Association of
Title IX Administrators

# Investigation Report Writing for Higher Education

Training & Certification Course

Any advice or opinion provided during this training, either privately or to the entire group, is never to be construed as legal advice. Always consult with your legal counsel to ensure you are receiving advice that considers existing case law, any applicable state or local laws, and evolving federal guidance.

# CONTENT ADVISORY

The content and discussion in this course will necessarily engage with sex- and gender-based harassment, discrimination, and violence and associated sensitive topics that can evoke strong emotional responses.

ATIXA faculty members may offer examples that emulate the language and vocabulary Title IX practitioners encounter in their roles including slang, profanity, and other graphic or offensive language.

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# CONTENT ACKNOWLEDGEMENT

TNG Consulting would like to thank April Paul Baer, Ed.D., Regina Curran, J.D., and Mandy Hambleton, M.S. for creating the foundational content for this training and granting TNG permission to use it for purposes of this course.

# Why this topic?

"It's a process of asking questions and then pruning and splicing and editing the transcribed answers, and it takes a tremendous amount of time and labor."
– William Zinsser

# COURSE OBJECTIVES

**After completing this training, attendees will be able to:**

- Identify words or phrases in investigation reports that indicate bias or a non-neutral tone
- Understand how to effectively incorporate direct quotations into investigation reports
- Separate the applicable information for each section of an investigation report
- Evaluate the use of appropriate tone, voice, tense, and point of view for investigation report writing
- Distinguish between relevant, directly related, and irrelevant evidence/information and document accordingly

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# AGENDA

1. Overview of the Investigation Process
2. Purpose of the Investigation Report
3. Writing Mechanics
4. Writing Clarity
5. Absent Information
6. Investigation Report Sections

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# INVESTIGATION PROCESS

- IX Commandments
- 10 Steps of an Investigation
- Investigation Records

# TITLE IX

*20 U.S.C. § 1681 & 34 C.F.R. Part 106 (1972)*

"No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any educational program or activity receiving federal financial assistance."

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# THE IX COMMANDMENTS

| | | | |
|---|---|---|---|
| **INVESTIGATION** (plus **prompt** & **fair** per VAWA Sec. 304) | **Thorough** | **Reliable** | **Impartial** |
| **PROCESS** | **Prompt** | **Effective** | **Equitable** |
| **REMEDIES** | Act reasonably to stop discrimination | Act reasonably to prevent recurrence | Act equitably to remedy effects |

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# 10 STEPS OF AN INVESTIGATION

1. Receive Notice/Complaint
2. Initial Assessment and Jurisdiction Determination
3. Establish basis for investigation (Incident, Pattern, and/or Culture/Climate)
4. Notice of Investigation to Parties/Notice of Formal Allegation (“Charge”)
5. Establish investigation strategy
6. Formal comprehensive investigation
   - Witness interviews
   - Evidence gathering

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# 10 STEPS OF AN INVESTIGATION

7. Draft report
8. Meet with Title IX Coordinator (or legal counsel) to review draft report and evidence
9. Provide draft report and all evidence directly related to the allegations to the parties and their Advisors for inspection and review with 10 days for response
10. Complete final report
    - Synthesize and analyze relevant evidence*
    - Send final report to the parties and Advisors for review and written response at least 10 days prior to hearing/determination

*The 2020 Regulations permit, but ATIXA does **not** recommend, that Investigators make recommended findings or conclusions

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# COMPREHENSIVE FILE

**Title IX Coordinator should maintain:**

- Supportive measures and interim action correspondence and documents
- Emergency Removal documents (if applicable)
- Communication regarding informal resolution (if applicable)
- Signed releases of information for Advisors
- Advisor Non-Disclosure Agreement (if applicable)
- Dismissal information (if applicable)
- Allegations of bias or conflict of interest and response

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# INVESTIGATION FILE

**Investigator should maintain:**

- Copies of the policies and procedures in place at the time of the incident and at the time of the investigation
- Notice of Investigation and Allegations (NOIA)
  - All subsequent NOIA updates
- File for each party and witness
  - Approved interview transcripts
  - Associated evidence (e.g., screenshots, written statements)
  - Correspondence with the Investigator(s)
- Other collected evidence (log)

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# INVESTIGATION FILE (CONT.)

- Background information (education, employment, etc.)
- Witness flowcharts
- Issue tracking list
- Investigator notes
- Timelines for incident and investigation
- Contact log

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# INVESTIGATION OUTPUTS

**Investigator will produce:**

- Investigation Report
  - Relevant evidence
  - Investigation timeline
  - Appendices including review and comment by parties and any response from Investigator(s)
- Evidence File
  - Includes relevant and directly related evidence
  - Index or other organizational structure for file

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# PURPOSE OF THE INVESTIGATION REPORT

- Title IX Regulations Requirements
- Relevant and Directly Related Evidence
- Information for Decision-makers

# TITLE IX REGULATION REQUIREMENTS

- Federal regulations require an investigation report that fairly summarizes relevant evidence (34 C.F.R. § 106.45(b)(5)(vii))
  - While the regulations use the term "summary," the preamble specifies the report will summarize **all** relevant evidence, meaning the report is comprehensive, not skeletal
- Any individual designated as an Investigator may not have a conflict of interest or bias for or against complainants or respondents generally or an individual complainant or respondent (34 C.F.R. § 106.45(b)(1)(iii))
- A recipient also must ensure that Investigators receive training on issues of relevance to create an investigative report that fairly summarizes relevant evidence (34 C.F.R. § 106.45(b)(1)(iii))


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# RELEVANT AND DIRECTLY RELATED EVIDENCE

- Evidence is generally considered relevant if it has value in proving or disproving a fact at issue
- While directly related evidence (DRE) is not defined by the regulations, it may be helpful to think of DRE as evidence connected to the complaint, but which is not inculpatory or exculpatory, and/or which is explicitly excluded by the regulations
- Under the Title IX regulations, evidence of the Complainant's sexual predisposition is **never** relevant

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# RELEVANT AND DIRECTLY RELATED EVIDENCE (CONT.)

- Evidence of the Complainant's prior sexual behavior is explicitly and categorically **not** relevant except for two limited exceptions:
  - Offered to prove that someone other than the Respondent committed the conduct alleged, or
  - Concerns specific incidents of the Complainant's sexual behavior with respect to the Respondent and is offered to prove consent
- The regulations do not require the same analysis applied to the Respondent so that consideration of pattern behavior is possible

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# RELEVANT VS. DIRECTLY RELATED EVIDENCE EXAMPLE 1

| | |
|---|---|
| Investigator: | Walk me through the evening and the next morning with as much detail as you can share. I just want you to tell me a really detailed story that fills in all of those gaps for me. |
| Respondent: | All right. You said you want to know how I met [Complainant]. |
| Investigator: | Yeah. |
| Respondent: | It was sometime last semester. She was at a party that I went to that one my roommates knew this guy and I guess he is her brother and she was there and we just kind of talked while we were at the party. |
| Respondent: | She told me that she was going to be a student at school in the fall and so she was looking for friends and just connections and that kind of thing. So, I thought she was pretty cute and so we exchanged our Snapchat information and our cellphone numbers and kind of talked a little bit over the summer. |
| Respondent: | Then she hit me up when she got to campus in the fall. So, that was kind of like how I know her. |

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# RELEVANT VS. DIRECTLY RELATED EVIDENCE EXAMPLE 2

- Witness 2 is the roommate of the Respondent. Witness 2 and the Respondent share membership in several student organizations. Witness 2 is also a senior and knows the Complainant's older brother through social interactions. Witness 2 reports never meeting or communicating with the Complainant.

