

Advanced Title IX Investigator Training

**Level 3: Writing Workshop
and Discussion of Self-Care**

Bricker 
Graydon

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Disclaimers

- **We can't help ourselves – we're lawyers**
- We are not giving you legal advice – consult with your legal counsel regarding how best to address a specific situation
- This training does not cover all of the basic subjects required for Title IX Investigators, institution-specific grievance procedures, policies, or technology.
- Use the chat function to ask general questions and hypotheticals
- This training is not being recorded, but we will provide you with a packet of the training materials to post on your website for Title IX compliance

Presentation Rules

Again... we can't help ourselves. We're still lawyers.

- Questions are encouraged!
- “For the sake of argument...”
- Be aware of your own responses and experiences
- Follow-up with someone if you have questions and concerns
- Take breaks as needed

Can We Post these Materials?

34 C.F.R. §106.45(b)(10)(i)(D)

- Yes!
- Your Title IX Coordinator is required by 34 C.F.R. §106.45(b)(10)(i)(D) to post materials to train Title IX personnel on its website
- We know this and will make this packet available to your institution electronically to post

Writing Interview Summaries and Investigation Reports

- Summarizing investigative interviews
- Structuring your investigative reports
- Common Mistakes that Prevent Clarity in Writing
- Best Practices for Neutral Writing on Sensitive Subjects

Burnout, Turnover, and Self-Care

- Trends in Burnout and Turnover
- Signs and Sources of Burnout
- Practical Ideas for Providing Support
- Assessing your office climate to address concerns on an ongoing basis

Review of Your Role

1. The **gatherer** of all relevant evidence
2. The **organizer** of all relevant evidence

Writing Interview Summaries (1 of 2)

- No magic formula
- Try to draft them near the time of the interview
- Summarize the discussion with as much detail as possible
 - Include policy and procedure discussions
 - Include questions asked and answered
 - Use quotations when possible

Writing Interview Summaries (2 of 2)

- Must be readable
- Must be accurate
- Incorporate feedback promptly
 - Otherwise you might forget what was said or what the feedback is referencing
- Put the work in
 - If your summaries are accurate and readable, they may become the bulk of your report (depending on your institution's report format)
 - Putting the work in now may save you time later

Writing Investigation Reports

From the Title IX Regulations...

The 2020 Regulations provide that the investigator must create a report that:

- Fairly summarizes relevant evidence
 - 34 C.F.R. §106.45(b)(5)(vii)

What does this mean?

Preparing to Write the Report

Timing and Form

- Don't start writing the Final Report before the investigation has concluded, if you can help it
 - However, your interview summaries may be the bulk of your report and you will write those as the investigation proceeds
 - Starting the report too soon might give the impression that you have pre-judged the facts or have confirmation bias
- Find out whether your institution has a template for reports
 - Use it and your policy as a checklist

Investigation Reports

Basics

- Summarize **facts**
- No findings of fact; No determinations
- Provide to parties and advisors at least 10 days before the hearing
- Did you create a draft and share it with the parties when you shared the evidence?
 - If so, make sure to distinguish between the DRAFT report and the FINAL report because the FINAL report must address your consideration of the feedback provided

Things to Keep in Mind

Two or more “stories”

- Each case includes at least TWO stories, maybe more
 - (1) The underlying case
 - (2) The investigation of the underlying case

Story One of (at least) Two

The Underlying Facts

Each case includes at least TWO stories in one:

(1) The facts of the underlying case

- On August 25, 2020, Complainant and Respondent attended a party together at Thompson Point Residence Hall
- Complainant reports A, B, and C
- Respondent reports X, Y, and Z

Story Two of (at least) Two

The Investigation of the Underlying Case

Each case includes at least TWO stories in one:

(2) The investigation of the underlying case

- On August 30, 2020, Complainant filed a formal complaint
- On September 5, 2020, Complainant spoke with Investigator
- On December 10, 2020, Complainant shared the Investigation Report with Witnesses 1, 2, and 3

Different Ways to Tell These Stories

Structural Considerations

- Template
- Typical practice for your institution
- Common structural tools
 - Chronology
 - Topic or allegation
 - Perhaps by chronology within each topic or allegations
 - Chronology of how the information came into the investigation
 - By Witness Summary

Where to Begin? (1 of 2)

Structuring Your Report – Introduction

Should preview both stories

- How did the underlying “story” get to the Title IX Office?
- What about the underlying story was reported?

