



2019 ATIXA CIVIL RIGHTS INVESTIGATOR
LEVEL THREE TRAINING & CERTIFICATION COURSE:
PRACTICAL SKILLS

Omaha, NE

May 8th & 9th, 2019

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AGENDA



Days 1 & 2

Interviewing Skills Practice

1

General

2

Complainant

3

Reluctant Complainant

4

Respondent

5

Other Witnesses

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.

Title IX of the Education Amendments of 1972

Implementing Regulations at:

20 U.S.C. § 1681 & 34 C.F.R. Part 106

IX

THE IX COMMANDMENTS



Thorough	Reliable	Impartial	Investigation (prompt & fair – VAWA Sec. 304)
Prompt	Effective	Equitable	Process
End the Discrimination	Prevent its Recurrence	Remedy the effects upon the victim & community	Remedies

BIAS & PREJUDICE

- Definitions
- Exercise



“BIAS” DEFINED



- Inclination of temperament or outlook; especially a personal and sometimes unreasoned judgment (*merriam-webster.com*).
- “Biased” – To cause partiality or favoritism; influence, especially unfairly (*dictionary.com*).
- Tendency to believe that some people, ideas, etc. are better or worse than others that may result in treating some people inequitably.

“PREJUDICE” DEFINED



- Feeling of like or dislike for someone or something especially when it is not reasonable or logical (*merriam-webster.com*).
- Any preconceived opinion or feeling, either favorable or unfavorable (*dictionary.com*).
- An illogical feeling of like or dislike for a person or group because of some characteristic or perceived characteristic and preconceived notion(s) about that characteristic (e.g., race, gender, ethnicity, etc.)

BIAS & PREJUDICE



- Conscious vs. unconscious.
- Positive vs. negative.
- Social & cultural capital.
- Stereotyping.
- Cultural competence.
- Multi-partiality.
- Social justice.

NOT FOR DISTRIBUTION

BIAS AND PREJUDICE CONT.



- Common hot-button areas of bias & prejudice:
 - Sexual orientation.
 - Gender, transgender, and gender identity.
 - Race.
 - Ethnicity.
 - Religion or religious beliefs.
 - Political views.
 - Athletes.
 - Greek life.
 - Alcohol or drug use.
 - Sexual freedom/preferences.

THE START OF THE MEETING



- The Environment
- Managing Expectations
- The Process Explanation
- Questioning Guidelines

THE ENVIRONMENT



- Where will you do the interview?
 - Your office?
 - Conference room?
 - Do you have an option?
- Skype, phone, and email interviews.
- Important aspects:
 - You need a neutral environment.
 - Minimize distractions.
 - Sit in their chair. Literally.
 - Check your lobby/waiting area for distractions and hidden messages.

OTHER CONSIDERATIONS



- Consider who should conduct the interview and who should be note-taking.
- Ask open-ended questions first.
- Allow time.
 - What if you don't have enough?
- Use breaks strategically.
- Remain calm and professional.

THE INVESTIGATORS



- Maintain professionalism, but balance with relaxed atmosphere.
 - Attire.
 - Demeanor.
- You are an extension of the environment.
 - So what do I do about distractions?
- Your neutrality is key, but should be balanced with compassion.
- Maintain good eye contact and comfortable, open body language.

MANAGING EXPECTATIONS



- No one is happy at the end of these cases; you are helping manage their frustration.
- People who conduct investigations with skill rest secure in the knowledge that all involved, including witnesses, are treated objectively and fairly.
- Provide ample opportunity for interviewee – especially the complainant and the respondent – to ask questions.
- **Be sure complainant and accused understand parameters of the policy, what it does and does not cover, how the process may play out, and what the process can and cannot accomplish through outcomes.**

EXPLANATION OF ROLES



- Explanation as to **your role** in the process.
 - Neutral fact finder.
- Explanation of others' roles in the process.
 - Hearing officers/panelists.
 - Appellate officers.
 - Advisors (for all parties).
- A few comments about advisors:
 - Who can they have?
 - Lawyers, faculty, parents, victim's advocates, coaches, friends, roommates, etc.
 - How many?

9 STEPS



1. Complaint or notice
2. Preliminary investigation (initial strategy)
3. Gatekeeper determination
4. Notice of allegation
5. Strategize investigation
6. Formal comprehensive investigation
 - a) Witness interviews
 - b) Evidence gathering
 - c) Analysis
7. Determination – post-determination meeting
8. Prehearing meeting
9. Hearing and appeal

THE PROCESS (SIMPLIFIED)

