

Interviewing Best Practices in Title IX Cases

Maine Coalition Against Sexual Assault & Southern Maine Community
College System

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What We Will Cover

- Capturing Interviews
- Basic Interviewing Techniques
- Party and Witness Interviewing Techniques
- How to Apply Trauma-Informed Investigation Training
- Difficult Investigation Issues
- Questions?

Capturing Interviews

- Identify date, everyone in room, name of interviewer, and start/finish times
- Collect as much detail as possible
- Legibility of notes
- Recording of interviews
- Confirming your notes, recording, transcript are accurate
- Maintaining notes, recordings
- Verbatim quotes and capture questions that asking for clarification

Interview Opening Statement

- Thank the person for coming.
- Briefly explain the matter.
- Mention note taking/recording.
- Explain process of the investigation.
- All information only disclosed on a “need to know” basis.
- Expectations of confidentiality, candor, cooperation, no contact.
- Discuss prohibition of retaliation.
- Explain amnesty policy.
- Explain guidelines regarding advisor’s participation.
- Ask: Do you have questions? Are you feeling ready to get started?

Basic Interviewing Techniques

- Build a rapport – don't interrogate
- Acknowledge difficulty/no judgments formed
- Pronouns – for purpose of investigation report
- Be compassionate in neutral manner
- Curious, non-judgmental tone
- Plan out questions, but let conversation evolve naturally
- Funnel approach to questioning (open ended to narrow)
- Avoid “leading” questions, paraphrasing, asking for character evidence or speculation
- Be comfortable with silence
- Establish a timeline/chronology
- Ask the difficult questions
- Get clarification to understand (not make assumptions), especially in relation to terms/phrases/acronyms
- Identify witnesses/corroborative evidence
- Ask: “Anything else?” Ask: “What questions do you have for the other party?”
- Provide opportunity for follow-up/ thank participant

Complainant Interview

- Reluctant complainants → what to do?
- Open-ended, non-judgmental questions
- Do not ask about prior sexual history (except as necessary)
- Consider impact of parents, advisors, etc.
- Handling conflicting statements (reconciliation)
- Handling difficult disclosures (explain why you need to know)
- Interview for clarification – don't interrogate

Complainant Interview

- What are you able to tell me about your experience?
- What are you able to tell me about sensory details?
 - Saw/heard/tasted/smelled/touched?
- What are you able to tell me about how that made you feel?
- What are you able to tell me about what you thought was going to happen?
- What are you able to tell me about what your thought process was when....?
- Can you tell me more about...?
- What are you able to tell me about any specific moments that stand out in your mind?
- What are you able to tell me about your physical/emotional reactions when...?
- What are you able to tell me about impact on your life and behavior now compared to before?
(e.g., eating, drinking, sleeping? Other routines?)

After Collecting Complainant's Experience

- Seek clarification of facts and information to help determine elements of the alleged violation or other additional evidence (who, what, where, when, how).
- Seek information about Respondent's behavior and communication.
- Exhaustive search for corroboration (even minor details)
- Explore motive, bias, interest.
- Pay close attention to circumstances of disclosure.
- Identify witnesses, electronic evidence, other sources of evidence.

Respondent Interview

- Follow same structure and approach to questioning as Complainant interview
- Allow Respondent to give statement in their own words, uninterrupted
- Seek exculpatory evidence, information and/or leads, other witnesses, etc.
- Ask Respondent to explain inconsistencies with known evidence and provide opportunity for Respondent to explain evidence disclosed by Complainant and witnesses
- Explore sensory and peripheral details disclosed by Complainant
- Explore motive, bias, interest
- Identify where there is agreement/dispute about what is alleged to have occurred

Common Defenses

Fabrication (It didn't happen.)

- Typically used when there is no corroborating physical or eyewitness evidence.

Identification (Someone else did it.)

- Typically used when there is corroborating physical evidence to establish that act occurred.

Consent

- Typically used when there is physical or other identification evidence or when the Parties know each other.
- Consent is the most common defense in acquaintance rape situations.

Corinne Casarino, *Civil Remedies in Acquaintance Rape Cases*, 6 B.U. Pub. Int. L.J. 185, 189 (1996).

How to Apply Trauma-Informed Investigation Training

- Gather information in investigations and adjudications in a non-judgmental manner.
- Utilize trauma-informed interview techniques when questioning parties and witnesses.
- Seek clarification from individuals about their specific behaviors instead of making assumptions or generalizing.
- Consider any plausible explanations of behaviors with other evidence.

Explaining Difficult Questions

Investigator's Question . . .	What the Interviewee Hears . . .
Are those the clothes you were wearing when this happened?	The Investigator thinks it's my fault because of what I was wearing.
Were you drinking or doing any drugs?	I am in trouble/to blame for alcohol and drug consumption.
Did they physically hurt you or threaten you with a weapon?	I knew the person and they didn't hurt me or use a weapon. The Investigator thinks I consented.
Why didn't you tell anyone about what happened?	The Investigator thinks I am lying because I didn't immediately tell someone/report.

Conclusion of Party Interviews

- Opportunity/need for follow-up
- Safety planning/interim actions
- Next steps, manage expectations
- Exchange contact information, details.
- Work with advisor/Title IX to ensure student understands resources and how to find support.
- Explain parameters of no contact and retaliation.
- Questions?

Witness Interviews

- During a witness interview, the Investigator will...
 - Give enough information to illicit relevant information but be circumspect about what is shared
 - Explore relationship to the Parties and potential motive/biases
 - Ascertain the source of witness's knowledge
 - Follow the same open-ended approach with narrowed follow-up questions
 - Ask witnesses about the Parties' motives
 - Consider effect of witness tampering/interference

Difficult Investigation Issues

- Interviewee volunteers highly sensitive information (undocumented status, mental illness, sexual orientation, past abuse, drug use, other misconduct)
- What if these areas of inquiry are suggested by other party?
- Requests to destroy/not use sensitive information
- Disappearing evidence (Snapchat)
- Evidence/interviewee indicates risk of suicide
- Considering prior complaints where no finding of responsibility
- Cross complaints
- Concurrent law enforcement investigations/ refusal to release forensic evidence testing/rape kits.
- Uncooperative witnesses

Common Errors During Interviews

- Assuming the veracity of Complainant's or Respondent's account at the outset
- Drawing conclusions from testimony without allowing party/witness chance to explain
- Allowing confirmation bias to influence the direction of the interview
- Allowing advisor to take over an interview
- Not asking detailed/specific/difficult questions
- Not conducting thorough follow up/"reconciliation" interviews
- Failing to interview potential witnesses/follow up on available information

Questions?

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