Identify relevant individuals with just factual information

- Complainant
- Respondent
- Investigator
- Witnesses

Where to Begin? (2 of 2)

Structuring Your Report – Introduction

The Allegations

- Refer back to the Notice when drafting your descriptions of the allegations
 - Do they match your description?
 - If not – why?
- Did both parties receive Notice of the issues you've investigated?
- Did something come up during the investigations that requires further notice or charges?
- Remember to use the names and definitions of violations as they existed when the conduct is reported to have occurred
 - Same policy for definitions and procedure? Or a split?

Identify and include all alleged policy violations

- Always include definitions of prohibited conduct alleged from applicable policy
- Always include related definitions as appropriate (e.g. consent, incapacitation) or any code of conduct included if done together
- Include verbatim, in entirety
 - This will take up space but it's worth it
 - Acts as a check on the process to ensure accuracy
 - Gives the parties and advisors a reference point within the report itself

Structuring Your Writing – Step-by-Step

Procedural Steps beginning with Formal Complaint:

- Can work well between the introduction and discussion of facts
- Pieces of this description may need to be repeated later
- Include the following for your Decision-Maker(s):
 - Formal Complaint
 - Notifications to the parties
 - Interviews with parties and witnesses
 - Site visits
 - Methods used to gather other evidence

Structuring Your Report – What Happened According to Whom?

- Infinite ways to structure a report
 - We are providing suggestions *ONLY*
- Structure may need to change depending on the type of case and information presented
 - Think about this early in the writing process
- Remember – you are telling at least TWO stories to anyone reading your report
 - Both must be readable

Explaining Your Structure

Example Explanation

“The information in this report is a summary of facts provided by the participating parties and witnesses. Where there is a difference in the accounts, it is noted in the report. For the sake of clarity, the report is organized chronologically and by subject matter when appropriate.”

Other Basics to Include

Issues of Relevance and Procedure

- Address any relevance determinations you made during the investigation
 - Witnesses NOT interviewed (and why)
 - Records NOT requested (and why)
- Any procedural anomalies that need explained?
 - Explaining them in the report gives the parties an opportunity to address them prior to the hearing

A statement regarding relevant evidence

“All relevant information gathered during the course of the investigation has been included in this report.”

- Identify if you thought something was not relevant and why – consider including in attachment(s) for the decision-maker, even if you’ve concluded it is not relevant
- Provide a table or list of all relevant evidence gathered and attach that evidence

- If you can, synthesize the information from multiple parties and witnesses
 - May work best in an overview/introduction section or a conclusion section
- Where the stories diverge:
 - “Information from [Complainant]”
 - “Information from [Respondent]”

Look for opportunities to logically combine related facts

- Undisputed facts at the beginning
 - May give a framework without creating repetition
- Disputed facts
 - Facts may be related by:
 - Timing
 - Source
 - Topic

Synthesis Example #1

Logically combine related facts to tell a story

Pre-Gaming at Apartment 12

Complainant and Witnesses A, B, and C, reported that they each took 3 shots of vodka when they arrived at Apartment 12. Appendix, pp. 6-9. Witnesses agree that approximately two hours after Complainant and Witnesses A, B, and C arrived and took vodka shots, Respondent arrived at Apartment 12 with Witness D. Appendix, pp. 4-9. During his Title IX interview, Respondent reported that he did not take any shots of vodka and had a clear memory of the night. Respondent also reported that he did not observe Complainant take any shots of vodka that night, did not see Complainant stumbling when she walked around the apartment, and did not hear Complainant slur her speech at any time. Appendix, p. 7.

Synthesis Example #1 – Takeaways

Can you apply these takeaways in your cases?