- Witness 2 remembers seeing the Respondent in their shared apartment around 2:00 a.m. on the date of the reported incident. Witness 2 remembers the Respondent coming out of their room with just shorts on.

- Witness 2 recalls joking about Respondent's luck.

- Witness 2 recalls telling Respondent to try to "keep it down" as Witness 2 was going to sleep.

- Witness 2 e-mailed the Investigator screenshots of group text messages from September 5-6, 2020 in which the Respondent, Witness 2, and Witness 3 debriefed the night.

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# SEPARATING EVIDENCE

- Investigation Report = only relevant evidence
- Evidence File = all relevant evidence and DRE
- The report is the narrower document, and the evidence file is a broader file
- When a portion of an interview/document/etc. is relevant, and another portion is DRE, the content needs to be separated
- ATIXA recommends an approach that separates the evidence so that all participants know what is what but all evidence can still be seen in the DRE file in a complete form

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# SEPARATING EVIDENCE (CONT.)

**One helpful way to do this is by:**

1. Color-coding the evidence in the evidence file for what is DRE and what is relevant (thus also contained in the report) for easy visual distinction, and
2. Adding footnotes or internal notes to the investigation report to indicate where the information is located in the evidence file

- Any time a partial record is removed from the report because it is DRE and not relevant, the report should cross-reference to where this information can be found in the evidence file
  - If an entire record is removed as not relevant, it should only appear in the evidence file and not the investigation report

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# SEPARATING EVIDENCE (CONT.)

- While the investigation report can feel stilted because DRE context is missing/removed, that context can be provided by reviewing the evidence file, which is clearly cross-referenced for ease of use
- DRE can't be relied upon by the Decision-maker, but it can offer some additional coherence and/or context

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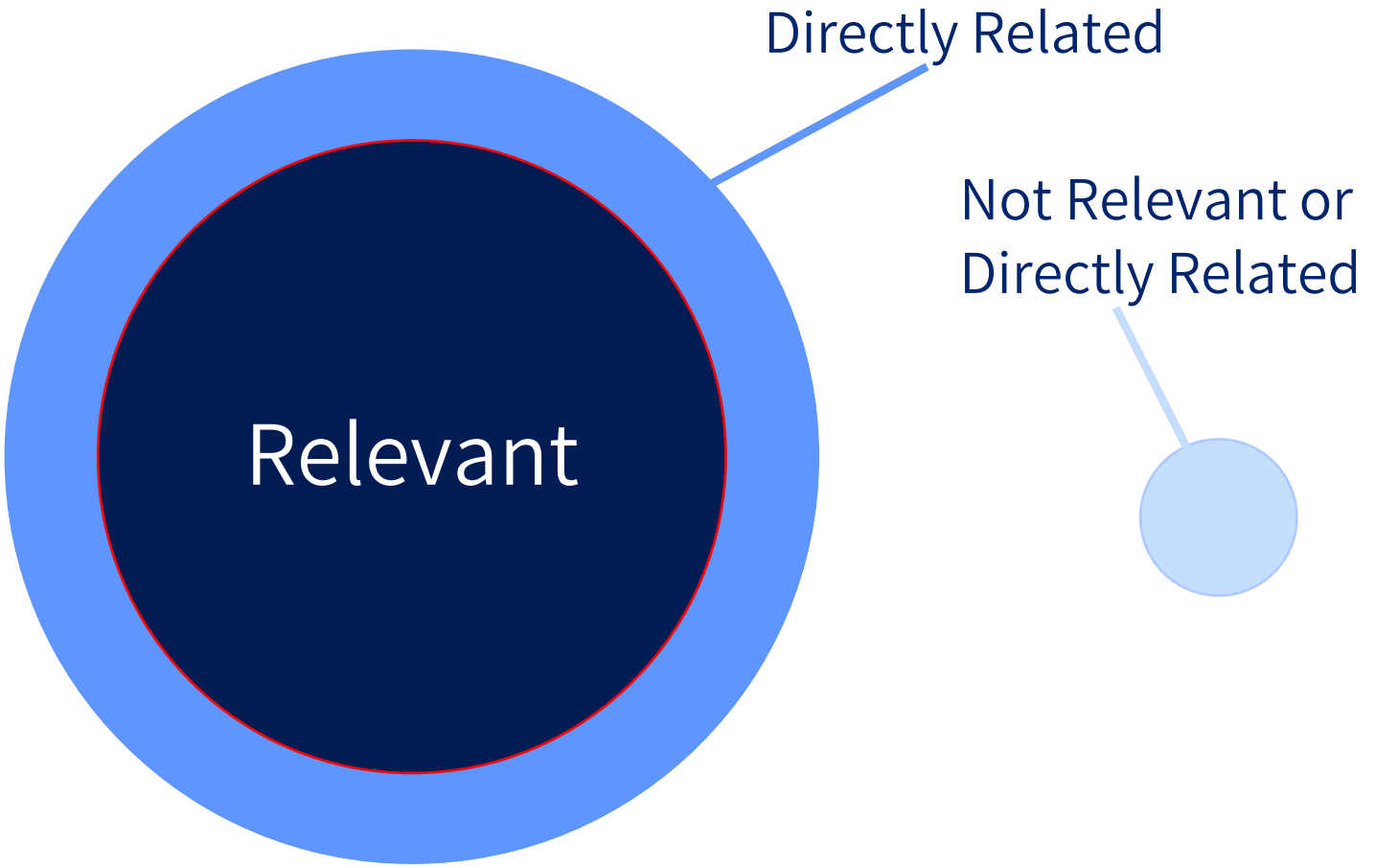
# UNDERSTANDING EVIDENCE

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# SEPARATING EVIDENCE EXAMPLE

- The parties exchanged 36 text messages, each writing 18. This text thread between the parties is provided to the Investigator, who determines that 20 messages are relevant and 16 are DRE
- The Investigator includes the 20 in the report, noting that a section of the texts is redacted and referencing where in the evidence file the removed sections of the thread can be found
- In the evidence file, the Investigator provides the entire text thread, but uses color-coding to show the section(s) that is relevant (and thus found in the report) and the section that is DRE, which is only found in the evidence file, and not in the report
- Thus, the reader has the entire context, but can clearly see what evidence has been deemed relevant and what has not

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# SEPARATING EVIDENCE EXAMPLE (CONT.)

