and behaviors
- Culture is collective
- Culture is learned
- Culture is not static



Cultural Competence

- Develop awareness of one's own cultural values, beliefs and biases
- Continued education on cultural norms
- Honor diversity and acknowledge differences as assets to an organization or institution



Cultural Humility

- Cultural humility is a life long learning process of engaging in critical self reflection, and self critique, requires individuals and their respective institutions to be actively accountable for inclusivity
- Individuals who practice cultural humility increase their self-awareness of their own biases and perceptions, which enhance their experiences with others

Tervalon & Murray-Garcia (1998)



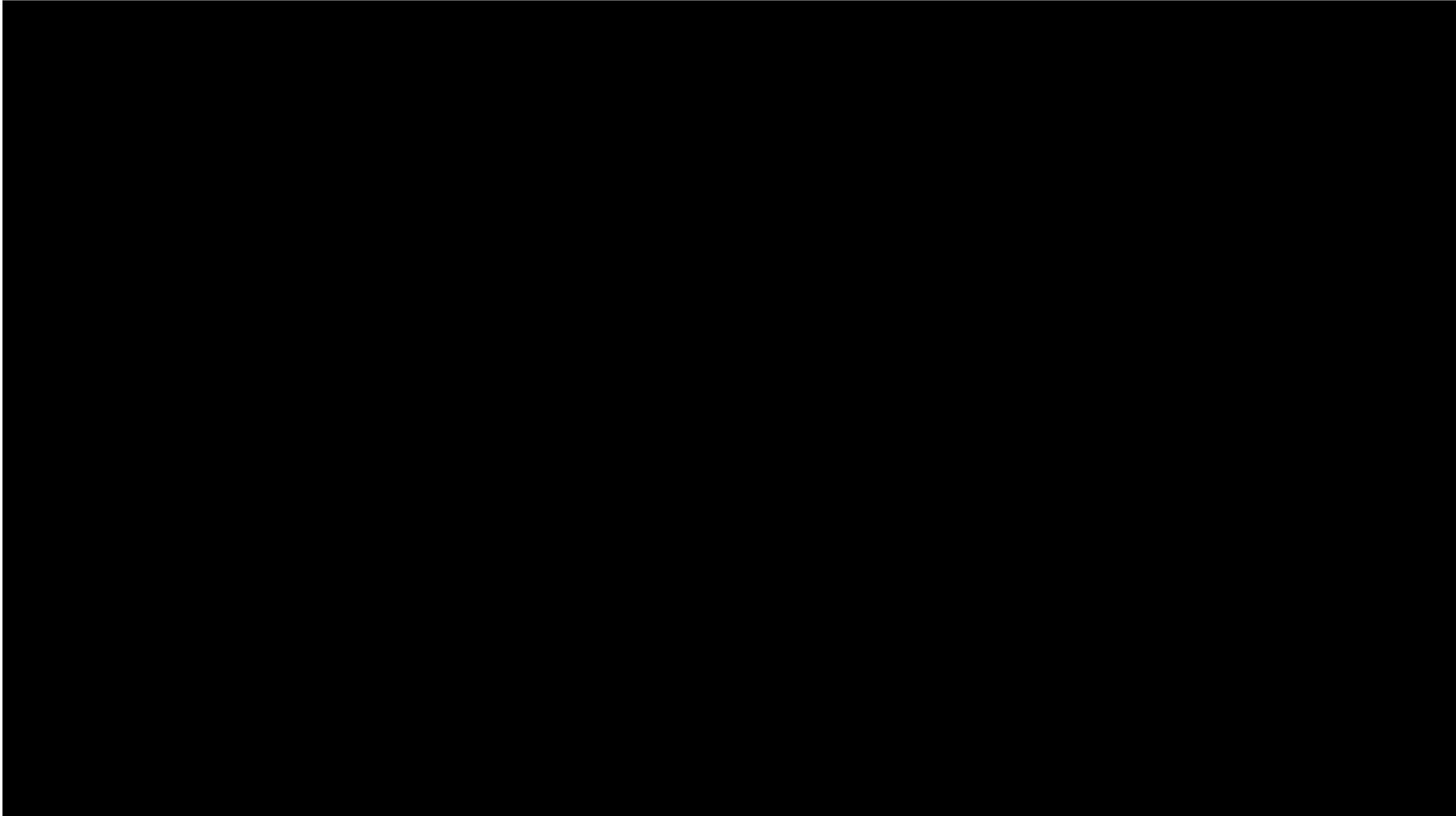
Importance of Identities



“Our minds automatically organize items into categories. Chairs, stools and sofas are used for sitting. This idea is not only true for items but also for people. These categories can include gender, race, and age. When this happens, the categories that we have associated with that person can automatically be activated and have an influence on our interaction with that person.” Jerry Kang, UCLA

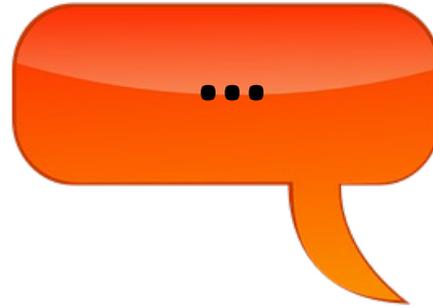
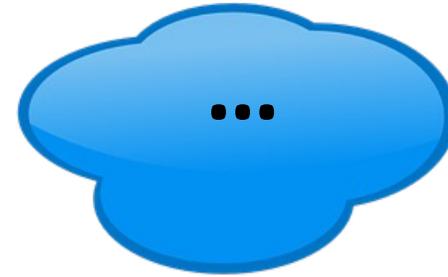
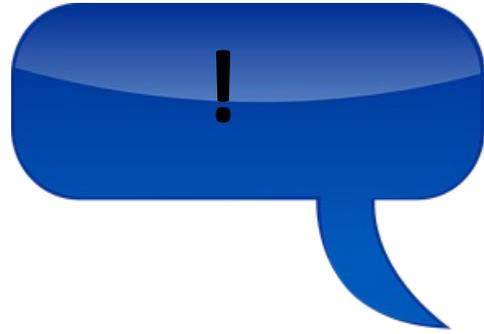
Personal Identity Activity





Applying Cultural Humility to Investigations

- Recognize unconscious biases that may arise during the investigation
- Consider how your identities are presented
- Be knowledgeable of all resources on campus to provide to parties and utilize campus partners
- Avoid the single story – Assess the information from all angles



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