Several things worth noting in this example:

- The information is presented under a topic heading
 - "Pre-Gaming at Apartment 12"
- Information comes from different sources and is blended together
 - Parties and witnesses
 - References to appendix suggest that the information came from several different interview summaries

Synthesis Example #2

Logically combine related facts to tell a story

Report that Respondent choked Complainant

As previously mentioned, Complainant reported four separate acts that might rise to the level of a policy violation. First, Complainant reported that Respondent choked her during their argument on September 1, 2020. Formal Complaint, p. 1. When Complainant described this incident to the Title IX investigator, she said that Respondent used his hand to encircle her throat and then squeeze, preventing her from breathing or talking. (Sept. 10th Interview of Complainant). Complainant submitted photographs of her neck during the Title IX investigation, which are included in the Appendix to this Report on pages 10 and 11. Two witnesses, Witness A and Witness B, reported to the Title IX investigator that they observed bruising on the Complainant's neck when they saw the Complainant the morning of September 2, 2020. (Sept. 12th Interview of Witness A; Sept. 20th Interview of Witness B).

Respondent denied that he choked Complainant. In his statement to the Title IX Investigator...

Synthesis Example #2 - Takeaways

Can you apply these takeaways in your cases?

Several things worth noting in this example:

- The information is presented under a topic heading
 - “Report that Respondent Choked Complainant”
- Information comes from different sources and is blended together
 - Parties and witnesses
 - References to multiple interview summaries and photographs
 - When things cannot be logically combined, begin a new paragraph (“Respondent denied...”)

Be careful to avoid drawing any conclusions

Complainant and Respondent's Accounts of Events

- A. Areas of Agreement
- B. Areas of Disagreement

Consider Feedback

And document that Consideration

- Remember...
 - “**Prior to completion of the investigation report**, the recipient must send to each party and the party’s advisor, if any, the evidence subject to inspection and review in an electronic format or a hard copy, and the parties must have at least 10 days to submit a written response, **which the investigator will consider prior to completion of the investigative report.**”
- Make sure the investigation report reflects your consideration
 - Don’t just go through the motions

Common Writing Mistakes

Consistent and Precise Language

Inconsistent Terminology

- Referring to individuals or locations differently in different places in the report
- May leave the reader with the impression that you are talking about different places or people
 - Tom, Tom Smith, Mr. Smith, Thomas
 - Tom's room, Room 4A, Hubbard Hall

Word choice

- Be as precise as possible
- This can add time to the writing process, but can pay off in terms of clarity
- Avoid charged language

Common Writing Mistakes

Empathy and Tone

Empathy

- Stay away from charged words of advocacy
 - Clearly/obviously
 - Innocent/guilty
 - Victim/perpetrator
- Watch your use of adjectives and adverbs – unless they are in a quote
 - “really drunk”
 - “forcefully pushed”

Tone

- Be non-judgmental
- Recognize the impact of your words

Common Writing Mistakes

Cite Your Source

Failing to include sources of information

- If explaining this in every sentence (“Bob stated this happened”) weighs down your writing, use footnotes to add clarity.
- Citing the source of your information helps the reader and underscores your neutrality

Confusing Quotation Marks

- Is the quoted language from the interviewee?
- Is the quoted language actually a quote from someone else?
 - Footnote 10: The quoted language was attributed to Respondent by Complainant during Complainant’s October 10, 2020 Title IX interview.

Common Writing Mistakes Structure

Topic sentences and transitions

- Provide a roadmap in your introduction and under new headings
- Sentences should flow from one-to-another
- Remember – telling two or more stories to someone unfamiliar with the case

Pronouns

- Be careful of pronoun usage so that the reader always knows who is saying or doing what
- When using pronouns, make sure you are using the right pronouns for the individual

Common Writing Mistakes

Miscellaneous

Typos

- They happen to everyone, but
- Typos in every sentence undermine the integrity of a summary/report

Run-on sentences/Sentence fragments

- Make sure each sentence has a subject and a verb
- If combining multiple independent clauses, consider whether to separate sentences

Editing Exercise #1

Respondent stated that he was uncomfortable cuddling with women that he was not close with during his freshman year.

Issues:

- Confusing
- Misplaced modifier (to what part of the sentence does “during his freshman year” refer?)

Fix:

Respondent explained that during his freshman year, he was uncomfortable cuddling with women with whom he did not have a close relationship.

