



INVESTIGATION PROTOCOL CHECKLIST

Prior to beginning the investigation:

- Confer with the Investigative Team on overall strategy and process for this investigation.
- Designate a member of the investigation team as the Lead Investigator.
- Clearly identify the applicable policies and procedures that apply to the investigation. Coordinate procedures where more than one applies and give clear notice of these procedures that apply to the investigation.
- Establish a preliminary timeline for the investigation, using reasonable time frames, and communicate that timeline to appropriate parties. Allow time for the following:
 - Interviewing parties
 - Interviewing witnesses
 - Compiling statements
 - Verifying statements
 - Gathering/obtaining documentation
 - Testing medical evidence
 - Research
 - Drafting a response

Interviewing the complainant:

- Choose neutral, comfortable turf for the interview, if possible. Avoid displays of power (uniforms, your office, behind a desk, in a higher chair than the complainant sits).
- Ensure privacy by turning off the phone, closing the door, etc.
- Describe the purpose of the investigation and the interview.
- Review the institutional policy(s) at issue.
- Explain the process for investigation and have the complainant sign a statement that he/she received documents outlining the process.
- Emphasize the no retaliation policy if appropriate.
- Discuss the privacy and anonymity policies. (The identity of the complainant must be given to the respondent. In some cases, witness identity may be protected.)
- Do not promise absolute confidentiality.
- Elicit information on the outcome the complainant desires for the complaint, but do not promise any outcome will happen.
- Make the complaint as specific as possible.
 - Where the complaint is written by the investigator, either in person or in summary based on the interview with the complainant, it should then be shared with the complainant for final editing and verification.
- Solicit a witness list from the complainant.
- During the interview, seek to:
 - Develop a rapport with the complainant.
 - Allow time for the interview to wander.
 - Gently accept information about an emotional/difficult/embarrassing experience.
 - Allow the complainant to narrate without interruption. Don't guide the oral interview. Clarify what you need to when their narration is complete.

- Use open-ended questions to get the flow going again if it is interrupted.
- Use a specific, precise question to get a precise answer when one is needed. Do not insinuate with questions.
- Take good notes. With a team, one investigator can question while the other takes notes. Avoid writing notes from memory after the interview, as details may be lost.
- Permit the complainant to bring an advisor or support person to the interview. Allow advisors to communicate with their advisees during the interview. Complainants may be more comfortable having eye contact with their advisor, rather than being seated side-by-side.
- Take care that your comments do not blame the victim.
- Request that the complainant not discuss the complaint with others.
 - Seek not to create a chilling effect on the complainant's sharing of information.
 - Emphasize that discretion is encouraged for the complainant's own protection.
 - Respondents may be willing to use defamation claims to silence complainants.
 - Talking about the complaint widely may increase the risk of retaliation.
- Inform the complainant that he or she will be kept up-to-date on the progress of the investigation.
- If appropriate, remind the complainant of the institution's policy against false complaints.
- Thank the complainant for being willing to come forward.

Reluctant victims:

- Where an alleged victim is reluctant to make a formal complaint, or returns to withdraw a formal complaint, investigators should honor that request.
- Investigators should attempt to persuade (not coerce) the alleged victim to reconsider. It may be helpful to:
 - Remind him or her that the institution will vigorously enforce its policy on retaliation to help protect the alleged victim.
 - Remind the victim that if he/she does not act, the perpetrator may harm someone else.
 - Offer to allow the alleged victim time to consider and the chance to come back later and file a report if he/she so desires.
 - Ask the complainant if a change in circumstances might make it easier for the alleged victim to report (change of classes, for example). Notify the Lead Investigator if you believe this is indicated.
- Follow up with the alleged victim, offering to investigate.
- If the alleged victim refuses to file a formal complaint or will not allow his/her name to be revealed, the investigator should share this information with the Lead Investigator.
- If there is sufficient information to investigate the complaint without identifying the complainant, that investigation should take place.

Interviewing the respondent:

- Strategize notifying the respondent of the complaint. Provide the complainant (or non-cooperating victim) with advance notice of when the accused party is to be notified of a complaint. Precautions against retaliation should be taken as necessary.
 - In some circumstances it may be best to notify the respondent immediately upon receipt of the formal complaint.