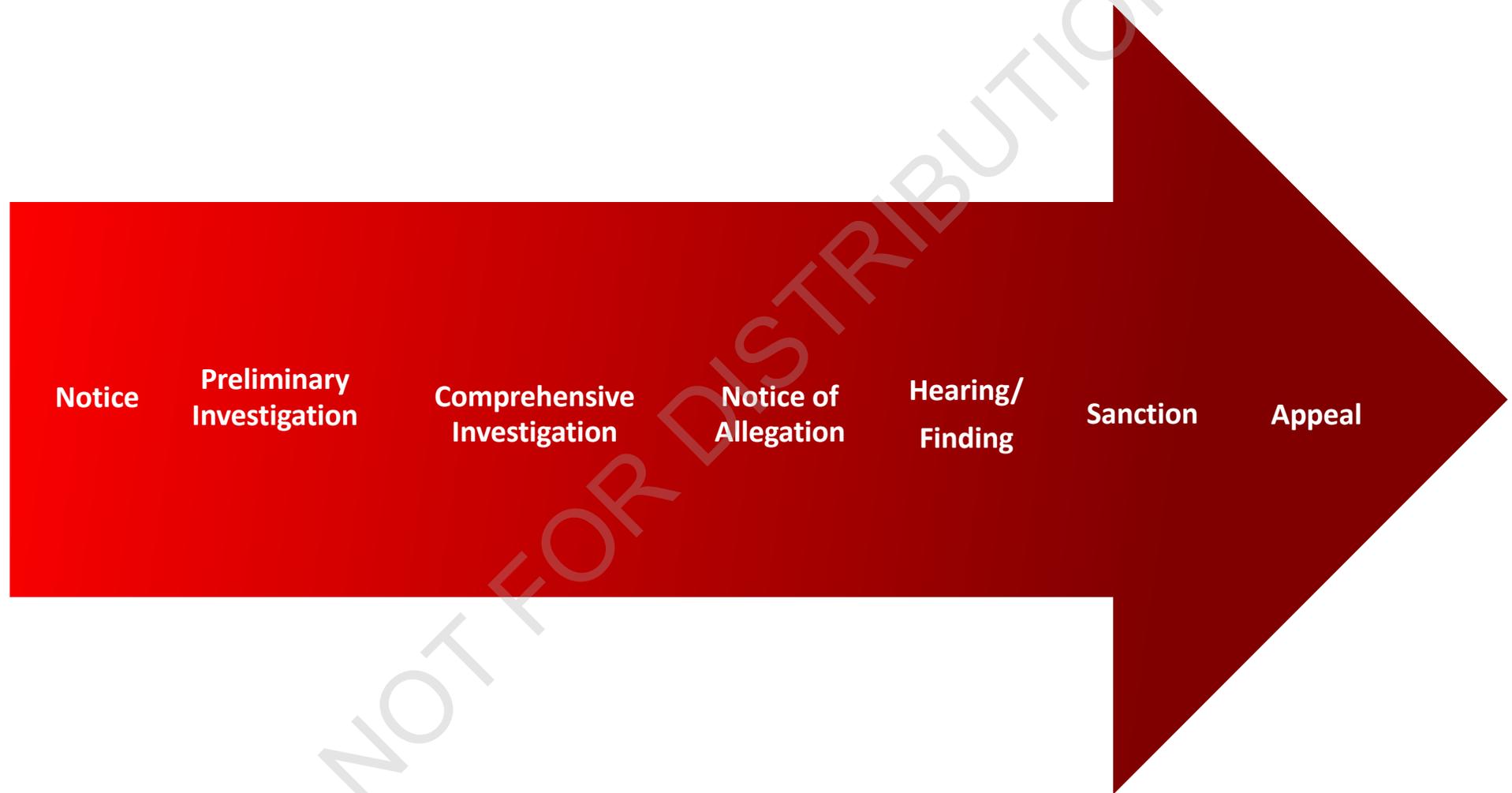


- Incident
 - Notice to Title IX officer, strategy development
- Investigation
 - Possible Outcomes: Informal resolution, administrative resolution, or formal resolution?
- Investigation and Report
- Hearing (if needed)
 - Finding
 - Sanction
- Appeal (if appropriate)

THE PROCESS (SIMPLIFIED)



MAJOR GATEKEEPING GUIDEPOSTS



EXPLANATION OF PROCESS



- What happens next.
 - Strategy, more meetings with others, etc.
 - Interim actions (supporting, preventing, etc.).
 - How long this may take.
 - Other options they have (criminal, other processes, etc.).
- Gatekeeping determination.
 - Note: The process may end before a hearing and the case may no longer be pursued.
- First draft of Final Report.
 - Review and Comment Period.
- First sharing of the Draft Final Report with panel.
 - Possibility of additional meetings.

EXPLANATION OF PROCESS CONT.



- Determination/Findings
 - This may be the end of the process in certain processes that allow for informal administrative resolution.
 - In others, this may be the pre-hearing determinations.
- Pre-Hearing Meetings:
 - With both parties.
 - This is the last opportunity for noting additional statements, new witnesses, etc.
 - Note that you will go over the entire Final Report in this meeting.

EXPLANATION OF PROCESS CONT.

