

The Texas A&M University System
Introductory Civil Rights
Investigator Training

"Refresher Training"



System Ethics and Compliance Office
January 2022
Presented via Webex

Civil Rights Investigator Training (January 2022)

NOTICE:

This training material is provided for public review in accordance with federal law. The material may be utilized only for non-commercial educational and training purposes with the user assuming all risk for utilization of any content herein. Commercial utilization of this material is prohibited.



- The Training Team

- Trisha Ford – Investigator, SECO
- Janet Gordon – System Ethics and Compliance Officer
- Rick Olshak, M.S. – Director, Title IX Compliance, SECO
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- Dr. Nicole Roberson– Director, Equal Opportunity and Diversity, SECO

We also wish to acknowledge the contributions of Bret Davis (formerly of OGC) and Dr. Joni Baker (Texas A&M University – San Antonio, formerly with SECO) in developing these training materials.



WARNING:

- **Triggers**

- Please know that we may use strong/explicit language that is appropriate to situations as they would be described by the parties
- Please know that our subject matter will include issues that some of our participants may find to be disturbing and/or personally triggering



PURPOSE:

This week's refresher trainer serves several functions. These include:

1. Revisiting questioning and listening strategies, in order to be able to improve the overall quality of the information we collect.
2. Revisiting best practices for ensuring that material is appropriately collected and reported, in order to improve the degree of accuracy between interviews and report.
3. Providing practical guidance on the development of the investigative report.
4. Address questions and concerns from practitioners.

If you are new to investigations and have not yet received substantive foundational training, we will be working with your member to ensure that you receive this training.

**AGENDA:**

1. Process Review
2. Questioning and Listening
3. Writing For Your Audience
 - a) Primary Audiences
 - b) Interview Summaries
 - c) Credibility Determinations
 - d) The "Consent Construct"
4. Writing the Report
 - a) Templates
 - b) Writing Guide



REFLECTIONS FROM OUR TEAM:

1. Describe your style as an investigator. What is your approach and mindset going into an investigation? Into an interview?
2. How do you best ensure that the final report accurately reflects the information you have collected?
3. What are the most important lessons you learned about investigations from your practice?

**1. Review of the Investigative Process**

- A) Pre-Investigation Strategy Meeting
- B) Interviews (separate from process intake)
 - Complainant
 - Witnesses
 - Respondent
 - Additional Witnesses
 - Second (and beyond) interviews with Complainant and Respondent
 - Interview Summaries are developed as you go and incorporated into Exhibits (after being reviewed by party or witness)



1. Review of the Investigative Process

- C) Drafting of Initial Draft Report (IDR)
 - Submission to Assigner of Investigation
 - Submission to SECO and OGC
 - Feedback to Investigator(s)
- D) Drafting of Final Draft Report
 - Submission to Parties
 - Review of Feedback from Parties
 - Determining Edits



1. Review of the Investigative Process

- E) Drafting of Final Report (Investigation Report)
 - Submission to SECO, OGC, and Assigner
 - Feedback to Investigator(s)
 - Authoring of Final Report
 - Submission to Designated Administrator



1. Review of the Investigative Process

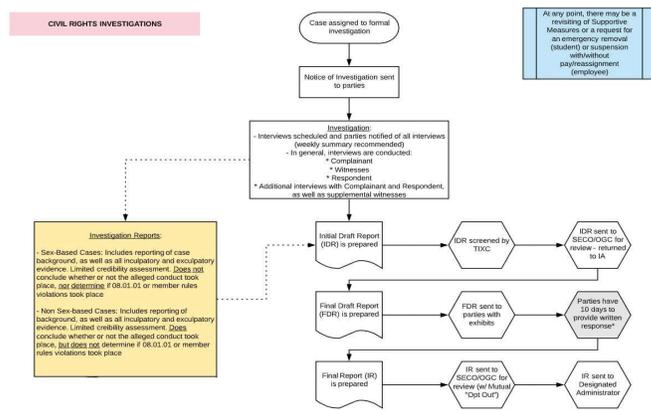
Pre-Investigation Strategy Meeting

Topics to Review:

- Fair and Equitable Process
- Allegation/Policy Violations
- Scope and Nature of the Investigation
- Roles of Investigators (questioning, note-taking, exhibit and/or report writing)
- Witnesses (Lists)
- Evidence identified
- What Key Witnesses/Evidence is missing?
- Event(s) Timeline/Flowchart of Events
- Record or Not to Record Interviews?
- Ongoing Concurrent Criminal Process?
- What to do with Character Witnesses?
- Addressing allegations of failure to report, failure to comply with the investigation, providing false information, and/or retaliation
- Process Timeline and Seeking Extensions



1. Review of the Investigative Process



* For sex based cases, written responses are taken from parties; in non sex based cases, questions for parties and/or witnesses are taken from the parties



- Parking Lot

Are there questions about any of the material covered so far?

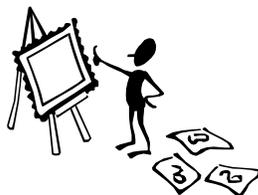


2. Questioning and Listening

Conducting Interviews

As an investigator, imagine that you are “painting a picture” of what took place, based on all of the evidence and information collected from everyone involved.

To create the most accurate picture of what took place, we obviously want to collect as much information as possible and analyze it correctly.



2. Questioning and Listening

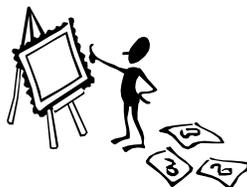
Questioning Basics

1. In every case, you need to understand the WHO, WHAT, WHEN, WHERE, and HOW, as well as any relevant actions that may have precipitated the incident(s) in question and/or resulted from it.
2. Create a safe and comfortable environment for the person to engage with you.
3. In order to create a substantive timeline of the event(s) under review, it is important to understand how each person interacts with the overall timeline. Where do they fit into the sequence of events?
4. When questioning, utilize empathy over sympathy to build rapport. We should seek to convey understanding rather than agreement.
5. Be wary of asking questions that imply judgments or conclusions that they have not articulated.
6. When questioning, don't give the party the answer (leading questions, multiple choice, etc.).
7. When asking questions, be careful that the framing of your question does not lend itself to confirmation bias.



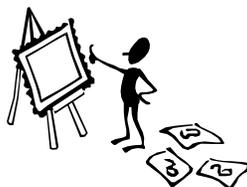
• Conducting Interviews

Begin with easy, **open-ended questions** to allow the party to share their perspective in a way that makes the most sense to them. Encourage people to start at the beginning of events in order to provide the fullest context (e.g., tell me what happened that night), but don't insist on it if they want to start in the middle (or end).



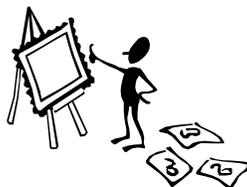
- Conducting Interviews

Closed-ended questions allow the investigator to gather details and specifics surrounding events, as well as to seek definitions of subjective terms used by the parties (e.g., What time did you arrive at the party? Who did you see when you walked in? What do you mean by “hooking up”?).



- Conducting Interviews

A return to **open-ended questions** then aids the investigator in understanding factors such as effects of specified behaviors, intentions of their statements and/or acts, and to understand motivations behind a party's decisions or actions (e.g., why did you decide to leave the party at that time?). Avoid **VICTIM-BLAMING** (e.g., why didn't you just leave?)



• Conducting Interviews

Questioning Skills:

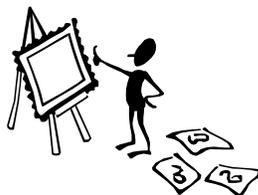
- ATIXA offers a helpful guide for asking questions –
 1. What do I want to know?
 2. Why do I want to know it? (relevance)
 3. Is now the best time to ask it?
 4. What is the best way to ask it? (directly or indirectly)
 5. Am I the best person to ask it? (if there are two investigators)



2. Questioning and Listening

Conducting Interviews

Asking questions is critical to the ability of the investigator to develop a report that most accurately reflects what took place. But while asking questions is great, really hearing the answers is even better. Listening is the key skill an investigator needs to be successful.