36 Text Messages
Evidence File

20 Relevant Text Messages
Investigation Report

16 Directly Related Text Messages
Evidence File

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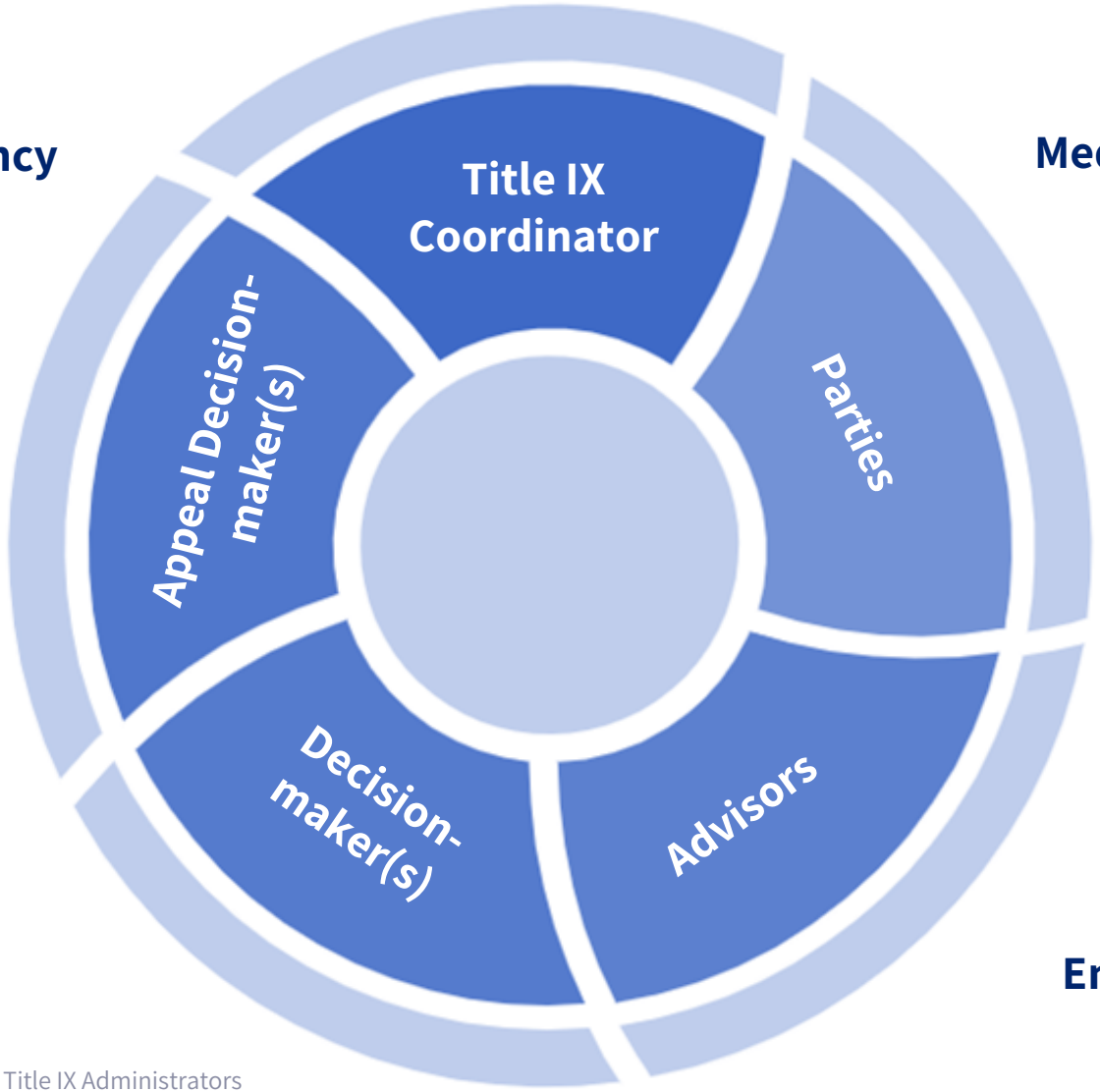
# Let’s Practice!

# AUDIENCE

External Agency

Media




Civil Court

Legal Counsel

Criminal Court

Mediator or Arbitrator

Law Enforcement

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# WRITING MECHANICS

- Tone
- Voice
- Tense
- Point of View
- Formal vs. Informal Language
- Active vs. Passive Voice

# TONE, VOICE, TENSE, & POINT OF VIEW

- **Tone:** an attitude of the writer toward the subject or audience; typically conveyed through word choice, syntax, and punctuation
- **Voice:** form or format through which a narrator communicates a story
- **Tense:** when events or actions occurred in time—in the past, present, or future. Verb choices can also indicate aspect, which expresses the completeness or effects of an action.
- **Point of View:** the position from which the author "speaks" to the reader

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# TONE

- Most people tend to write how they speak
- Value-laden words reflect the bias of the author
  - Ex. disrespectful
- Words typically have a positive, negative, or neutral connotation
  - Evaluate the origin of the word
    - Author
    - Interviewee
    - Another source
  - Evaluate if the word communicates a neutral tone
- Consider audience, especially in complaints involving minors

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# FORMAL VS. INFORMAL LANGUAGE

## Formal Language

- Medical/biological terms
- Accurate terms for alcohol or other drugs, their composition, and use
- Full words--we would, cannot, percent
- Last name, role, titles
- Third-person writing

## Informal Language

- Colloquial terms for anatomy (“junk”) or sexual acts (“smashing”)
- “Weed,” “jungle juice,” “hammered”
- Contractions--we’d, can’t
- First name or nickname
- Empathic writing/taking a position

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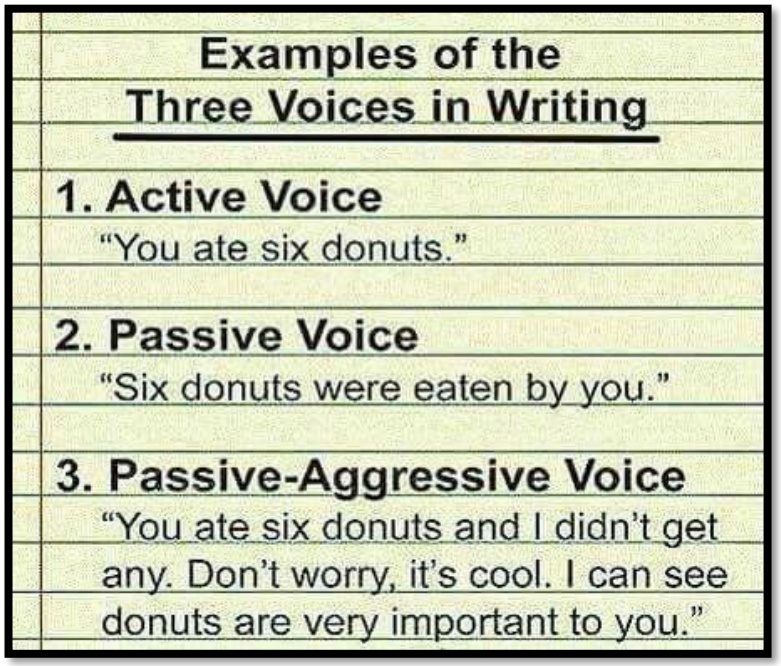
# ACTIVE VS. PASSIVE VOICE

- **Active Voice:** used when the subject performs the action
- **Passive Voice:** used when the action is performed upon the subject

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# TENSE

- **Present tense:** expresses anything that is happening now, or is ongoing, constant, or habitual
- **Past tense:** indicates past events, prior conditions, or completed processes
- **Future tense:** indicates actions or events that will happen in the future
- Investigation reports are a narrative of events which have previously occurred
  - Written in past tense as an industry convention
  - Avoid changing tenses
  - Exception: Investigator actions for the present or future

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# POINT OF VIEW

- What and how much the reader learns about the events, people, and locations in an investigation report depends on the Investigator's point of view
  - How much does the Investigator know and understand?
  - How much does the Investigator want the reader to know?
  - How would the report be different if someone else were writing it?
- Point of view is determined by the role the Investigator plays in the events being recounted
- Does the Investigator **describe** what parties and witnesses told them, or do they **repeat** what they were told by parties and witnesses?