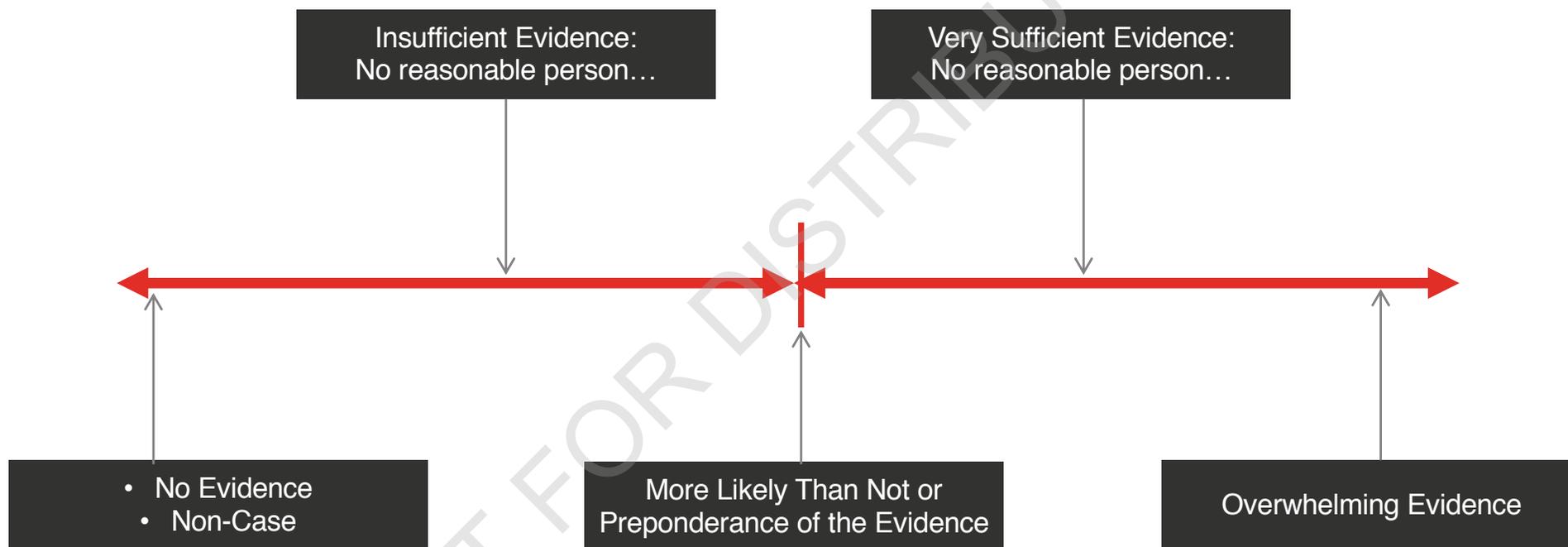


- The Hearing:
 - What it looks like.
 - Who will be there.
 - The process/procedures.
 - Possible sanctions and other outcomes.
- The Appeal:
 - Grounds.
 - Requests.
 - Timelines.
- Explanation of the standard of proof.

EXPLAINING EVIDENCE THRESHOLDS/STANDARDS



“HOW WE MAKE DECISIONS”
Use words they can understand



PRACTICE EXERCISE

- Break into small groups of 3-4 and have 1 or 2 of you practice the opening spiel – explain your process, what will happen, etc.



INTERVIEWING THE REPORTING PARTY



- Elements of Interview
- Conducting the Interview
- Large Group Exercise
- Small Group Exercise



ELEMENTS OF THE INTERVIEW



- Greeting – first opportunity to establish rapport and tone:
 - Thank them for coming in.
 - Acknowledge difficulty of situation.
- Explanation of process:
 - Go through all steps and what happens in each.
 - Share the timeline requirements.
 - Start with this meeting (not “interview”).
 - Options after this meeting is over.

CONDUCTING INTERVIEWS



- Ask if the reporting party has any questions about the process or the procedure.
 - Provide a copy of the brochure.
- Let the reporting party know that thoroughness is key and address the need for completeness.
- Make sure parties don't leave facts out because they are afraid of getting into trouble.
 - Discuss the amnesty provisions (if applicable).
- Create comfort with language and sensitive subjects.
 - Let them know they will not offend or surprise you.

CONDUCTING INTERVIEWS CONT.



- Explain that you will be taking notes or recording and why.
 - Writing vs. Typing vs. Recording
- Acknowledge that they may have told others what happened multiple times already.
 - Ask who else they have talked to about the incident.
- Ask if they have written about this in any fashion:
 - Blog.
 - Facebook/Twitter/Other Social Media.
 - Journals or other writings or video journals.
 - Texts/Calls.

CONDUCTING INTERVIEWS CONT.



- Now begin getting their statement
 - Let them talk.
 - Give them a starting point if they don't have one.
 - Drill down later.
 - Interrupt for questions only when you must.
 - Note: Some strategies may change based on the party's demeanour.
 - Expressive.
 - Flat affect
 - Resistant.
 - Hesitant.

CONDUCTING INTERVIEWS CONT.



- When they are finished giving the initial statement:
 - Get clarifications –
 - Use open ended questions.
 - Give reminders.
 - Speak clearly.
 - Ask simple questions.
 - Cue with time reminders when you go back to assist recall.
 - Do not suggest an answer.
 - Do not appear to give direction to the “right” or “best” answer.

CONDUCTING INTERVIEWS CONT.



- Watch victim-blaming!
 - Lack of physical resistance.
 - Role of alcohol/drugs.
 - Inconsistencies/memory loss.
 - Delayed reporting.
 - Prior relationships.
 - Pre-consent/flirting.
 - Pre-desired outcomes.
 - Post-incident consensual acts.
 - “What were you thinking?” (vs. “feeling”)?

CONDUCTING INTERVIEWS CONT.



- Things not to say to them in an attempt to communicate empathy include:
 - Everything is going to be all right.
 - Don't cry.
 - You shouldn't feel that way.
 - You must get on with your life.
 - Time heals all wounds.
 - It could have been worse.
 - At least you're not injured.
- Think about the car wreck victim...

CONDUCTING INTERVIEWS CONT.



- To conclude (some investigators do this earlier to assist with empathy/rapport):
 - Find out if academics and/or work have been affected.
 - Ask how this has affected them emotionally and/or physically.
 - Discuss counseling options if not already connected.
 - Challenges that this may provide when there is not a victim advocate and/or advisor.

CONDUCTING INTERVIEWS CONT.



- Discuss interim remedies that may be (or have already been) implemented:
 - No contact orders.
 - Class changes.
 - Living arrangements.
- Discuss non-retaliation.
 - Give examples of retaliation, and to whom it should be reported immediately.

CONDUCTING INTERVIEWS CONT.



- At the end:
 - What else do you think might be important for us to know?
 - What other questions are there that you thought we might ask that we didn't?
- Is there anything you want me to ask the other party (or any witness)?
 - **THIS IS CRITICAL WITH THE PARTIES!**
 - Document this extensively!
- If you have not ascertained this, ask what complainant's motivation is for reporting and what complainant hopes to see as a result – **BE CAREFUL HERE.**

CONDUCTING INTERVIEWS CONT.



