

INVESTIGATION PROTOCOL CHECKLIST

- Confer with your campus Title IX Coordinator on overall strategy and process for this investigation
- Establish a preliminary timeline for the investigation, using reasonable time frames, and communicate that timeline to appropriate parties
 - Interviewing parties
 - Interviewing witnesses
 - Compiling statements
 - Verifying statements
 - Gathering/obtaining documentation
 - Testing medical evidence
 - Research
 - Drafting a report
- Update this timeline as you progress and changes are needed
- Note clearly and document any delays in this timeline and the reasons therefor
 - Any delays should be explained in writing to the complainant and the accused student. Where needed, written permission to extend the timeline of the investigation can be sought from the parties
- Clearly identify the applicable policies and procedures that apply to the investigation. Coordinate procedures where more than one applies, and give clear notice of these procedures to the parties
- Designate a member of the investigation team as an intake officer for the complaint, unless the complaint has already been made. The same person providing intake should serve on the investigation team, if possible. If the complaint has already been made, share it with the investigation team
- The intake officer should stress the need to get the complaint in writing, and can write the complaint, solicit the written complaint from the complainant, or assist the complainant in writing the complaint
- Develop a rapport with the complainant, allowing time for the interview to wander, and to gently accept information about an emotional/difficult/embarrassing experience
- Don't guide the oral interview. Allow the complainant to narrate without interruption. Clarify what you need to when their narration is complete
- If the flow is interrupted, use open-ended questions to get it going again
- Do not insinuate with questions, and use specific, precise leading questions to get a precise answer when one is needed
- DO NOT VICTIM-BLAME
- Tape the interview if and only if the complainant is comfortable with taping. Otherwise, take good notes. With a team, one investigator can question while the other takes the notes. Avoid writing notes from memory after the interview, as details may be lost
- Permit the complainant to bring an advisor or support person to the interview
 - Advisors should be able to communicate with their advisees during the interview. Complainants may be more comfortable having eye contact with their advisor, rather than being seated side-by-side

- ❑ Choose neutral, comfortable turf for the interview. Avoid displays of power (uniforms; your office; behind a desk; in a higher chair than the complainant sits)
- ❑ Ensure privacy by turning off the phone, closing the door, etc.
- ❑ During the interview:
 - Describe the purpose of the investigation and the interview
 - Review the institutional policy(s) at issue, if known
 - Explain the process for investigation, and have the complainant sign a statement that he/she understands the process
 - Emphasize the non-retaliation policy if appropriate
 - Review the privacy and anonymity policies
 - Do not promise absolute confidentiality
 - Elicit information on the outcome the complainant desires for the complaint, but do not promise any outcome will happen
 - The complaint should be as specific as possible, and should be signed and dated by the complainant
 - Solicit a witness list from the complainant
 - Where the complaint is written by the Investigator, either in person or in summary based on the interview with the complainant, it should then be shared with the complainant for final editing, verification, and sign-off
 - Request, without chilling, that under institutional rules and for the complainant's own protection that they not discuss the complaint widely with others
 - Accused students are willing to use defamation claims to silence complainants
 - Talking about the complaint widely may increase the risk of retaliation
 - Inform the complainant that they will be kept up-to-date on the progress of the investigation
 - Thank the complainant for being willing to come forward
 - **Ask the complainant to sign a consent to revealing the complaint to the accused student and to witnesses as necessary**
 - If appropriate, remind the complainant of the institution's policy against false complaints
 - Where an alleged victim is reluctant to make a formal complaint, or returns to withdraw a formal complaint, Investigators should honor that request, but also attempt to persuade (not coerce) the alleged victim to reconsider. It may be helpful to:
 - Remind that the institution will vigorously enforce its policy on retaliation to help protect the alleged victim
 - Remind victim that if he/she does not act, the perpetrator may harm someone else
 - Offer to allow the alleged victim time to consider, and the chance to come back later to file a report if she/he so desires
 - Offer to change circumstances to make it easier for alleged victim to report (change of classes, living arrangements, etc).
 - FOLLOW UP WITH THE ALLEGED VICTIM, OFFERING TO INVESTIGATE.
 - If the alleged victim refuses to file a formal complaint, or will not allow his/her name to be revealed, the investigator shall share with the responsible administrator this information, and a decision will be made on whether sufficient threat is present to

warrant an investigation independent of the cooperation of the alleged victim.

Alternative responses, such as general programs and workshops, or communicating with the alleged harasser/perpetrator in a general way regarding the behavior alleged, should be considered

- Where appropriate, consider initiating a formal complaint on behalf of the institution. This may alleviate fears of the alleged victim, who may then cooperate. It may also agitate the alleged victim, and it is important to keep the alleged victim informed of actions the institution is taking
- At any time that an accused student is notified of a complaint, the complainant (or non-cooperating victim) should be given the time of such notification in advance, and precautions against retaliation should be taken as necessary

Create the investigation file

The timeline and checklist for this investigation should be kept on the inside cover of this file

- Record all significant dates of the investigation on this timeline
- Log the receipt of information, evidence, and other materials as it is obtained in the course of the investigation
- Log delays
- Log procedural communications with administrators, attorneys, etc.

- This file should be separate from the personnel or student file of the alleged perpetrators or complainant
- Only when a report is substantiated should it be included in the appropriate files of the individuals involved
- Investigation files can be accessed through litigation against the institution. File contents should be factual. Idle speculation, conjecture, unsubstantiated theories and suspect evidence should be purged
- Include a copy of all relevant institutional policies and procedures in the investigation file. These documents change over time, and your counsel will be assisted by having the relevant policies in the file, if called upon to defend a lawsuit or investigation

The investigation file should start with the complaint

Include documentation supportive of the complaint next

- Research, notes, medical records, police reports, prior complaints, etc.

