



TITLE IX
INVESTIGATOR TRAINING
August 2020

Office of Non-Discrimination Initiatives
Springfield College

Title IX Investigator Training

August 2020

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BEFORE WE BEGIN...

Title IX Investigators are...

- **NOT** Criminal Investigators, Prosecutors or Defense Attorneys
- **Limited** in their scope, access, subpoena powers, jurisdiction etc.
- Investigators in a **conduct process** relative only to Springfield College students

It is essential that you understand, that in this role, you do not establish a theory of the case to reach a pre-determined outcomes. You do not assume an outcome is responsible or not-responsible. You do not look for evidence to shape and build your theory.

In developing ideas and theories about how and when and under what conditions incidents occur or not, the only purpose of a theory is to help you develop a line of questioning. All of which you'll learn how to do here, and through our continued trainings.

OVERVIEW OF TITLE IX

- Text of the Law
- Team Structure
- Process Overview
- Equity v. Equality

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.”

Process Overview

Thorough	Reliable	Impartial
Prompt	Effective	Equitable
End the Discrimination	Prevent its Recurrence	Remedy the effects upon the victim & community

Investigation
(prompt & fair –
VAWA Sec. 304)

Process

Remedies

Stop. Prevent. Remedy.

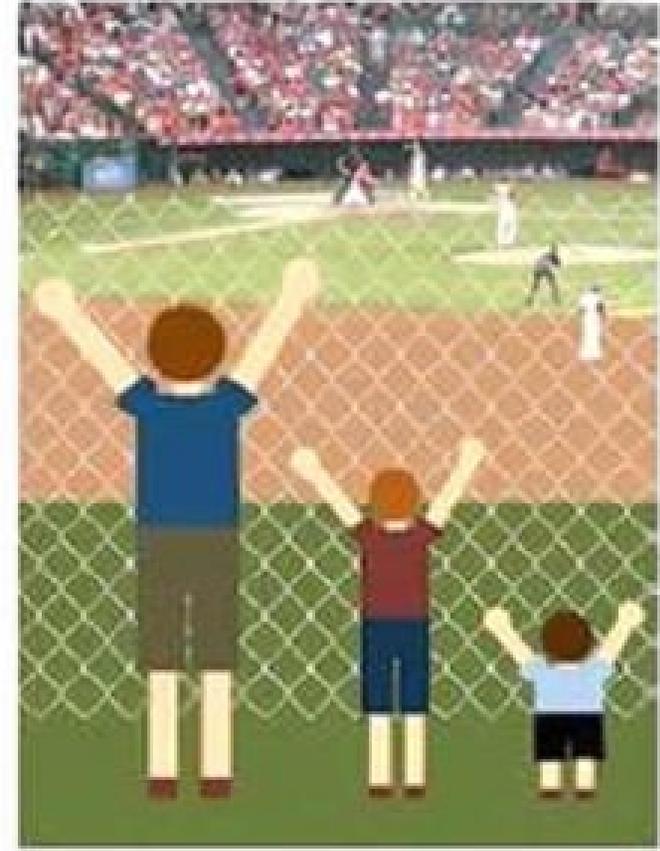
EQUALITY VERSUS EQUITY



In the first image, it is assumed that everyone will benefit from the same supports. They are being treated equally.