- Let them know next steps and when they will hear from you, and that they can contact you anytime with questions or problems.
- Get their contact information.
 - Voicemail?
 - Email?
 - Text?
 - Safety considerations?
- Be as specific as possible about timelines for contact and appointments.

QUESTIONING GUIDELINES



- What are the goals of questioning?
 - Learn the facts.
 - Establish timeline(s).
 - Understand each party's perception.
 - Of both the incident(s), relationships and the process.
 - Gather enough information to determine facts and their relative importance and relevance.
 - Try to learn what is *more likely than not* what happened.
 - Use questions to elicit details, eliminate vagueness, and fill gaps where information seems to be missing.

QUESTIONING GUIDELINES



- **WHAT DO I WANT TO KNOW?**
- **WHY DO I WANT TO KNOW IT?**
- **WHAT IS THE BEST WAY TO ASK IT?**
- **AM I THE BEST PERSON TO ASK IT?
(if there is a 2nd Investigator)**

RESTATE/REFRAME



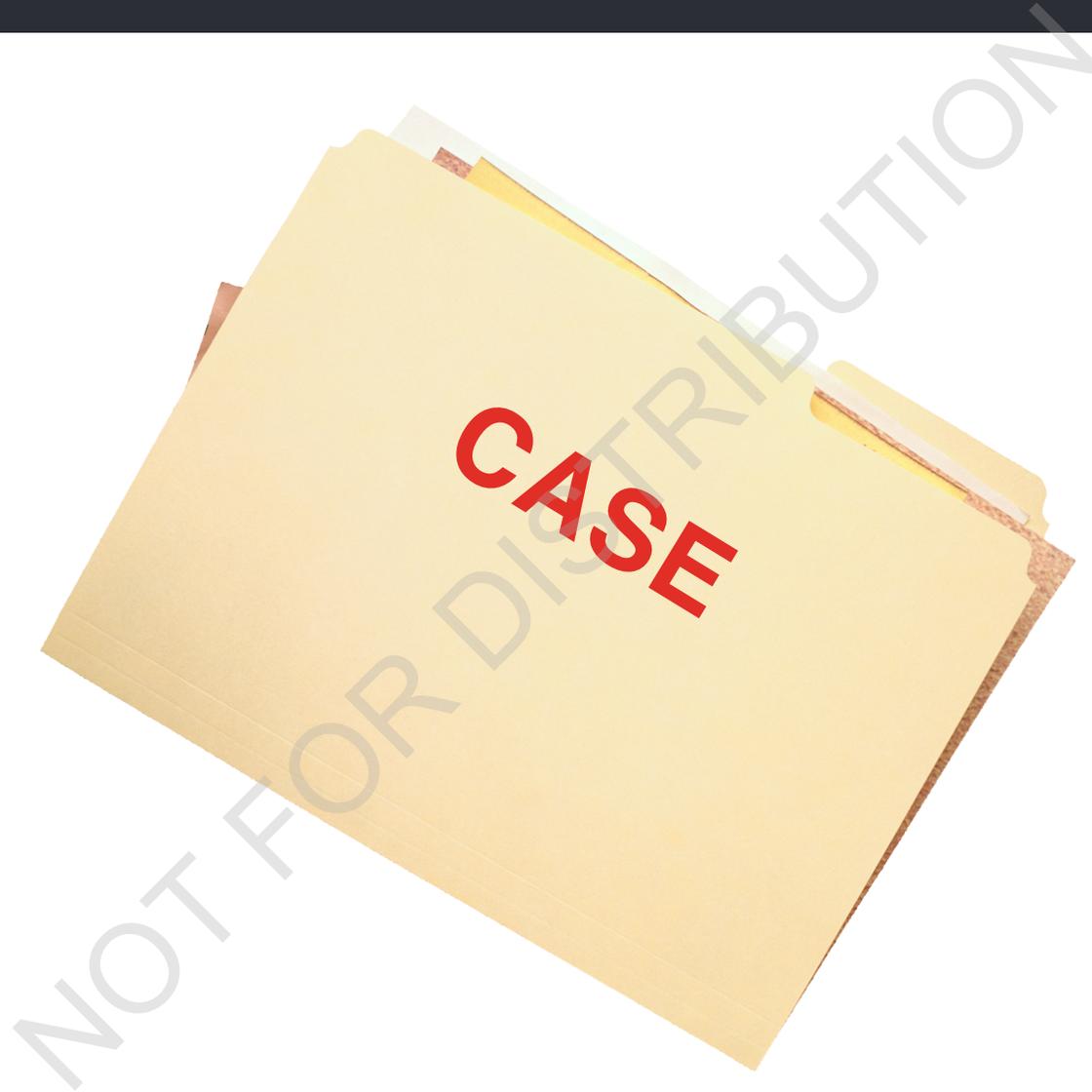
- Restate/summarize what is said.
- Launder the language.
 - Remove negative or inflammatory language and emotions.
- Helps validate that you are listening.
- Helps ensure you understand what is being said.
- “So it sounds like...”
- “Tell me more...”

QUESTIONING EXERCISE

- Using a case study, the presenter will play the role of complainant and allow the participants to practice their questioning techniques.



SMALL GROUP EXERCISE



SMALL GROUP EXERCISE



- Break into small groups as indicated.
 - One person plays the role of the Reporting Party, one will play the role of the Responding Party later.
 - Try not to break character.
 - Two people will be the Investigators:
 - Assume the spiel is done.
 - Begin with questions.
 - 1-2 observers/advisors:
 - Observe, do not interrupt.
 - Note verbal and non-verbal behaviors of Investigators.