Editing Exercise #2

Respondent engaged in sexual intercourse with Complainant from behind.

Issues:

- No source of the information
- From behind what? Complainant?
- Word choice

Fix:

According to Complainant, Respondent and Complainant were both standing near the pool table at the time that Respondent began to sexually penetrate Complainant's vagina with his penis. Complainant reported that her body was facing away from Respondent at the time, towards the table, and that Respondent pushed her forward...

Editing Exercise #3

Complainant couldn't explain why she was sitting on the couch by herself.

Issues:

- Pronouns are not clear

Fix:

At the hearing, Complainant testified that she observed Witness A sitting on the couch by herself. Complainant said that she (Complainant) could not explain why Witness A was sitting alone.

Closing Thoughts on Writing

- Clear and consistent writing is important at every stage in the process
- Make sure that your reports comply with your policy and the Title IX regs
- All written documents may be read by others at some point
- Any questions or further discussion?
 - Best practices that have worked for you?
 - Mistakes you've learned from?



Burnout, Turnover, and Self-Care

- Trends
- Signs & Sources
- Ideas
- Assessment

More disclaimers:

- Not mental professionals
- Don't always practice what we preach
- Small, practical strategies but no silver bullet

Trends - Nothing New

- Experts say that the Title IX coordinator position is uniquely stressful in that these administrators are often some of the first people to interact with alleged victims, and must delicately ask for precise and difficult details to guide their investigations. And despite criticism from some victims' advocates that Title IX coordinators aren't always sympathetic enough, or prioritize their institution over its students, **experts also say these administrators are often are drawn to their work because they enjoy helping students.** So it's trying, they say, for coordinators to maintain impartiality with victims and their alleged attackers so as not to taint the investigation...
- Source: Flaherty, Colleen, “Compassionate but Impartial,” *Inside Higher Ed*, **December 19, 2014.**

Trends – But Also Lots of New Things

Just in the last 5 years...

- NPRM in 2018
- New Title IX regulations in 2020
- COVID pandemic
- The Great Resignation
- NPRM 2022
- New Final Rule in October 2023

The Result?

- Individuals leaving Title IX and higher education altogether

Trends – Reasons for Calling it Quits

NASPA: Student Affairs Administrators in Higher Ed (data collected June 2021)

Reason	%
Salaries and/or compensation packages are not competitive for experience and education required	88%
Level of stress and crisis-management responsiveness required for the role lead to burnout	84%
Feel underappreciated/undervalued by the institution	81%
Salaries and/or compensation are not aligned with functions/duties	70%
Amount of hidden responsibilities that are not transparent in job descriptions or communicated up front	68%
Unhappy with long days and weekends	54%
Inadequate institutional support for addressing racism and racial inequities	53%

Signs & Sources of Burnout

From the Mayo Clinic...

Job burnout is a special type of work-related stress — a state of physical or emotional exhaustion that also involves a sense of reduced accomplishment and loss of personal identity.

"Burnout" isn't a medical diagnosis. Some experts think that other conditions, such as depression, are behind burnout. Researchers point out that individual factors, such as personality traits and family life, influence who experiences job burnout.

Whatever the cause, job burnout can affect your physical and mental health. Consider how to know if you've got job burnout and what you can do about it.

Burnout “Syndrome”

According to the WHO:

- “Burnout is a syndrome conceptualized as resulting from chronic workplace stress that has not been successfully managed. It is characterized by three dimensions:
 - (1) feelings of energy depletion or exhaustion;
 - (2) increased mental distance from one’s job, or feelings of negativism or cynicism related to one’s job; and
 - (3) a sense of ineffectiveness and lack of accomplishment.”

Ask yourself.....