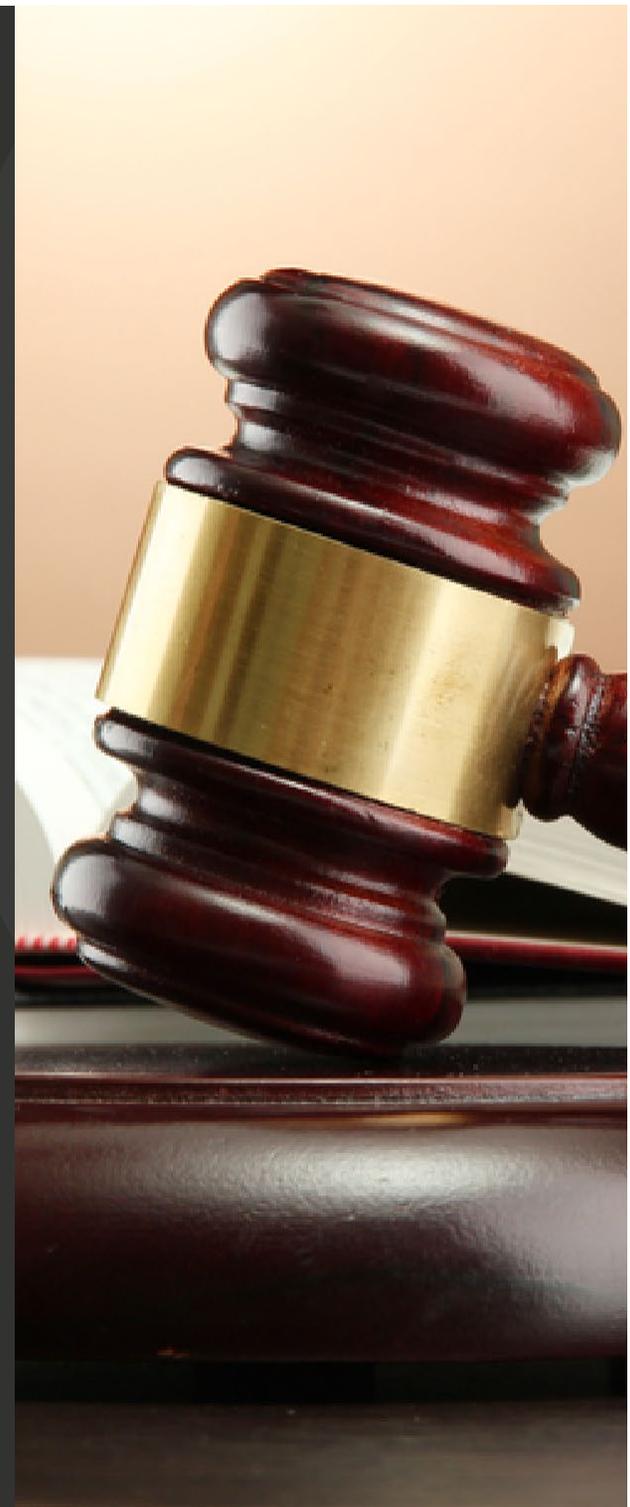
In the second image, individuals are given different supports to make it possible for them to have equal access to the game. They are being treated equitably.



In the third image, all three can see the game without any supports or accommodations because the cause of the inequity was addressed. The systemic barrier has been removed.

LEGAL BASIS FOR TITLE IX LIABILITY

- Springfield College Policy: Highlights & Updates
- Notice & Due Process
- Reports v. Investigations and Our Duty of Care



GBMP Highlights

- Students have the right to drive their own process with few exceptions: (1) incident is so egregious, the College must act; (2) non-isolated incident and College must act to protect community
- Governs students, and activities affecting access (on or off-campus)
- Students are entitled to support service i.e. interim measures through Student Affairs.
- When an investigation goes forward, two trained investigators are assigned.
- Student have the right to know the charges against them and the incidents related to those charges.
- Investigators meet with witnesses, collect evidence.
- Parties are entitled to advisors, who can attend all meetings/programs.

Legal Liability

Notice:

- Obligations, rights, duties
- Gender-based Misconduct Policy
- Outlines behaviors – charges
- Describes the process students are subject to

Due Process:

- Fair process
- Key in current OCR cases
- Standard of proof
- Detailed notice
- Hearings & investigations
- Review and knowledge of evidence
- Trained investigators

What's the difference...

Report:

- Communication of misconduct
- Phone, in-person, email, on-line
- Responsible Employees
- Interim measures
- Support services/range of responses
- Safety, health, and wellness are being addressed
- Coordinator/Deputy Coordinator

Investigation:

- Formal process, always the same
- Trained internal or external investigators
- Results in “responsible” or “not responsible” finding with disciplinary outcomes or sanctions
- Collection of evidence, statements

THE ACT OF INVESTIGATING PART I

-
- Policy violations
 - Charges
 - Consent
 - Case Study

Policy Violations & Charges

- Sexual Harassment (civil only)
- Aiding or Facilitating
- Dating Violence
- Domestic Violence
- Intimidation
- Non-consensual sexual contact (indecent assault and battery)
- Non-consensual sexual intercourse (rape)
- Sexual exploitation
- Stalking
- Voyeurism
- Retaliation

Consent:

- Consent to engage in sexual activity must be knowing and voluntary
- Consent to engage in sexual activity with one person does not imply consent to engage in sexual activity with another.
- Consent may be withdrawn by any party at any time.
- Consent consists of an outward demonstration indicating that an individual has freely chosen to engage in sexual activity.
- A current or previous dating or sexual relationship, by itself, is not sufficient to constitute consent.
- Consent is not effective if it results from the use or threat of physical force, intimidation or coercion, or any other factor that would eliminate an individual's ability to exercise his or her own free will to choose whether or not to have sexual contact.
- An individual who is incapacitated is not able to make rational, reasonable judgments and therefore is incapable of giving consent.