SMALL GROUP EXERCISE: PROCESSING

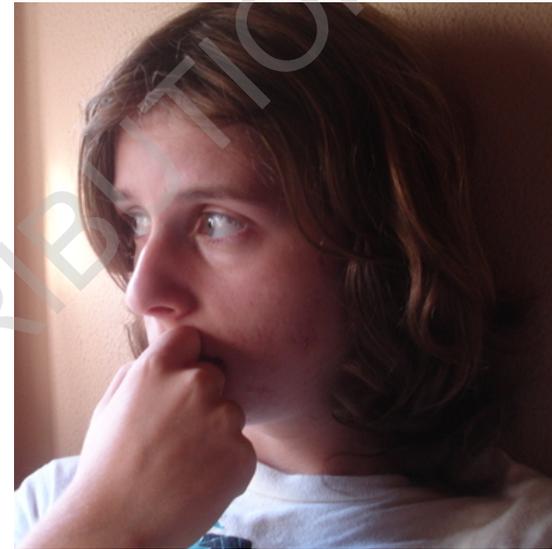


- How was the spacing/environment (as much as you could control it)?
- Non-verbal cues and behaviors
 - The Reporting Party and the Investigators
- Lead vs. Tag Team v. Interactive
- Documents? Witnesses?
- Questions – How were they?
- Motivation for complaint?

RELUCTANT COMPLAINANTS



- Requests Not to Investigate
- Notifying Parties
- Confidentiality Requests
- Pattern, Predation, Threat, or Violence
- Exercise and Discussion



RELUCTANT COMPLAINANTS CONT.



- When a reporting party is reluctant to make a formal complaint, or returns to withdraw a formal complaint, Investigators **should honor that request.**
 - Unless...
- You **MUST** determine the reason for reconsideration.
 - The investigation or hearing process is too hard?
 - Retaliation?
 - Just not ready?
- Using advocate or advisor to assist in determination.

RELUCTANT COMPLAINANTS CONT.



Reporting parties **MUST** be notified:

1. That the process will still be available to them, *regardless of how long they wait.*
 - a) Pros and cons of “statutes of limitations.”
2. That the institution will support them in any way it can (e.g., housing, classes, no contacts, etc.)
3. That, if there is a threat to the community, the institution may be forced to proceed with an investigation, **BUT** that they will be notified of this process before we move forward.

RELUCTANT COMPLAINANTS CONT.



- If reporting parties request their names not be used:
 - The institution should take all reasonable steps to respond and investigate consistent with request.
 - So long as doing so does not prevent the school from responding effectively and preventing the harassment of other students or reporting parties.
 - PPTV – Pattern, Predation, Threat, and Violence.

PPTV CONSIDERATIONS: MUST WE PROCEED?



- Pattern, Predation, Threat, or Violence:
 - Additional complaints of sexual violence involving the same perpetrator.
 - Whether committed by multiple perpetrators.
 - Whether the perpetrator has a history of arrests or records from a prior school indicating history of violence.
 - Whether report reveals a pattern of perpetration at a given location or by a particular group.

PPTV CONSIDERATIONS: MUST WE PROCEED?



- Pattern, Predation, Threat, or Violence (cont.)
 - Whether alleged perpetrator threatened further violence or violence against the student or others.
 - Whether violence was perpetrated with a weapon.
 - Age of the alleged victim.
 - Whether the school possesses other means to obtain relevant evidence (e.g., security cameras or personnel, physical evidence, etc.).
- If institution proceeds, it should notify reporting party and use appropriate interim measures to protect party.

EXPLAINING RATIONALE



- Explain to reporting parties that:
 - Its responsive action may be limited based on the level of privacy requested by them.
 - It cannot guarantee privacy if doing so would jeopardize the safety of the complainant or others.
- Emphasize that only those with a need to know will be informed.
 - Train those who will be informed about confidentiality expectations.

PPTV SCENARIO



- A female student confides in the director of the Sexual Health and Violence Prevention Center (also a faculty member) that they were sexually assaulted by another student and asked that the institution not investigate the matter. The Director notifies the Title IX Coordinator, but indicates that the reporting student does not want the matter investigated.
- The TIX Coordinator reviews the identified potential respondent's student's file and notes that he received probation for pushing a female security guard and calling her a "stupid bitch" 11 months ago and a reprimand for an alcohol violation 15 months ago.
- The female reporting student agrees to meet with the Title IX Deputy Coordinator/Investigator.

SMALL GROUP EXERCISE (TIME PERMITTING)



- Break into small groups.
- First, would your institution have even known this?
 - Would the director/faculty member have told the TIXA/TIXI? How sure are you? What are the thresholds you think exist for your faculty/staff to tell you?
 - What would they have told you?
 - What would you tell them?
- Does the prior behavior warrant a meeting?
 - Does it cross the PPTV thresholds to move forward without consent?
- Strategize what you will discuss with the student
 - What will/can you tell the female student?