2. Questioning and Listening

Listening Basics

1. Keep a body posture that invites engagement.
2. Minimize distractions.
3. Acknowledge what is being said.
4. Paraphrase what is being said to test your own accuracy and invite additional comments.
5. Be attentive to words or terms that you do not understand, or that may have multiple interpretations (e.g., Hooked up, had sex, buzzed, drunk, stalked, harassed). Follow up.
6. Seek clarification if you are not completely certain of what the person has said.
7. Utilize verbal and/or non-verbal mirroring when appropriate.
8. Silence provides an opportunity; be comfortable with it.
9. At the outset, allow the party to speak at length since the initial conversation can often be an "information dump"



2. Questioning and Listening

Concluding an Interview – Questions to Ask

- Is there anything else that you believe is relevant that we should address?
- Are there areas I should have asked you about but did not?
- Are there other people that you believe I should speak with?
- What else do you think might be important?
- Is there anything you want me to ask the other party (primary parties)?



2. Questioning and Listening

Concluding an Interview – The Process

- Reiterate the key facts that were reported
- Reiterate privacy and retaliation considerations
- Invite them to contact you with additional information and provide contact information
- Address post-interview follow-up (such as interview summaries and additional interviews)
- Do you have any final questions for me?
- Thank them for their participation



2. Questioning and Listening

Post-Interview Follow-up

- Provide each party (and substantive witness) an opportunity to review your summary of the interview (not your handwritten/typed notes) and affirm that the information collected is accurate.
- Provide 1-2 business days for the party to respond by email (may take a bit longer for faculty/administrators, time of year).
- When party challenges information in your summary, compare their comments to your own notes and recollections; only make changes in the summary/exhibit when you believe that their version is more accurate than your own.
- If you disagree with a “correction,” include it as an additional exhibit and reference it if the statement is used in the report.



- Parking Lot

Are there questions about any of the material covered so far?



3. Writing for Your Audience

- A. Primary Audiences
- B. Interview Summaries
- C. Credibility Determinations
- D. The "Consent Construct"



3. Writing for Your Audience

A. Primary Audiences

Who are the primary audiences for the Investigative Report?

- Decision maker(s) and Appellate officer(s)
- Complainant and Respondent

Notable secondary audiences:

- The Advisor(s) and/or Family Members to Parties
- A judge
- The Department of Education (or other federal/state agency)
- The media
- The public (when shared via social media)



3. Writing for Your Audience

B. Interview Summaries

What do these look like? (from ATIXA)



Evidence Presentation: What goes in the report and exhibits?

- REPORT** will contain: ALL evidence relevant to the complaint (inculpatory and exculpatory)
- EXHIBITS** will contain: ALL EVIDENCE relevant to the complaint and ALL EVIDENCE directly related to the complaint that the investigator(s) determines is not relevant
- NOTES** will contain: ALL information collected, including evidence that is neither relevant nor directly related to the complaint – information deemed by investigators to be not related and not relevant will not be included on the Interview Summary form completed for each interview; notes are not shared with the parties and are typically destroyed when the final report has been created

**3. Writing for Your Audience**

B. Interview Summaries

What if the process for creation?

- Utilize recordings and notes to summarize interview
- Type and length of summary will vary based on which “bucket” of evidence you are addressing in your summary
- **BEST PRACTICE**: Email the summary to the person interviewed, and provide them an opportunity to verify/offer corrections
- **BEST PRACTICE**: Once the Investigative Report has been sent to the Designated Administrator for review, securely destroy your notes and/or recordings (except in cases of a Litigation Hold)



3. Writing for Your Audience

C. Credibility Determinations

When are they needed?

- Anytime a person has offered information that suggests their version is more credible than another version in existence, we want to note this along with the factors we are basing our judgment on
- Anytime a person has offered information that suggests their version is less credible than another version in existence, we want to note this along with the factors we are basing our judgment on
- Anytime we are reaching a conclusion that one party is more credible than another



3. Writing for Your Audience

C. Credibility Determinations

What are they based on?

- Facts in evidence
- Corroboration/Reliability (or lack of)
- Likelihood (“Extraordinary claims...”)
- Relevance
- Bias



3. Writing for Your Audience

D. The Consent Construct

What is consent? Under System Regulation 08.01.01...