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# FIVE POINTS OF VIEW

| | |
|---|---|
| First Person | The author is involved in the story and recounts their own feelings, impressions, and experiences |
| Second Person | The author is speaking directly to the reader |
| Third Person Objective | The author is outside the story and remains a neutral, detached observer that is not privy to individuals' thoughts and feelings |
| Third Person Limited | The author is outside the story and has limited knowledge of individuals' thoughts and feelings |
| Third Person Omniscient | The author is outside the story and has unlimited knowledge and can describe every person's thoughts and interpret their behaviors |

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# WRITING CLARITY

- Format & Structure
- Quotations
- Sensitive Information
- Redaction
- Word Choice
- Bias-Free Writing
- Footnotes
- Attachments, Appendices, Exhibits, etc.

"Your ethical duty to the person being interviewed is to present [their] position accurately...but after that your duty is to the reader. [They] deserve[] the tightest package."
- William Zinsser

# FORMAT AND STRUCTURE

- Verbatim transcripts vs. summarized interviews
- Narrative vs. bulleted format
  - Headnotes are a great summary device for a long narrative that follows
- Parties' comments on the draft report
- Report or Appendix?
  - Transcribe texts/social media/audio recordings
  - Description of video content
  - E-mail or other writing description or transcript/excerpt
  - Expert statements

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# DIRECT QUOTATIONS

**"[Their] own words will always be better than your words...this is a person talking to the reader directly, not through the filter of a writer."**

**- William Zinsser, *On Writing Well***

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# DIRECT QUOTATIONS

- The inclusion of direct quotations and commentary from parties and witnesses can help to more accurately convey their experiences and perceptions
  - What are ways that these narratives are supported in investigation work?
  - How do Investigators account for quotations that are unclear, wordy, or otherwise strange?
  - What quotations or phrases should otherwise be omitted? Example: “You feel me?”
- Statements by Advisors should not be attributed to a party as their own words
- Care must be taken to indicate whether a quote is something a witness told Investigator(s) or something another person said to a witness

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# FOUR WAYS TO INTEGRATE QUOTATIONS

| | |
|---|---|
| Introduce the quotation with a complete sentence | Cole described how his relationship with Devyn evolved over time: “We were friends, and then we became friends with benefits.” |
| Use an introductory or explanatory phrase | When asked to describe his relationship with Devyn, Cole responded, “We are friends with benefits.” |
| Incorporate the quotation part of the sentence | Cole described his relationship with Devyn as “friends with benefits.” |
| Use a short phrase as part of the sentence | Cole used the term “friends with benefits” to describe his relationship with Devyn. |

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# PUNCTUATION FOR QUOTATIONS

- If words are omitted from a quotation, use an ellipsis
  - Use three dots (…) to indicate an omission of words in a sentence or sentences in a paragraph unless the ellipsis is at the end of one sentence and the quote continues to the next sentence, then use four dots (….)
  - An ellipsis is not needed at the beginning or end of a quotation unless it provides clarity
  - Examples:
    - "Where sentence one ends….Sentence two begins."
    - "You've heard it before…there's only one reason someone comes back to your place."
- Make sure when you omit text you do not change the meaning of the sentence


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# PUNCTUATION FOR QUOTATIONS (CONT.)

- If words are inserted or altered in a quotation, use square brackets [ ] to indicate the change
  - May include:
    - Letter case or verb tense
    - Replacing a word to clarify meaning
  - Example:
    - Original: “He made me question if I was imagining everything that happened.”
    - Revised: “[Respondent] made me question if I was imagining everything that happened.”

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# PUNCTUATION FOR QUOTATIONS (CONT.)

- Enclose “sic” in square brackets to indicate that the quote is verbatim, even if there are spelling or other syntax errors
  - Example:
    - “I notified [sic] that she was starting to feel the effects of alcohol.”
- When a quote includes an error in word choice or grammar, there is no need to identify the error or include [sic] unless the meaning is unclear as a result, in which case, the Investigator should clarify as in the example above, or check with the interviewee to ensure they correctly captured the meaning.
  - This will occur most often in transcription of recorded interviews, but if Investigator notes are unclear, clarify

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# SENSITIVE INFORMATION

- Title IX investigations are inherently sensitive and personal
- Accounting for the fact that investigation reports will include details of private exchanges between others, what considerations should be made in report writing?
  - Use of offensive, triggering, or explicit language (i.e., slurs)
  - Graphic images*
    - Forensic photographs
    - Nude images
    - Variety of methods to incorporate images
  - Medical information, including test results
  - Sex assigned at birth vs. gender identity
  - Chosen name vs. legal name

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# REDACTION PRACTICES

- Full redaction vs. replacement with an identifier
  - Example:
    - Original: Teagan stated that Jesse smacked her with an open hand.
    - Full: [redacted] stated that [redacted] smacked her with an open hand.
    - Identifier: Complainant stated that Respondent smacked her with an open hand.
  - Full redaction is a common practice in law enforcement, but is not recommended for Title IX investigations
- Other options:
  - Include full name for first mention
  - Use initials
  - Use one or two-letter identifiers (C, R, W1, W2, etc.)

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# REDACTION PRACTICES (CONT.)

**Example practice:**

1. Create a full version of the report and evidence file that includes all names and personally identifiable information (PII)
   - This version goes to the Decision-maker(s)/Panel and is for the comprehensive file (including any review by the TIXC and/or legal counsel)
2. Create redacted versions of the report and evidence file that remove all names and PII, substituting identifiers
   - This version goes to all parties/Advisors
   - Create an answer key that separately explains all identifiers that also goes to all parties/Advisors

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# TIPS FOR SHARING THE REPORT AND EVIDENCE FILE

- Use a secure file-sharing platform
  - Consider functional and time limit restrictions as appropriate for your community and process
    - Downloading
    - Saving
    - Printing
- Include a separate watermark for each party/Advisor
- Ensure the parties have a user-friendly method for providing feedback

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# WORD CHOICE

- Conclusory words
- Unnecessary adverbs and adjectives
- Bias language
- Common Pitfalls
  - Repetition
  - Absolutes
  - Generalizations
  - Cliches
  - Exaggerations
  - Jargon
  - Abbreviations, initialisms, and acronyms
  - Inconsistency

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# WORD CHOICE EXAMPLE 1 – PART A

If you are comfortable doing so, please close your eyes and visualize what is happening during each of the following statements.

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# WORD CHOICE EXAMPLE 1 – PART B

Now that you've heard each of the statements, where would you place the described actions on a continuum from least severe/egregious to most severe/egregious?

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# WORD CHOICE EXAMPLE 2

- The Respondent **refused** to answer the question.
- The Respondent **declined** to answer the question.
- The Respondent **chose not** to answer the question.

- The Complainant **denied** offering to massage the Respondent.
- The Complainant **vehemently denied** offering to massage the Respondent.
- The Complainant **flatly denied** offering to massage the Respondent.