LARGE GROUP DISCUSSION

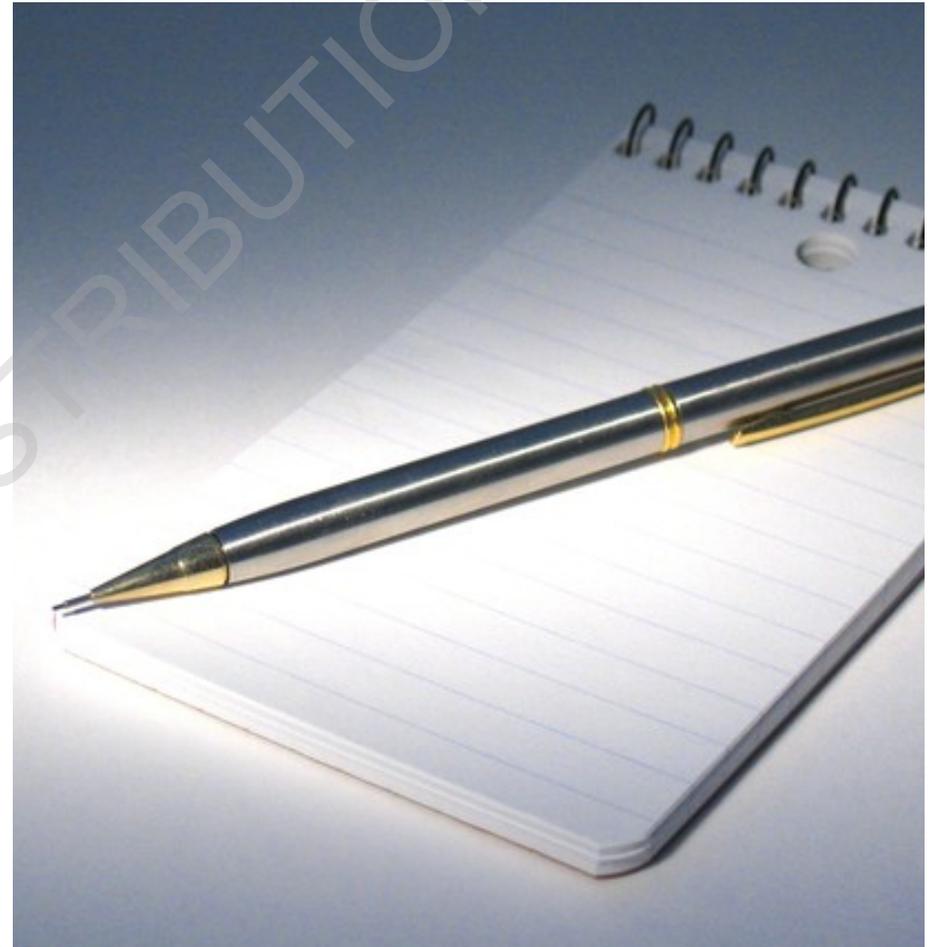


- The Female student makes these requests; can you do or not do the following :
 - That the institution not investigate the incident.
 - That a no-contact order be issued between them.
 - The male student be removed from the residence hall (same as hers).
 - She be allowed to withdraw from two of her courses without financial penalty.
 - You do not tell her parents/partner.

INTERVIEWING THE RESPONDENT



- Elements of Interview
- Gatekeeping Posts
- Explanation of Process
- Preponderance Standard
- Explanation of Roles
- Conducting the Interview
- Small Group Exercise



ELEMENTS OF INTERVIEW



- Greeting – first opportunity to establish rapport and tone.
 - Thank them for coming in.
 - Acknowledge difficulty of the situation.
- Explanation of the process:
 - Go through all of the steps and what happens in each step.
 - Share the timeline requirements.
 - Start with this meeting (not “interview”).
 - Options after this meeting is over.

CONDUCTING INTERVIEWS – RESPONDING PARTY

- Ask if they have any questions about the process or the procedure.
 - Provide a copy of the brochure.
- Let them know that thoroughness is key and address the need for completeness.
- Make sure they don't leave facts out because they are afraid of getting into trouble.
 - Discuss the amnesty provisions (if applicable).
- Create comfort with language and sensitive subjects.
 - Let them know they will not offend or surprise you.

EXPLANATION OF ROLES



- Explanation as to **your role** in the process.
 - Neutral fact finder.
- Explanation of others' roles in the process.
 - Hearing officers/panelists
 - Advisors (for all parties).
 - Appellate officers.
- A few comments about advisors – dealing with theirs.
 - The “pre-meeting meeting.”
 - Who – lawyers, faculty, parents, victim’s advocates, coaches, friends, roommates, etc.
 - How many?

CONDUCTING INTERVIEW CONT.



- Discuss interim remedies that may be taken or already implemented:
 - No-contact orders.
 - Interim restrictions or suspensions.
 - What this means – academics and timelines.
 - Class changes.
 - Living arrangements.

EXPLANATION OF PROCESS



- What happens next.
 - Strategy, more meetings with others, etc.
 - Interim actions (supporting, preventing, etc.).
 - How long this may take.
 - Other options they may be subject to.
- Gatekeeping determination.
 - Note: This may be the end of the process.
- First Draft of Final Report.
 - Final report meetings.
- First Sharing of the Draft Final Report with panel.
 - Possibility of additional meetings.