Consent – **clear, voluntary and ongoing agreement** to engage in a **specific sexual act**. Persons **need not verbalize their consent** to engage in a sexual act for there to be permission. Permission to engage in a sexual act may be indicated through physical actions rather than words. A person who is asleep or mentally or physically **incapacitated**, either through the effect of drugs or alcohol or for any other reason, or whose agreement was made by threat, coercion, or force, cannot give consent. Consent may be **revoked** by any party at any time.



3. Writing for Your Audience

D. The Consent Construct

Three types of sexual interactions

1. Wanted and consensual sex
2. Unwanted but consensual sex
3. **Unwanted and nonconsensual sex**

Of these, only the **last** represents a violation of regulations/rules



3. Writing for Your Audience

D. The Consent Construct

The Consent Construct (ATIXA) – Three consent questions

1. Force – was force use by the respondent to obtain sexual access?
2. Incapacity – did the respondent know, or should the respondent have known, that the complainant was incapacitated?
3. Consent – what clear words or actions by the complainant gave the respondent permission for the specific sexual activity that took place (how did you know that you had consent)?



3. Writing for Your Audience

D. The Consent Construct

1. Force – 4 types
 - a) Physical Violence (hitting, restraining, pushing, etc.)
 - b) Threats (anything that gets person to do something they would not absent the threat)
 - c) Intimidation (implied threat that causes reasonable fear)
 - d) Coercion (act, process, or power of compelling a person to take an action, make a choice, or allow an act to happen that they would otherwise not choose or give consent to)

For Coercion, consider unreasonable actions that seek to deprive someone of the ability to withhold consent (consider Isolation, Frequency, Intensity, Duration, Ability to control environment, Ability to clearly state one's choices); Small "c" versus capital "C"



3. Writing for Your Audience

D. The Consent Construct

2. Incapacity

a state in which a person, due to a disability, the use of alcohol or drugs, being asleep, or for any other reason, is not capable of making rational decisions about consent to sexual activity and recognizing the consequences of their decision.

Incapacity is fact dependent. When dealing with potential incapacity due to the consumption of alcohol, we compare an approximated blood alcohol level (when available) with the behaviors presented as described by all of the parties and witnesses. Blackouts (no memory of who, what, when, where, why, or how for a designated time) and partial blackouts (brownouts, "spotty" or fragmented memories) are frequently indicators of a lack of capacity.



3. Writing for Your Audience

D. The Consent Construct

2. Incapacity

Forms of incapacity:

- Alcohol or other drugs
- Mental/Cognitive impairment
- Asleep or unconscious
- Injury



3. Writing for Your Audience

D. The Consent Construct

2. Incapacity

Questions:

- Was the person incapacitated at the time of sexual contact/access?
 - Could they make rational choices?
 - Could they appreciate the consequences of their actions?
 - Could they know who, what, when, where, how, and why?
- Did the respondent know of the incapacity?
- Or – Should the respondent have known of the incapacity based on all the circumstances (reasonable person)?



3. Writing for Your Audience

D. The Consent Construct

2. Incapacity

“Should have known” – Did the respondent:

- Use alcohol and/or drugs with the complainant?
- Provide alcohol and/or drugs to the complainant?
- Have awareness of a complainant's incapacity?
- Have a familiarity with the complainant from previous interactions? If so, how was this event similar or different from previous events?



3. Writing for Your Audience

D. The Consent Construct

2. Incapacity

Evidence Suggestive of Incapacity:

- Slurred speech
- Impaired motor functions
- Shaky equilibrium, stumbling
- Passing out
- Throwing up
- Appearing disoriented
- Unconscious
- Known Blackout



3. Writing for Your Audience

D. The Consent Construct

3. Consent

- a) What clear words or actions by the complainant gave the respondent permission for each sexual act that took place? If words and actions are established, the interaction was consensual. If there are no words or actions established, the interaction was nonconsensual.
- b) Yes means yes. No means no. Nothing means no. Silence or inactivity does not equal consent.
- c) Consent cannot be inferred from the manner in which a complainant dresses, from purchasing items, for conducting favors, or from using alcohol and/or drugs.



3. Writing for Your Audience

D. The Consent Construct

3. Consent

- d) Consent must be given immediately prior to or contemporaneously with the sexual or intimate activity.
- e) Consent can be withdrawn at any time, as long as the withdrawal is clearly communicated – verbally or nonverbally – by the person withdrawing it.
- f) The definition of consent does not vary based upon a participant's sex, sexual orientation, gender identity, or gender expression.