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# WORD CHOICE EXAMPLE 3

**Poor Phrasing Example:** "On September 21, 2016, four upperclassmen male students brought unwelcome sexual activity to Jane Doe and another female student in a stairwell at Maplewood."
(*Doe v. Metropolitan Government of Nashville and Davidson County*, No. 20-6225 (6th Cir. May 19, 2022).)

**Recommended Revision:** Four male upperclassmen engaged in unwelcome sexual activity with Jane Doe and another female student in a Maplewood stairwell on September 21, 2016.

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# WORD CHOICE (CONT.)

- Investigation report construction is largely built with the first-person accounts of the parties and witnesses
  - What are ways in which these voices are included that does not minimize their experiences or indicate bias?
    - Example: pejorative use of the term “female” by a party in an interview
      - How is this communicated in a report?
      - What if it is used in a hearing?
- How can we also strive to use accessible language in interviews and in report writing?
  - For example, “rush” vs. “new member process”

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# BIAS-FREE WRITING

- Words communicate ideas, but also reflect power, status, and privilege
- Language can reflect social capital
- Conscious and purposeful use of language can promote equity, justice, and inclusion
  - Pay attention to your communication with individuals in different roles (e.g., Complainant, Respondent)
- The use of bias-free language ensures the content does not exclude, demean, or offend groups
- Bias-free communication attempts to include all identities of people in a way that doesn't make assumptions about the receiver of the communication
- Bias-free writing does not discriminate

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# TIPS FOR BIAS-FREE WRITING

- Know your own biases
  - Have your writing proofread by others
  - Read your own work to recognize language that is part of your everyday speech
- Focus on what's relevant
  - Only include information on identities when applicable
- Recognize and acknowledge differences
  - Not supposed to imply differences don't exist
- Think small
  - Be as specific as possible
  - Specificity is preferred over generalization
    - Example: Avoid using "students of color" generally when you are really referring to a specific racial group

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# TIPS FOR BIAS-FREE WRITING (CONT.)

- Avoid Labels
  - Describe identities and group connections as the individuals have described them
- When in doubt, ask
  - Do your research
  - Get a second opinion
- Use nouns, objectives, and adjectives properly
  - Avoid using language that refers to people in objectifying ways

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# BIAS AND BIAS-FREE LANGUAGE EXAMPLES

| Biased Language | Bias-Free Language |
|---|---|
| Chairman | Chairperson |
| Ray is mentally disabled | Ray has Attention Deficit Disorder |
| The elderly are our biggest customers | Adults aged 65 and older are our most frequent customers |
| The new Black kid on the team is the captain | James is the captain |
| Poor kids qualify for those scholarships | Students with a household income below $20,000 qualify for those scholarships |

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# BIAS EXAMPLE

## E-mail to Complainant

Thank you so much for sending your written statement. I would like to set up another meeting with you to ask some further questions and discuss the evidence that you may have, witnesses you'd like me to speak with, and any other concerns you might have. If you could just let me know if there's a time that works well for you and if you have a preferred meeting location, I'll set an appointment for us.

I hope we can find a good time to meet next week. In the meantime, take good care and please don't hesitate to reach out if there's anything you need. Thanks!

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# BIAS EXAMPLE (CONT.)

**E-mail to Respondent**

Thank you for sending your written statement. We will need to meet again so that I can ask any follow-up questions I have and discuss the evidence that you may have, witnesses you'd like me to speak with, and any other outstanding process pieces. Based on your class schedule, I set an appointment for us at 11 AM on Monday, February 7, 2022, in my office.

Refer to the list of resources at [website] if you need assistance before our meeting.

Sincerely,

Title IX Investigator

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# FOOTNOTES

- Footnotes provide definitions, context, or source information that would otherwise disrupt the flow of the investigation report
  - Slang terms, regionalisms, campus-specific language
    - Ex. Talking (v): when two people have established that they are mutually interested in each other and are getting to know each other better, but are both still considered to be single and not a couple
  - Description of electronic applications
  - References to appendices
  - Background information
    - May also be its own separate section depending upon length and complexity

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# FOOTNOTES (CONT.)

- Be mindful of assuming "common knowledge," and if the Investigator is offering context from their own knowledge, make sure it is clearly indicated as such
- Consider who will be reading the report now and potentially in the future
  - Technology evolves
  - Slang shifts
  - Pop culture references change
  - Businesses come and go
  - Generational differences
  - Cultural differences

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# FOOTNOTES (CONT.)

- In text, the footnote follows punctuation except for the m-dash (—)
  - Example: The parties agreed that the sexual activity on the couch was consensual.[1]
- ATIXA recommends using footnotes to indicate the source of relevant information incorporated in the report when summarizing or synthesizing multiple sources of evidence

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# FOOTNOTES FOR RELEVANT INFORMATION EXAMPLE

**SUMMARY OF EVIDENCE**

The parties agree that they met the prior semester at a party when Complainant was an admitted student but had not yet started classes. Complainant's brother was one of the party hosts. The Complainant and Respondent exchanged contact information and frequently communicated over text or Snapchat.[5] Neither party has record of this prior communication. Complainant has since blocked and deleted all messages.[6] Respondent destroyed his phone by accidentally dropping it over a cliff while hiking.[7] Neither can recover Snapchat communication due to the nature of the social media application.[8]

Through their communication, they resolved to spend the evening of September 5, 2020 together. They went to Marty's (a local convenience store) to purchase wine, beer, and bread. Afterward, they walked to Respondent's on-campus apartment.[9]

The parties agree that they returned to Respondent's apartment and no one else was present in the apartment when they arrived.[10] They turned on Netflix and began drinking the beverages purchased at Marty's. The parties agree that Complainant drank most (if not all) of the bottle of wine and one beer –

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[5] Evidence File pgs. 4-5, 28, & 30
[6] Evidence File pg. 21-22
[7] Evidence File pg. 29
[8] Evidence File pg. 21 & 30
[9] Evidence File pgs. 5-6 & 28
[10] Evidence File pgs. 2 & 28


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# ATTACHMENTS, APPENDICES, & EXHIBITS

- Complete versions of information that is incorporated into the body of the investigation report by reference or in excerpt form
  - Photographs
  - Video stills
  - Screenshots of text messages/social media
  - Access logs, card swipe logs, phone records
  - Academic course schedules
  - Floorplan diagrams
  - Others
- Provide source and submission date information
- Separates relevant from directly related evidence

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# APPENDIX "C"

- Questions suggested or requested to be asked by the parties should be documented and included as an appendix in these sections:
  - **Section 1:** Questions the party wanted asked specifically but were not because the answers were gained in a narrative or otherwise volunteered. The question posed and the answer should be noted here.
  - **Section 2:** Questions the party wanted asked specifically that were asked in the manner the party wanted.
    - Document: The question they wanted, how it was asked, and the answer.

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# APPENDIX "C" (CONT.)

- **Section 3:** Questions the party wanted asked specifically that were asked but not in the manner the party wanted
  - Document: The question they wanted, the one that was asked, the answer, and the rationale for changing the form of the question (e.g., argumentative, blaming, improper form, etc.).
- **Section 4:** Questions the party wanted asked specifically that were not asked
  - Document: The rationale for not asking the question (e.g., irrelevant, already asked and answered, etc.).