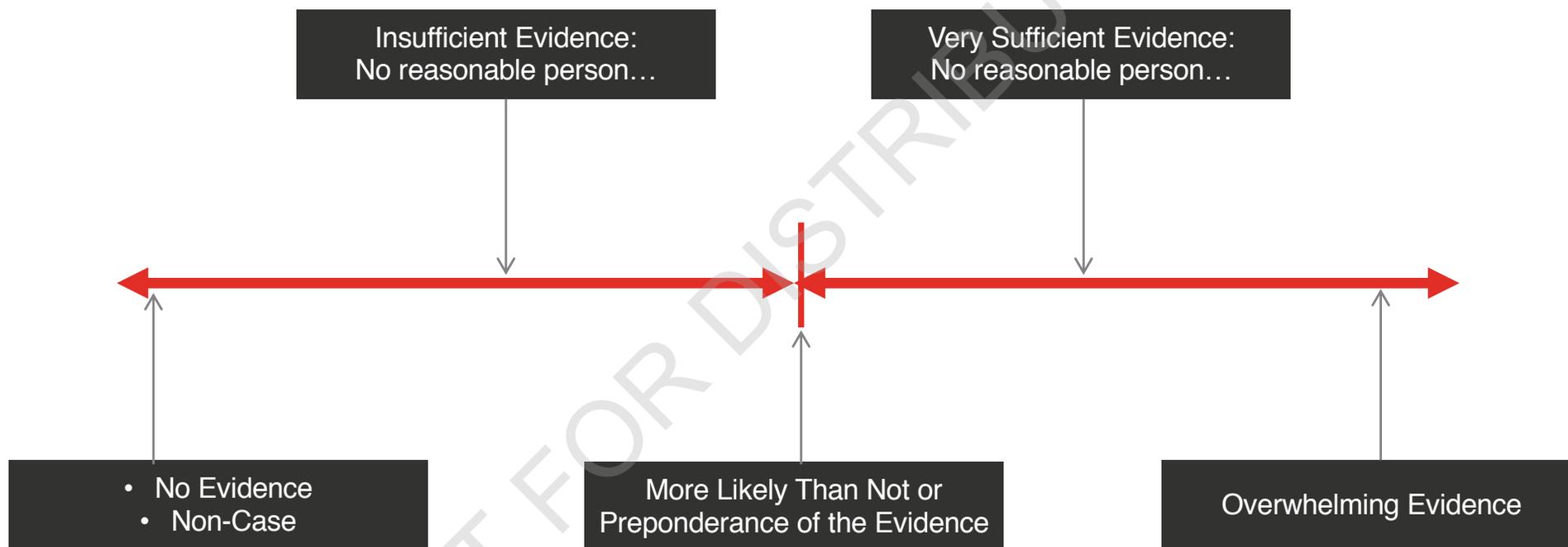
THE PROCESS (SIMPLIFIED)



EXPLAINING EVIDENCE THRESHOLDS/STANDARDS



“HOW WE MAKE DECISIONS”
Use words they can understand



CONDUCTING INTERVIEWS CONT.



- Explain that you will be taking notes or recording and why.
 - Writing vs. Typing vs. Recording
- Acknowledge that they may have told others what happened multiple times already.
 - Ask who else they have talked to about the incident.
- Ask if they have written about this in any fashion:
 - Blog.
 - Facebook/Twitter/Other Social Media.
 - Journals or other writings or video journals.
 - Texts/Calls.

CONDUCTING INTERVIEW CONT.



- Now begin the meeting.
 - Let them talk.
 - Give them a starting point if they don't have one.
 - Drill down later.
 - Interrupt for questions only when you must.
 - **Note:** Some strategies may change based on their demeanor.
 - Expressive.
 - Angry.
 - Resistant.
 - Hesitant.

CONDUCTING INTERVIEW CONT.



- When they are finished giving the initial statement:
 - Get clarifications.
 - Lots of open ended questions.
 - Used closed questions when resistant or necessary.
 - Give reminders – may want to use visualization to assist with recall. This can be done without giving complainant's statement to them.
 - Cue with time reminders when going back to assist recall.
 - Speak clearly.
 - Ask simple questions.
 - Do not suggest an answer or appear to give direction to the “right” or “best” answer.

CONDUCTING INTERVIEW CONT.



- To conclude (some investigators do this earlier or at the beginning to assist with empathy/neutrality):
 - Find out if academics and/or work have been affected
 - Ask how this has affected them emotionally and/or physically.
 - Discuss counseling options if not already connected.
 - **NOTE:** Challenges that this may provide when there is not an advocate.

CONDUCTING INTERVIEW CONT.



- Discuss non-retaliation.
 - Give examples of retaliation, and to whom it should be immediately reported.
 - “Accidental” Retaliation

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CONDUCTING INTERVIEWS CONT.



- At the end:
 - What else do you think might be important for us to know?
 - What other questions are there that you thought we might ask that we didn't?
- Is there anything you want me to ask the other party (or any witness)?
 - THIS IS CRITICAL WITH THE PARTIES!
 - Document this extensively!
- What do you think the motivation for this complaint is? (Only ask if you have already not been told this information.)

CONDUCTING INTERVIEW CONT.



- Let the Responding Party know next steps and when they will hear from you, and that they can contact you anytime with questions or problems.
 - Get their contact information.
 - Voicemail?
 - Email?
 - Text?
 - Be as specific as possible about timelines.

QUESTIONING EXERCISE

- Using a case study, presenter will play role of respondent and allow participants to practice their questioning techniques.



MORE RESPONDENT QUESTIONING

- Using a case study, participants to practice their questioning techniques.



SMALL GROUP EXERCISE



- Break into small groups as indicated.
 - Interview the Responding Party
 - Try not to break character.
 - Two people will be the Investigators:
 - Assume the spiel is done.
 - Begin with questions.
 - 1-2 observers/advisors:
 - The Reporting Party (and their advisor, if there is one) will observe as well (stay out of sightlines if possible)
 - Observe, do not interrupt.
 - Note verbal and non-verbal behaviors of Investigators.