- In other circumstances interviewing witnesses and accumulating evidence first may be the best practice.
- Keep in mind that interviewing witnesses favorable to the respondent may reveal the complaint to the respondent.
- Strategize interviews and notification so as to reduce the respondent's opportunities for fabrication or inciting witnesses to coordinate versions of events.
- Only inform the accused person for the purpose of meeting in advance if doing so will support your strategy, or if asked. Otherwise, schedule a meeting with class or work schedules in mind, or conduct an immediate interview by seeking out the accused person.
- Sometimes unanticipated interviews can be unfair. In other cases unanticipated interviews could be an important advantage. They should be used with discretion.
- If the goal is to build rapport and trust with the accused person, unanticipated interviews may undermine that.
- Unanticipated interviews can be used when appropriate for interviewing witnesses or for follow-ups with the complainant to test veracity or accuracy of descriptions.
- Describe the behaviors alleged and by whom.
- Be neutral, not accusatory.
- Be non-judgmental.
- Define the policies at issue and provide written copies.
- Provide a written copy of the complaint to the respondent. Redact any names/identifying information that is not necessary.
- If the respondent prefers to give evidence in the company of an advisor, it should be clear that the advisor has no role in the proceedings.
- Ask if the described behaviors happened. Make it a direct question.
- *If there is an admission of responsibility, immediately label the conduct as inappropriate and a violation of institutional policies.*
- If there is no admission, explain the investigation process and timeline.
 - Ask the respondent if he/she understands the process.
 - Explain the institution's obligations to take complaints seriously and to vigorously investigate them.
- Invite the respondent to tell his/her version of events.
- Take notes and share the interview notes with the respondent for accuracy and verification.
- Solicit a witness list from the respondent (and character witnesses if appropriate).
- Request documents and evidence that support the response.
- Strongly caution against retaliation.
- Caution against contact with the complainant, either directly or by third-parties.
- Discuss no contact orders and/or accommodations that may be in place or pending.
- Caution the respondent that Title IX Investigations are to be kept confidential by law. Complete confidentiality cannot be guaranteed, however.

Interviewing witnesses:

- Strategize contacting witnesses, ordering witness interviews, and preventing contact between witnesses where necessary.
- Prepare a list of written questions in advance for each witness.
- Do not label the conduct. Ask what the witnesses know about specific behaviors/events.

- Establish a rapport with witnesses.
- Ask for witness opinions.
- Ask witnesses if they have been contacted by the respondent or complainant and what, if anything, was discussed.
- Give copies of relevant policies and procedures to witnesses.
- Arrange for witnesses to wait in separate facilities from each other and consider limiting cell phone and other communication between witnesses during the interview or pre-interview process.
- Solicit a witness list from the witnesses.
- Take notes or allow witnesses to write statements.
- Only share with witnesses the details of the complaint needed in order to provide information.
- Request documents and evidence that support witness statements.
- Flowchart your witness list if it is extensive. This will help you easily see who provided what information, how it came to you, and where it led. Maintain full contact information for those on this chart.
- Explain to witnesses the privacy of the process, their obligation not to discuss the interview with anyone, and the risks of defamation suits.
- Strongly caution against retaliation.
- Find out if the witnesses will agree to be present in the event of a hearing.
- Keep notes on impressions of witnesses, including credibility, nervousness, similarity of descriptions to other witnesses, nonverbal behavior, contradictions, etc.

Investigation files:

- Create the investigation file at the outset of the investigation.
 - Keep the timeline and checklist for this investigation on the inside cover of this file.
 - Record all significant dates of the investigation on this timeline.
 - Log the receipt of information, evidence and other materials as it is obtained in the course of the investigation.
 - Log delays.
 - Log procedural communications with administrators.
- Keep this file separate from the personnel or student files of the alleged perpetrators or complainants.
- Ensure that file contents are factual. Investigation files can be accessed through litigation against the institution. Idle speculation, unsubstantiated theories and suspect evidence should be purged.
- Include a copy of all relevant institutional policies and procedures in the investigation file.

Timelines:

- When needed, written permission to extend the timeline for the investigation can be sought from the parties.
- Update the original timeline as you progress and changes are made.
- Note clearly and document any delays in the timeline and the reason for the change.
- Communicate those delays in writing to the complainant and the respondent.

Reviewing evidence:

- Ensure that all evidence has been examined and all leads exhausted.
- Evaluate the evidence.
- Make a statement of findings.
- List the evidence and what it shows.
- Assess credibility.

Determination of responsibility:

- Make a determination as to whether the evidence (facts, opinions, circumstances) establishes that a violation of policy is more likely than not to have occurred.
- Cite concretely the reasons for this conclusion in a written report.
- If the respondent is found to be responsible, determine a recommendation for sanctioning.
- Refer the complaint and your finding to the Lead Investigator for implementation, sanctioning and/or hearing.

The Title IX Compliance Coordinator and Lead Investigator will share results of the investigation with the concerned parties and will notify the Dean of the appropriate department about the complaint when it is initialized and finalized.

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