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# POST-REVIEW PARTY FEEDBACK

- When the parties/Advisors provide written review and comment on the report or evidence file, include the entirety of that feedback and any responses from the Investigator(s)
  - Ask individuals to provide an itemized list of feedback rather than a long narrative
- Include appropriate discussion if feedback impacts credibility
- Should the Investigator include new evidence in the report or appendix?
- What about clarification of earlier statements? Should the Investigator show two versions, or just go back and correct within the body of the report?

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# POST-REVIEW PARTY FEEDBACK (CONT.)

- How should shifts between relevant evidence and DRE that are made as a result of feedback be shown?
  - Track changes? How much back and forth should an Investigator have with the parties versus what should be resolved by the Decision-maker(s)?
- Appendix vs. evidence file

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# ABSENT INFORMATION

- Information Unable to be Obtained
- Questions Asked Yet Unanswered

# INFORMATION UNABLE TO BE OBTAINED

- Seeking information that was not successfully secured for an investigation report should be equally documented to demonstrate the lengths through which details and data were sought, even if not obtained:
  - Did not exist at the time of the reported incident
  - Does not exist at the time of the investigation
  - Cannot be located at the time of the investigation
  - Party/witness not available to be interviewed or declines to respond to question(s)
  - Request for submission declined
  - Was otherwise deleted, destroyed, damaged
  - Unable to access without a court order
  - Information that cannot be released due to an ongoing criminal and/or agency investigation

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# QUESTIONS ASKED YET UNANSWERED

- It is important to include questions which were asked but unanswered during the investigation to:
  1) demonstrate a thorough investigation and attempts to obtain information, and
  2) help guide the Decision-maker to topics that may need further discussion during a hearing or other resolution process.
- If relevant, should be documented in the interview summary
  - Example: “Witness 2 declined to provide additional information regarding their text conversation with the Complainant on February 19, 2019. W2 was informed the Complainant voluntarily submitted screenshots of the text messages in question for purposes of this investigation.”

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# INVESTIGATION REPORT SECTIONS

- Complaint Information
- Executive Summary
- Relevant Background
- Jurisdiction & Scope of the Investigation
- Applicable Policies & Relevant Definitions
- Investigation Timeline
- Reported Incident(s) Timeline(s)
- Summary of Relevant Statements & Evidence

# COMPLAINT INFORMATION

- Complaint date
- Complainant's name and recipient ID
- Initial notice date
- Initial notice received from
- Respondent name and recipient ID
- Date assigned to Investigator(s)
- Assigned Investigator(s)
- NOIA date
- Final investigation report date

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# COMPLAINT INFORMATION EXAMPLE

**[RECIPIENT] INVESTIGATION REPORT**

**CONFIDENTIAL**

| | |
|---|---|
| **Complaint Date:** | **[Date]** |
| **Complainant:** | **[Complainant's Full Name] ([RecipientID])** |
| **Initial Notice Date: (if different)** | **[Date]** |
| **Initial Notice Received From: (if different)** | **[Third Party's Full Name] ([RecipientID])** |
| **Respondent:** | **[Respondent's Full Name] ([RecipientID])** |
| **Date Assigned:** | **[Date]** |
| **Investigator(s):** | **[Investigator(s)' Full Name(s) and Titles]** |
| **Investigation Report Date:** | **[Date]** |

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# EXECUTIVE SUMMARY

- Date, time, and manner of formal complaint
- Complainant's identity
- Description of alleged misconduct
- Request for a formal investigation or TIX Coordinator's decision to sign a formal complaint
- Who investigated the complaint and in accordance with which law(s) and/or policies the investigation was conducted
- Detailed account of undisputed facts
- Detailed account of disputed information
- Status of the complaint (e.g., dismissal or referral to Decision-maker(s))
- Sections of the investigation report

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# EXECUTIVE SUMMARY EXAMPLE

**INTRODUCTION**

On Tuesday, October 6, 2020, the Title IX Coordinator (TIXC) met with Complainant and her advisor, the Sexual Assault Victim's Advocate. The Complainant reported that on Saturday, September 5, 2020 the Respondent sexually assaulted her while the Complainant was in a state rendering the Complainant unable to give consent. The Complainant requested to file a Formal Complaint and completed the form during the meeting.[1]

As a result of this allegation and additional evidence presented at the time of intake, the TIXC asked the Title IX Investigator to conduct a thorough and impartial investigation using the provisions outlined in the University's Equal Opportunity, Harassment, Nondiscrimination Grievance Policy (hereinafter, Grievance Policy) and in accordance with Title IX and following guidelines from the U.S. Department of Education's Office for Civil Rights.

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# RELEVANT BACKGROUND

- Summarize when and how the report/formal complaint was made and received
- Summarize the allegations, including applicable policies
- Include additional background information as necessary to understand relationship history, context, etc.
  - Separate by topic

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# JURISDICTION

- Provide a statement of jurisdiction including:
  - Incident date, time, and location
  - Individuals involved
  - Relevant policies and procedures related to jurisdiction
    - Information and analysis for subject matter jurisdiction
    - Institutional control of the context of the alleged misconduct
    - Indicate whether Title IX requires the institution to investigate, or whether jurisdiction is discretionary and Title IX does not apply

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# JURISDICTION EXAMPLE

According to available information, the Respondent is currently a full-time administrative employee in the College of Human Performance, and the Complainant is currently a third-year doctoral student the physical therapy program. Both parties maintained the same institutional affiliations at the time of the reported incident.

The reported incident occurred in Parking Garage Six on the University of the Northwest campus in Mulkiteo, Washington, United States. If proven, the allegations would constitute sexual assault under University policy and Title IX.

The University controls the location of the reported incident. the Respondent is an employee, and the Complainant is participating in the institution's educational program as a student; therefore, the University has jurisdiction over this complaint pursuant to Grievance Policy Section 2(b).


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# SCOPE OF THE INVESTIGATION

- **Scope:** the purpose of and parameters around the investigation
  - Allegations it will explore
  - Timeframe being considered
  - Who will be involved
  - Outcome
- The Title IX Coordinator or designee will determine the scope of the investigation
- Most investigations will originate from a formal complaint, but the content of the complaint is not the sole determiner of the scope of the investigation

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# SCOPE OF THE INVESTIGATION (CONT.)

- List the parties and relevant witnesses, while providing basic context for who the witness is in relation to the institution and the parties
- Include when each individual was interviewed and by whom
  - If there were witnesses or parties who were contacted and were either nonresponsive or declined to participate, include that information as well

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# SCOPE OF THE INVESTIGATION EXAMPLE

The Office of Institutional Equity, which oversees Title IX and VAWA compliance, commenced an investigation to determine:

1. If the Respondent engaged in behavior which constitutes sexual assault under University policy in an on-campus apartment on April 7, 2021
2. If the Respondent engaged in behavior which constitutes sexual exploitation under University policy in an on-campus apartment on April 7, 2021

Investigator(s) Felicia Morris conducted an investigation in accordance with guidelines and requirements set forth by the U.S. Department of Education Office for Civil Rights for Title IX investigations, the Violence Against Women Act Section 304, and University policy. Her efforts were overseen by Melanie Wallace, Title IX Coordinator. Witnesses interviewed include current students and non-students.