Source: “Job burnout: How to Spot it and take action,” Healthy Lifestyle, Adult Health page, Mayo Clinic website at <https://www.mayoclinic.org/healthy-lifestyle/adult-health/in-depth/burnout/art-20046642> (last accessed May 6, 2022)

Practical Ideas for Providing Support

- Pay attention*
- Be available
- Look for on-campus opportunities for relaxing activities
- But....
 - Don't add "self-care" to your employees' to-do list

*Source: Chatterjee, Rhitu and Carmel Wroth, "WHO Redefines Burnout as a 'Syndrome' Linked to Chronic Stress at Work," npr website, <https://www.npr.org/sections/health-shots/2019/05/28/727637944/who-redefines-burnout-as-a-syndrome-linked-to-chronic-stress-at-work> (last accessed on May 6, 2022)

Leisure & Subjective Well-Being

- Disclaimer: Not a psychologist, statistician, or mental health practitioner
- DRAMMA model
 - Newman, D., Tay, L., and Diener, E. (2013). “Leisure and Subjective Well-Being: A Model of Psychological Mechanisms as Mediating Factors,” *Journal of Happiness Studies*, published online on April 16, 2013
 - Goal: to present a conceptual framework linking leisure to subjective well-being
 - Propose five core psychological mechanisms that leisure potentially triggers to promote subjective well-being

The DRAMMA Model

- Not a typo
- The effect of leisure on subjective well-being → six mechanisms
 - D – Detachment
 - R – Recovery
 - A - Autonomy
 - M - Mastery
 - M - Meaningfulness
 - A - Affiliation

Detachment-Recovery

- Because work takes effort and strains physiological and psychological resources, working continuously can produce negative subjective well-being (e.g., burnout)
- Time away from work is essential for recovery, but...
 - “For instance, one may be ruminating about work albeit trying to relax.”
 - Suggests cognitively switching off by engaging in distraction techniques
- Can occur through rest (lying on the beach, sleeping) or high energy activities like skydiving and travel

Autonomy

- Often viewed as necessary for leisure in many psychological theories
- Link between leisure activities and well-being
- Gives people a sense of control and freedom that contributes positively to subjective well-being

Mastery

- Activities that challenge individuals and provide learning opportunities
- Focuses on the efforts put into improving skills and achieving success

Meaning

- A way to add purpose to life
- Examples: volunteering, religious practices, meditation
- Potential pitfall given the scope of Title IX work
 - Find something meaningful *outside* of your work

Affiliation

- Various psychological models support the idea that connection and a sense of belonging supports subjective well-being
- Encourage positive emotions and improve quality of life
- Social affiliation leads to support from others
- Social affiliation may be the most consistent predictor of subjective well-being
 - Newman, Tay, and Diener study cites to a 2002 study of 222 undergraduate students (Diener, E., & Seligman, M.E. (2002). Very happy people. *Psychological Science*, 13(1), 81-84.)
 - The happiest 10% of students spend more time socializing and had stronger social relationships

Assessing Your Office Climate

- When?
- How?
- How often?
- Who?

Questions?



Higher Ed CLE Webinar Series

*Presented by Bricker Graydon & Southern
Illinois University School of Law*

THURSDAY
JUN 1

Affirmative Action Update
WEBINAR - 12:00 PM CT

THURSDAY
JUN 8

AI Goes to College
WEBINAR - 12:00 PM CT

THURSDAY
JUN 15

Pregnancy and Parenting Update
WEBINAR - 12:00 PM CT

THURSDAY
JUN 22

Athletic Compliance Update
WEBINAR - 12:00 PM CT

UPCOMING
EVENTS 23

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Upcoming Events

Midwest Clery Day Camp hosted by University of Findlay & Tiffin University

Tuesday, June 13, 2023

9:00 AM to 4:00 PM (EST)

University of Findlay



www.bricker.com/events

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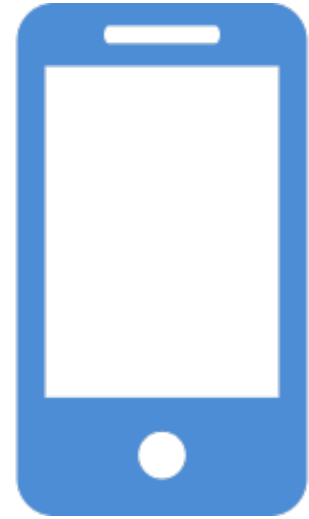
Additional information available at:



Title IX Resource Center at www.bricker.com/titleix

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insights
authored by our
attorneys.**



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