SMALL GROUP EXERCISE: PROCESSING

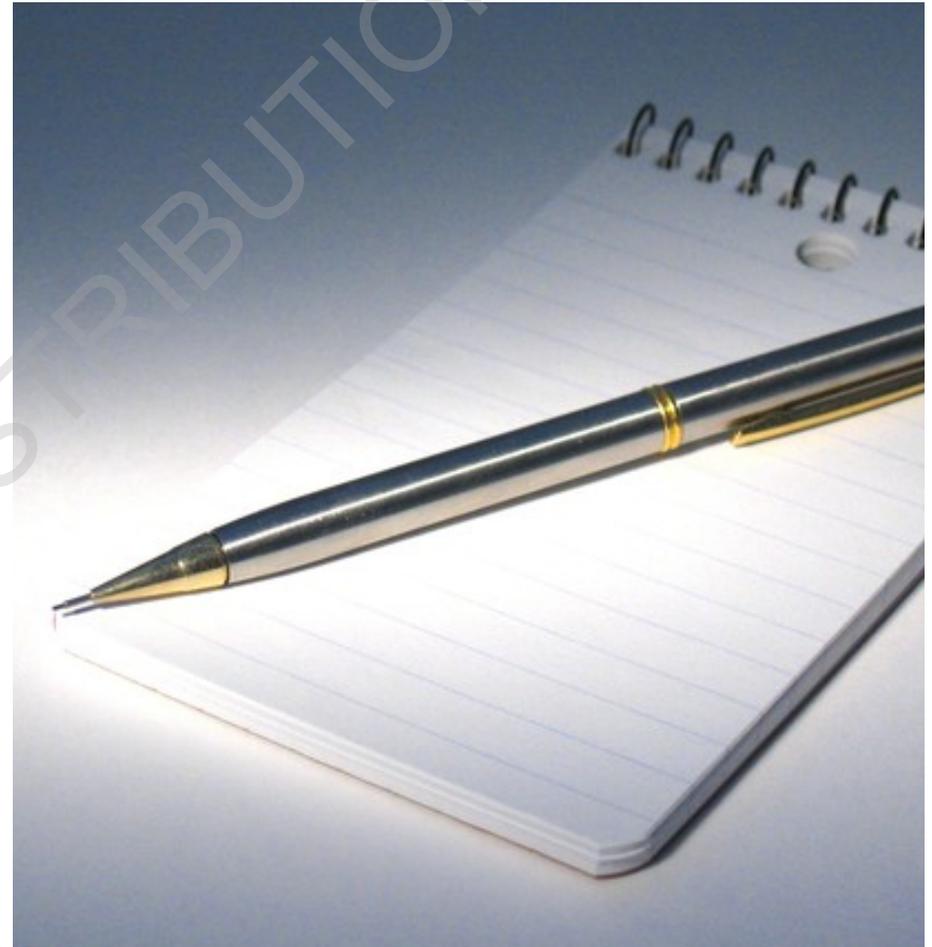


- Investigators:
 - What did you think worked?
 - What would you change?
- Responding party:
 - How did you feel?
 - What did you like and what could be improved on?
- Observers:
 - Pros – verbal and non-verbal.
 - Things to look out for – verbal and non-verbal.

WITNESSES



- Managing Witness Expectations
- Conducting the Interview
- Lying Witnesses
- Resistant & Quiet Witnesses



MANAGING WITNESS EXPECTATIONS



- Set the tone:
 - Thank them.
 - Review your role as a neutral fact-finder.
 - Put them at ease – ask about them without being phony.
 - Acknowledge their hesitation.
 - Review retaliation against a witness.
 - Review immunity.
 - Review confidentiality.
 - Review expectation of truthfulness.
 - Restate/reframe.

MANAGING WITNESS EXPECTATIONS



- Witnesses may ask or say:
 - Am I being investigated?
 - What are you really investigating?
 - How will you use the information you are given?
 - Is it confidential?
 - Will I get into trouble by giving you this information?
 - I don't want to cooperate.
 - Do I need my parents or lawyer present during the interview?
- Anticipating these questions/covering them in advance can help ensure that you get complete truthfulness.

CONDUCTING THE INTERVIEW



- Ask if they have been contacted already by one of the parties.
- Ask if they have made any previous statements, such as to private investigators.
- Ask if there is anything you should know that was not been covered or if there is anyone else they think that should be contacted.
- Discuss non-retaliation and give examples of it; as some people only see retaliation as personal threats.
- Discuss privacy, and execute FERPA release.

CONDUCTING THE INTERVIEW CONT.



- Ascertain their relation to the other parties in the case.
- Ask for their opinion of the other parties .
- Did they see any change in behaviors?
- Social media?
- Phone records/Texts
- Ask all interviewees to contact you if they remember anything else or want to add to their interview

LYING WITNESSES



- In a non-accusatory way, explain how their statements don't "make sense."
- Allow opportunity for witnesses to restate.
- Try to gauge why they are lying – Fearful? Embarrassed? Protective? Try to address their motivation individually, with understanding.
- If they continue to lie, confront them directly (firm, yet polite) and explain the repercussions for lying in an investigation.
- Calmly bring them back to the questions.
- If needed, leave the door open and follow up.

RESISTANT & QUIET WITNESSES



- Gauge their resistance or hesitation and try to address their motivation individually.
- Answer their questions about the process.
- Back up when needed.
- If they open up, be responsive.
- Explain the expectations of the school and rationale for the duty to participate.
- If appropriate, appeal to their humanity.
- Advance preparation will help when open-ended questions don't work.
- Restate/reframe.
- Revealing information to put them at ease.

INTERVIEW EXERCISE



TIME PERMITTING

- What are the steps – before and during – telling a reporting party and/or a respondent that a NCSI case has been determined not to have sufficient evidence to move forward and/or a Not Responsible Finding has been made.

CONTACT US!

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