3. Writing for Your Audience

D. The Consent Construct

Consent Complications

- Lack of relationships and understood norms of behavior
- Past interactions with one another that may be transposed onto the current encounter
- Past interactions with others that get transposed onto a new partner
- Influence of alcohol and/or drugs
- Alternative Lifestyles and Power Exchanges (BDSM, con/noncon, etc.)



3. Writing for Your Audience

D. The Consent Construct

Predation

Predation: an intent to engage in acts of misconduct prior to their occurrence demonstrating premeditation, planning or forethought, and is reflected in communicated intent (physical, verbal, visual, or written), threats directed at a party, attempts to incapacitate a party, attempts to isolate a party, utilizing physical force or violence, or other actions that a reasonable person would construe as a pre-meditation to engage in actions that are unwanted by/against the recipient. Committing any of these actions with an individual under the age of consent is also considered predatory.

Typically, predation is identified through the use of force, threats, coercion, and behaviors designed to isolate a party. Consider any evidence of planning, the use of pressure, creating an environment encouraging the over-consumption of alcohol, and other factors indicating that the respondent created an environment where consent could not be meaningfully withheld (see previous section on Force).



- Parking Lot

Are there questions about any of the material covered so far?



4. Writing the Report

- A) Templates
- B) Writing Guide



4. Writing the Report

- A) Templates
 - Template #1 – Non sexual harassment-based cases
 - Template #2 – Sex-based Cases
 - Both templates are included in the materials



4. Writing the Report

B) Writing Guide (BEST PRACTICE)

- **Review** all exhibits and **highlight** all evidence that will need to be provided to the decision maker (background, context, all inculpatory and exculpatory evidence)
- **Review** your timeline and be certain that you have a thorough understanding of the incident(s) in question, and the role each person may have played in the incident(s).
- **Begin your Initial Draft Report**
 1. Use the appropriate report template
 2. Number and label the exhibits (including interview summaries)
 3. Write investigative question(s) (focus on behavior rather than conclusions)



4. Writing the Report

B) Writing Guide (BEST PRACTICE)

4. In general, begin with the complainant's statement and then provide the counter statement from the respondent. Then utilize relevant witness information to highlight inculpatory or exculpatory evidence that the decision maker might use to reach a decision.
5. Where appropriate, reference the exhibits throughout the report (include page numbers for exhibits over five pages)
6. Ensure that all pertinent information related to WHO, WHAT, WHEN, WHERE, WHY, and HOW are included. If the case involves the sexual contact or access, be certain the examine the incident through the Consent Construct, including only those areas that apply.



4. Writing the Report

B) Writing Guide (BEST PRACTICE)

7. The Comments section can and should be used to highlight important issues that are not immediately related to the decision-making process but which may become important either inside or outside of the civil rights process (e.g., previous complaints, behaviors falling outside of civil rights jurisdiction).
8. Spell (and Grammar) check the Initial Draft Report
9. Review the IDR in its entirety before submitting to the Director/Coordinator/Assigner
10. The Director/Coordinator/Assigner should review the report in its entirety prior to forwarding to SECO and OGC.



4. Writing the Report

B) Writing Guide (BEST PRACTICE)

11. Upon receiving System Offices feedback, review the report to determine if edits need to be made, if information needs to be added or removed, or if additional investigation needs to be conducted.
12. Once the Final Draft Report is complete, submit to the parties and provide 10 business days (use a date and time deadline) for the parties to provide feedback and/or additional questions for consideration.
13. Upon receiving party feedback, review the report to determine if edits need to be made, if information needs to be added or removed, or if additional investigation needs to be conducted.



4. Writing the Report

B) Writing Guide (BEST PRACTICE)

14. Prepare the final report and submit to SECO and OGC for review. If no substantive changes were made since the time of the IDR, send the report and you may request a waiver of the review process.
15. Once the final report (Investigation Report) is complete, submit to the Designated Administrator.
16. Unless a Litigation/Preservation Hold has been placed or is imminent, securely destroy all notes and recordings from the interview process.



- Parking Lot

Are there questions about any of the material covered so far?