Include witness statements supportive of the complaint next

Include Investigator notes of interviews, crime scene observances, etc.

Include the accused's written response to the complaint next

Include documentation supportive of the accused next

- Research, notes, medical records, police reports, prior complaints, etc.

Include witness statements supportive of the accused next

Include neutral or expert witness information next

Include the Investigator's findings and conclusion

Communicate

- Where appropriate, notify complainant's supervisor, RA, housing official that work performance, living environment, etc. may be affected

- Where an incident occurs on the job or in class, a supervisor or faculty member may be helpful in preventing reoccurrence
- Keep key administrators in the loop and updated
- Strategize notifying the accused student of the complaint
 - In some circumstances, it may be best to notify the accused immediately upon receipt of the formal complaint
 - In other circumstances, interviewing witnesses and accumulating evidence first may be the best practice
 - Keep in mind that interviewing witnesses favorable to the accused student may tip the accused student to the complaint
 - Strategize your interviews and notification so as to reduce the accused student's opportunities for fabrication or inciting witnesses to coordinate versions of events
 - Strategize whether the complainant or witnesses should be present at the interview of the accused (this should be rare)
 - Only inform the accused student of the purpose of the meeting in advance if doing so will support your strategy, or if asked. Otherwise, schedule a meeting with class or work schedules in mind, or conduct an immediate interview by seeking out the accused student
 - Sometimes, unanticipated interviews can be unfair. In other cases, unanticipated interviews could be an important advantage. They should be used with discretion
 - If your goal is to build rapport and trust with the accused student, unanticipated interviews may undermine that
 - Unanticipated interviews can be used when appropriate for interviewing witnesses, or for follow-ups with the complainant to test veracity or accuracy of descriptions
 - At the interview, describe the behaviors alleged, and by whom
 - Be neutral, not accusatory. Be non-judgmental
 - Define the policies at issue, providing written copies
 - Ask if the described behaviors happened as a direct question. Provide a written copy of the complaint to the accused, redacting any names/identifying information that are not necessary, or from whom written permission to share information has not been obtained
 - If there is an admission, immediately label the conduct as inappropriate and a violation of institutional policies
 - If there is no admission, explain the investigation process and timeline, and ask the accused student to sign a statement that he/she understands the process. Explain the institution's obligation to take complaints seriously, and to vigorously investigate them
 - Invite the accused student to tell his/her version of the events
 - As with the complainant, you may take notes, or ask the accused student for a written statement once the accused student's narration is complete
 - A recording may be appropriate, if the accused student consents
 - Solicit a witness list from the accused student (and character witnesses, if appropriate)
 - Request documents and evidence that support the response
 - Strongly caution against retaliation
 - Caution against contact with the complainant, either directly or by third-parties

- Discuss no contact orders and/or accommodations that may be in place or pending
- Caution the accused student that Title IX investigations are to be kept confidential by law
- Once the response to the complaint has been written, make sure the accused student signs and dates it. He/she should also execute a consent that allows the institution to share this response with the complainant/witnesses as necessary to further the investigation. If s/he does not, s/he is not entitled to view the complaint
- ☐ Strategize contacting witnesses, ordering witness interviews, and preventing contact between witnesses, where necessary
 - Prepare a list of written questions in advance for each witness
 - Do not label the conduct. Ask what witnesses know about specific behaviors/events
 - Ask for witness opinions
 - Ask witnesses if they have been contacted by the accused student or complainant, and what, if anything, was discussed
 - Give copies of relevant policies and procedures to witnesses
 - Sequester witnesses if needed, to isolate the truth and prevent opportunities for cover-up
 - Arrange for witnesses to wait in separate facilities from each other, and consider limiting cellphone and other communication between witnesses during the interview or pre-interview holding process
 - Solicit a witness list from the witnesses
 - Take notes or allow witnesses to write statements, and have witnesses sign written statements when complete
 - Only share with witnesses the details of the complaint needed in order to provide information
 - Establish a rapport with witnesses
 - A recording may be appropriate, if consented to by the witness
 - Request documents and evidence that support witness statements
 - Flowchart your witness list if it is extensive, so that you can easily see who provided what information, how it came to you, and where it led. Maintain full contact information for those on this chart
 - Explain to witnesses the privacy of the process, their obligation not to discuss the interview with anyone, and the risks of defamation suits
 - Strongly caution against retaliation
 - Find out if the witnesses will agree to be present in the event of a hearing. Have material witnesses agree in writing to participate in a hearing
 - Investigators should keep notes on their impressions of witnesses, including credibility, nervousness, similarity of descriptions to other witnesses, nonverbal behavior, contradictions, etc.
- ☐ If notified by an outside authority of a parallel investigation, determine appropriate action. Usually, it will be to continue the investigation without regard to the parallel process, or at the point at which law enforcement has concluded the evidence gathering phase of its investigation
- ☐ Ensure that all evidence has been examined, and all leads exhausted
- ☐ Evaluate the evidence (consult with administration, legal counsel, experts as needed)
- ☐ Make a statement of findings

- List the evidence and what it shows
 - Assess credibility
 - Make a determination as to whether the evidence (facts, opinions, circumstances) establishes a violation of policy is more likely than not to have occurred
 - Cite concretely the reasons for this conclusion in a written report
- Refer the complaint and your findings to the Dean of Students/Director of Student Conduct for implementation, sanctioning and/or hearing
 - Dean, Director or Investigator will share results of investigation with parties

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