

Innovative Educators

Supporting Academic & Professional Growth in Higher Ed

How To Write A Title IX Investigation Report: Evidence, Confidentiality & Credibility Assessments

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Today's Webinar

- Understand what steps to take in preparation for writing a Title IX investigation report
- Understand how to collect relevant evidence in accordance with institutional policy
- Identify the types of information and evidence that should be included in the report, including how to fairly summarize the relevant evidence
- Learn how to include credibility assessments in the report, when appropriate
- Learn considerations regarding confidentiality

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Title IX

Title IX of the Education Amendments of 1972 (Title IX) prohibits discrimination on the basis of sex in federally assisted education programs and activities.



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What Type of Behavior Violates Title IX?

- Sexual Harassment
- Gender Based Harassment
- (Does your policy include other behaviors?)

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Relevant Information

Q: What constitutes relevant information?

A: Information that directly relates to the issues disputed or discussed.

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Relevant Information

Usually the institution/investigator determines what information is relevant. Accordingly, you should encourage parties and witnesses to provide any information they believe is important.

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2017 Interim Guidance & Proposed Regulations

The 2017 Q&A and on Campus Sexual Misconduct issued by the Office for Civil Rights, as well as the recent proposed regulations explain that when an institution conducts a Title IX investigation, which may lead to disciplinary action against the responding party, the investigation should include relevant exculpatory and inculpatory evidence.

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Evidence

Exculpatory Evidence: Evidence tending to excuse, justify, or absolve the alleged fault or responsibility of the Respondent.

Inculpatory evidence: evidence that establishes the responsibility of the Respondent.

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Evidence

Is it Relevant? (Proceed with caution)

- Character Evidence
- Prior Consensual Relationship
- Prior Sexual History of Complainant
- Prior Sexual History of Respondent
- Pattern Evidence
- Prior Bad Act

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Confidentiality

- Parties - Restricting the ability of either party to discuss the investigation (e.g., through "gag orders") is likely to deprive the parties of the ability to obtain and present evidence or otherwise to defend their interests and therefore is likely inequitable.

and - Interim Guidance Proposed

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Confidentiality

- Witnesses – stress confidentiality. You will not know if you are hearing their information or someone else's.

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Confidentiality

- Investigator: Maintain confidentiality. Only share on a need to know basis. Understand FERPA.

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Preparing to Write Report

- Understand the scope of the investigation
- Have a preliminary timeline of events according to the original complaint or allegations
- Determine what information is necessary to determine responsibility (look at definitions)
- Create an initial witness list and determine who will be interviewed and in what order (this will likely change over time)

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Preparing to Write Report

- What information do I need?
- Do I really need the information?
- Will the information help determine if a violation of policy has occurred?
- Will the information impact the finding?

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Preparing to Write Report

- Be Flexible. Understand that the plan always changes...
- Go with the flow...
- Don't get thrown off...

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Preparing to Write Report

- Take careful notes (using an assistant if the investigator cannot ask questions and take notes at the same time)
- Review notes with interviewees to confirm accuracy

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Sample Format

- Parties
- Witnesses
- Documents/Records
- Complaint
- Background/History
- Relevant Policy Sections
- Relevant Definitions
- Summary of Material Facts
- Credibility Assessment (If applicable)
- Conclusion or Findings (if applicable)
- Sanctions (If applicable)

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Parties, Witnesses, Documents and Records

- Identify parties (status) and dates of interviews and whether they chose to have advisor present.
- Identify all witnesses interviewed and record dates of the interviews (brief explanation of why interviewed)
- List any evidence/documents collected, from whom and dates
- Explain reasons why certain witnesses were not interviewed or included in report, if applicable
- Explain why certain evidence was not collected or included in report, if applicable

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Complaint

Write what the allegation(s) is in accordance with policy definition:

The Complainant alleges that the Respondent penetrated the Complainant's vagina with his penis without her consent.

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Relevant Policy Sections and Definitions

Relevant Policy Sections

• **Example**

- **Sexual Assault:** *The penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, without the consent of the victim.*

Relevant Definitions

• **Example**

- **Consent:** *Consent is a clear, knowing and voluntary agreement to participate in a given activity.*

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Background/History

- Set the stage
- Procedural information (what happened leading up to investigation)
- Interim Measures?

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Summary of Material Facts

- Consider the elements outlined in your sexual misconduct policy
- Detailed summary of all of the relevant information collected
- Contain factual conclusions rather than assumptions or speculation
- Try to write in chronological order if possible
- Use consistent (**non-opinion**) language
- Include all relevant information from parties' statements – be objective
- Avoid blaming statements
- Use of verbatim quotes as often as possible

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Important Considerations

- Balanced and neutral
- Avoid opinions
- Base credibility on fact – avoid language such as "lied" or "unreliable"

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Credibility

Look at the Totality of the Circumstances

- Cooperation
- Level of detail
- Reliability of recollections
- Plausibility of accounts
- Motive to falsify information
- Consistency of accounts over time and with other available evidence
- Corroboration of information – especially when corroborative evidence is lacking where it should logically exist
- Demeanor

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Notre Dame Resolution (2011)

- The name and sex of the alleged victim and, if different, the name and sex of the person reporting the allegation
- A statement of the allegation, a description of the incident(s), and the date(s) and time(s) (if known) of the alleged incident(s)
- The date that the complaint or other report was made
- The date the accused was interviewed
- The names and sex of all persons alleged to have committed the alleged harassment
- The names and sex of all known witnesses to the alleged incident(s)
- The dates that any relevant documentary evidence (including cell phone and other records as appropriate) was obtained
- Any written statements of the complainant (or victim, if different from the complainant)
- The date on which the university deferred its investigation and disciplinary process because the complainant filed a law enforcement complaint and, as applicable, the date on which the university resumed its investigation and disciplinary process
- The outcome of the investigation and, if any, disciplinary process
- The response of university personnel and, if applicable, university-level officials, including any interim and permanent steps taken with respect to the complainant and the accused
- A narrative of all action taken to prevent recurrence of any harassing incident(s), including any written documentation

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Reviewing the Preliminary Draft

- Do you understand the Report?
- Determine what additional information is needed
 - Why do you need the additional information?
 - How will you obtain the additional information?
 - Where are there holes?
 - What is missing?
 - Where are there inconsistencies?
 - Be deliberate

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