This investigation was designed to collect all available information and to determine if the complaint should be dismissed or referred to a decision-maker for a formal hearing.

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# SCOPE OF THE INVESTIGATION EXAMPLE (CONT.)

**EXAMPLE**

Complainant is *(e.g., a first-year undergraduate male residing in the residence halls).*
Respondent is *(e.g., a female graduate student and a residence advisor in the residence halls).*
JM is *(e.g., a freshman male residing in the residence halls and Complainant's roommate).*
JC is *(e.g., a female undergraduate student living off-campus and a classmate and friend of Complainant).*
RH is *(e.g., a female employee of Name local bar; employee is not affiliated with the university).*

**DISCUSSION:**
**Does including demographic information potentially bias the Decision-maker(s)?**

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# APPLICABLE POLICIES AND RELEVANT DEFINITIONS

- Include the full text of ALL applicable policy sections
  - Alleged violation(s)
  - Relevant definitions (e.g., consent)
  - Standard of Evidence
- This section should be consistent with the Notice of Investigation and Allegations (NOIA), including any amendments thereto

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# INVESTIGATION TIMELINE

- The Decision-maker or TIXC will need to include "a description of the procedural steps taken from the receipt of the formal complaint through the determination" in the written outcome letter provided to the parties following a hearing; this information is usually drawn from this section of the investigation report
  - Notifications to the parties
  - Interviews with parties and witnesses
  - Site visits
  - Methods used to gather other evidence
  - Hearings held
- Note any process delays, including rationale

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Source: 34 C.F.R. § 106.45(b)(7)(ii)

# INVESTIGATION TIMELINE EXAMPLE

| Date | Action |
|---|---|
| **10/26/19** | ▪ Complainant notified [NAME] of allegations. |
| **10/27/19** | ▪ No contact order put in place between parties. |
| **11/01/19** | ▪ Meeting between Complainant and Title IX Coordinator<br>▪ Formal complaint submitted by Complainant<br>▪ Assigned to Investigators |
| **11/03/19** | ▪ Parties sent Notice of Investigation and Allegation<br>▪ Emailed interview requests to parties and witnesses |
| **11/07/19** | ▪ Investigators interview Complainant |
| **11/21/19** | ▪ Parties and Advisors provided directly related evidence for response |
| **12/2/19** | ▪ Review deadline; no response received from parties. |
| **12/3/19** | ▪ Parties and Advisors provided investigation report for review and response. |

# REPORTED INCIDENT(S) TIMELINE(S)

- Timelines are a visual representation or list that shows events in chronological order
- Investigators should develop one timeline for the reported incident(s) based on all information collected during interviews and submitted as evidence
- Reference evidence which substantiates with the timeline (e.g., timestamped text messages, receipts, call logs)
- Timelines are especially helpful in cases where incapacitation may be involved

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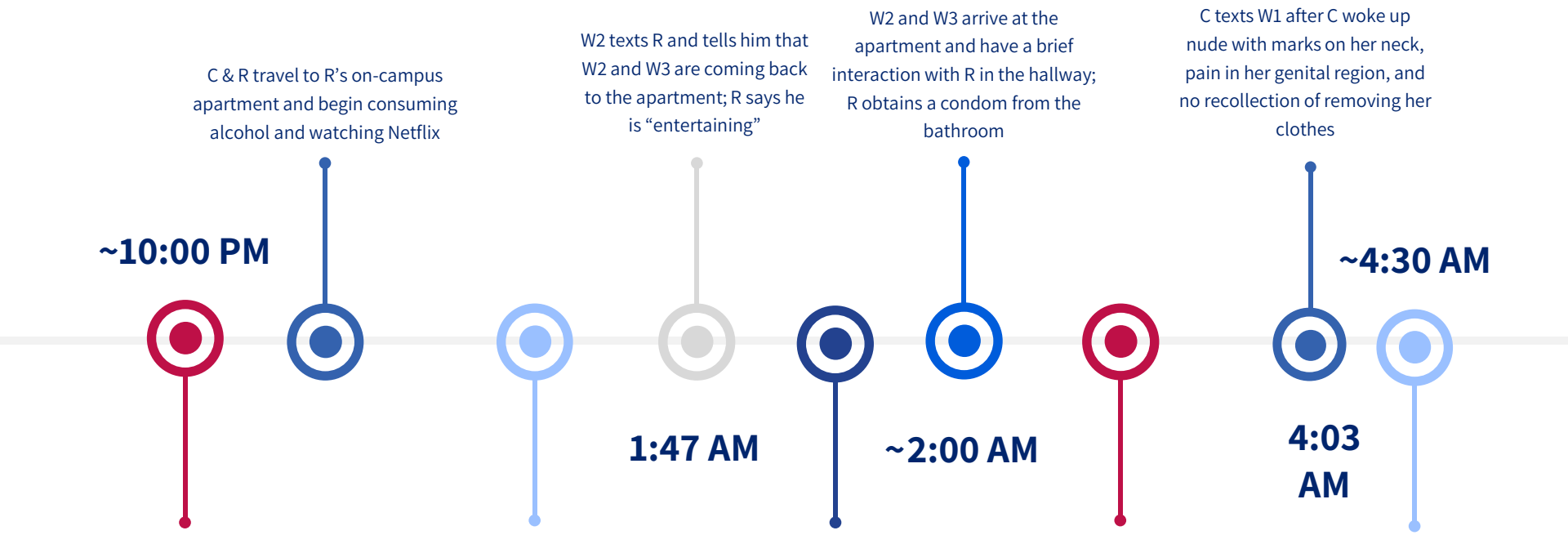
# REPORTED INCIDENT(S) TIMELINE EXAMPLE 1

## September 5-6, 2020

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# REPORTED INCIDENT(S) TIMELINE EXAMPLE 2

| Date/Time | Event |
|---|---|
| **9/18/19 ~ 9:50 pm** | Complainant goes to [name] house (Address) before [event]. |
| **9/18/19 ~ 10:45 pm** | Complainant and [names] walk to [location]. |
| **9/18/19 ~ 11:00 pm** | Complainant and [names] arrive at [location, plus brief description of activity.] |
| **9/18/19 ~ 11:30 pm** | Complainant vomited [where]. |
| **9/18/19 ~ 12:15 am** | Complainant starts [specific activity] with Respondent. They [engage in activity] for approximately [time frame]. [Add brief details re: drug/alcohol consumption, potential witnesses, etc.] |
| **9/18/19 ~ 1:30 am** | Parties agree to leave and go back to [location.] |

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# SUMMARY OF RELEVANT STATEMENTS & EVIDENCE

- The content of the investigation may dictate the most logical organization structure for this section
  - Chronological by interview
  - Chronological by incident timeline
  - Parties first, then witnesses

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# CREDIBILITY ASSESSMENT

- Specific and detailed analysis of credibility of:
  - Each party
  - Each witness
  - Any other relevant evidence
- Point to specific details that you have considered that have aided in your assessments
- May or may not include conclusions about credibility, depending on institutional policy
- ATIXA does not recommend making conclusions

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# CREDIBILITY OVERVIEW

**Corroboration**

- Aligned testimony and/or physical evidence.

**Inherent plausibility**

- "Does this make sense?"
- Be careful of bias influencing sense of "logical."

**Motive to falsify**

- Do they have a reason to lie?

**Past record**

- Is there a history of similar behavior?

**Demeanor**

- Do they seem to be lying or telling the truth?

*Enforcement Guidance on Vicarious Employer Liability for Unlawful Harassment by Supervisors*

EEOC (1999)

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# CREDIBILITY ASSESSMENT EXAMPLE 1

**Respondent**

Respondent stated that he received a text from his roommates when they were returning to the apartment.[32] This is what led Respondent to move with Complainant to Respondent's bedroom. Witness 2 and 3 provided testimony consistent with Respondent's statements, and Witness 2 provided text screenshots.[33]

Respondent stated he came out of the bedroom with a towel wrapped around his waist when his roommates returned to the apartment. Witness 3 recalled Respondent coming out of the bedroom with a towel around his waist, consistent with Respondent's statements.[34]

Respondent stated when he returned to the bedroom Complainant appeared to be asleep. Witness 3 walked by Respondent's open bedroom door before Respondent returned to the bedroom and observed that Complainant was under the covers of the bed and "seemed to be very still as though they might be asleep."[35] This statement is consistent with Respondent's statements.

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# CREDIBILITY ASSESSMENT EXAMPLE 2

- Mark's testimony about X contrasts with Mariana's testimony about X, and the accounts of Witness 1 and Witness 7 aligned with Mariana's testimony, not Mark's, during the investigation.
- The decision-maker may benefit from looking carefully at Mark's assertions about having received consent and explore this more deeply with the parties and witnesses during the hearing.

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# CREDIBILITY ASSESSMENT EXAMPLE 3

Complainant stated that she felt confused and dizzy upon awaking in Respondent's room around 4:00 a.m. Witness 1 observed that Complainant seemed "totally out of it" when the two met immediately after Complainant texted Witness 1 around 4:00 am. Witness 1's statements are consistent with Complainant's, and screenshots provided by Complainant are consistent with both individuals' statements.

Complainant stated that she had bruising and hickeys on her neck, chest, shoulders and arms after waking up in Respondent's room. Photos provided by Complainant and statements by Respondent are consistent with Complainant's statements.

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# DISCUSSION & SYNTHESIS

- Discuss and synthesize the relevant information
  - Consider the elements of each policy at issue
  - Refer back to relevant evidence cited
  - Refer to the credibility assessment(s)
- Summarize all areas of contested and uncontested facts/evidence
- Institutional procedure may allow the Investigator(s) to conduct analysis and make recommended findings or may limit the Investigator(s) to synthesis
- ATIXA does not recommend making recommendations for findings or final determination

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# DISCUSSION AND SYNTHESIS EXAMPLE

The parties agree on the order of events on the night of the reported incident including communicating via text message, meeting at an off-campus convenience store, walking to the Respondent's on-campus apartment, consuming alcohol, and engaging in sexual activity.

The parties disagree about the following:

- The amount of alcohol the Complainant consumed and whether she was incapacitated and unable to consent to sexual activity
- Whether the Respondent's actions caused the bruises on the Complainant documented via photographs

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# DISCUSSION AND SYNTHESIS EXAMPLE (CONT.)

During her interview, Complainant alleged that Respondent may have either videorecorded or taken photos of her without her consent while engaged in intimate activity on the couch in Respondent's residence. Respondent denies these allegations and no additional evidence was provided or available to corroborate or refute this allegation.

Complainant also alleged that Respondent may have caused her to unknowingly ingest an unknown substance that affected her capacity on the night of the reported incident. Respondent denies these allegations. The Investigators were unable to obtain a copy of the SANE report; however, a verbal conversation with the SANE provider indicated that drug and alcohol screening at the time of the exam did not indicate the presence of any substance other than alcohol. The screen does not test for all substances that could impact capacity.

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# RECOMMENDED FINDINGS

- This section is only applicable if permitted by institutional policy
- Did the conduct occur as alleged?
  - List recommended findings by the standard of evidence for each alleged policy violation
- Include a statement that the recommended findings are not binding on the Decision-maker(s)

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# RECOMMENDED FINAL DETERMINATION

- This section is only applicable if permitted by institutional policy
- Did the conduct violate policy?
  - List recommended final determination by the standard of evidence for each alleged policy violation
- Include a statement that the recommended determination is not binding on the Decision-maker(s)

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# CONCLUSION

- Guide for the Decision-maker(s) determination
- Akin to jury instructions

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# CONCLUSION EXAMPLE PART 1

Complainant's allegations describe misconduct that implicates [Institution]'s prohibition of sexual harassment as well as several provisions of prohibited conduct outlined in [Institution]'s Student Conduct Code. Some provisions of the policies, like the prohibition of sexual harassment, require a threshold determination regarding the severity and pervasiveness of the alleged behavior in order to support a determination of a policy violation. Other provisions, such as the prohibition against providing alcohol to minors, may be determined by the decision-maker to be satisfied by a single occurrence.

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# CONCLUSION EXAMPLE PART 2

Analysis of the allegations for the purpose of determining whether a preponderance of the evidence supports a determination that one or more of [Institution]'s policies were violated should proceed by first determining whether each allegation is supported by a preponderance of the evidence. In this particular situation, an analysis of whether consent was given, as well as whether it was withdrawn, is appropriate.

Allegations are presented separately and relevant evidence supporting and refuting each allegation is outlined within each respective section of the report. Because most, if not all, of the allegations are supported and refuted solely by the testimony of the parties and witnesses, the decision-maker should carefully evaluate the credibility of the testimony offered as well as the credibility of the individual providing the testimony.

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# CONCLUSION EXAMPLE PART 3

This report is intended to provide an exhaustive summary of the relevant evidence related to the allegations made by the Complainant. It is not intended to draw any conclusions regarding the accuracy of the allegations or the credibility of the parties and witnesses. The investigators submit this report for consideration by a decision-maker appointed by [Institution] and remain available to answer any questions regarding the investigation or information contained in this report.

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# EVIDENCE FILE (PROCESS A) / APPENDICES(PROCESS B)

- Include all applicable evidence and documentation
  - Formal complaint
  - Verified full transcript or complete notes from each interview
  - Any written statements, photos, screenshots, etc.
  - Always include a copy of the full policies in place at the time of the incident(s) and investigation

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# EVIDENCE FILE/APPENDICES EXAMPLE

A. Formal Complaint Submitted [Date]
B. Verified Transcript of Complainant's Interview on [Date]
C. Verified Transcript of Respondent's Interview on [Date]
D. Questions Submitted by Complainant
E. Questions Submitted by Respondent
F. Complainant's Response to Draft Investigation Report
G. Respondent's Response to Draft Investigation Report
H. Applicable Institutional Policy (provided by link)

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# SECTION/APPENDIX COVER PAGE EXAMPLE

## APPENDIX A

| | |
|---|---|
| **Description:** | Formal Complaint Submitted by Complainant |
| **Date Received:** | 11/1/2019 |
| **Submitted By:** | [Complainant's Full Name] |
| **Received By:** | TIXC's Full Name, Title |
| **[Authenticated By]:** | [Full Name, Title, and Means] |

[Additional context or explanatory information]

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# ENHANCING USER FRIENDLINESS

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# Questions?

# Thanks for joining us today.

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