THE ACT OF INVESTIGATING: PART II

- Preliminary Investigation (little “i”)
- Interview Strategy
- Evidence Collection
- Timeline

The Process



Reluctance to Report

When a reporting party is reluctant to make a formal allegation, or seeks to withdraw a formal allegation, the coordinator will determine if the institution will honor that request.

- A risk or threat assessment of some kind, as well as consideration of the reporting party's reasons will usually influence the Coordinator's determination.
- A comprehensive investigation and/or resolution does not automatically need to involve the reporting party, as it may, in many circumstances, be conducted without their involvement, if sufficient independent evidence allows, or a remedial response will suffice.

When do we Investigate?

- Upon receipt of a formal, written, complaint
- When the Coordinator deems an investigation is warranted
- Once actual notice exists, further action is required.
 - Small “i” preliminary inquiry, and maybe...
 - Big “I” comprehensive investigation.

PRELIMINARY INQUIRY

Preliminary Inquiry



- The preliminary inquiry is a “soft collection” of facts to determine if the report falls within our policy, making it ripe for an investigation.
- This is an initial inquiry to determine if a comprehensive investigation is desired by the person that experienced the alleged policy violation or if it’s necessary for the College to act independently.
- Checking background, obvious patterns, indicia of predatory, violent, or threatening behavior by evaluating Maxient/conduct records, or like-reports.
- How much involvement does reporting party want? Who is the reporting party relative to the alleged behaviors?
- Can we remedy informally or without discipline? What is the reporting party looking out as an outcome?
- Give reporting party as much control as possible in the process.

Preliminary Inquiry



- Establish a preliminary timeline for the investigation.
- Investigate all allegations to determine:
 - The extent of the harassment.
 - The acuity of the threat it represents to students or employees.
 - What might be necessary to put an end to it.
- Preliminary collection of evidence:
 - Working with Department of Public Safety, housing, ITS, etc. to preserve any evidence that could promote reasonable cause for investigation.
 - Evidence includes statements from the complainant or other potential witnesses
- Responding to anonymous reports:
 - Determine if a trend or pattern may be apparent.
 - You may have a duty to attempt some form of remedial response, even to an anonymous report.

Gatekeeping

The Gatekeeper of the process determines the extent and development of the investigation, moving it from preliminary to full investigation and identifying timing for charges and strategy development.

- Equity, due process, essential fairness, and equal dignity all demand substantiating evidence before dragging a reporting party through the entire process.
- A charge (complaint) must be supported by reasonable cause to permit its **full** pursuit.
- We have to balance preliminary inquiry with essential fairness.

Interim Actions

- Throughout process:
 - Investigate
 - Stop behavior
 - Prevent re-occurrence:
 - Consider the effect of “educational” sanctions
 - Consider what education/training needs to be implemented, changed, etc.
- Impact remediation
- Provide support and resources to reporting and responding parties throughout the process, and don't forget to remedy on behalf of community, not just parties.

Common Interim Actions

- Providing a campus escort
- Minimizing interaction between reporting party and responding party (e.g.: shifting classes, work, etc.)
- Relocating to a different classroom, residence hall, work space, course group, etc.
- Providing counseling services
- Providing medical services
- Providing academic support services, such as tutoring
- Transportation options
- Offering no-contact orders
- Arranging for the reporting and/or responding party to re-take a course/withdraw from a class without penalty
- Reviewing any disciplinary actions taken with respect to reporting party to assure they are non-retaliatory
- Holding school-wide training and education initiatives
- Interim suspension
- Change supervisor
- Issuing a timely notice

BEGINNING THE INVESTIGATION

- Timeframes for resolution
- Formal comprehensive investigation
- Strategize the investigation

Prompt Timeframes for Resolution

60 days to resolution is a good practice for more complex cases:

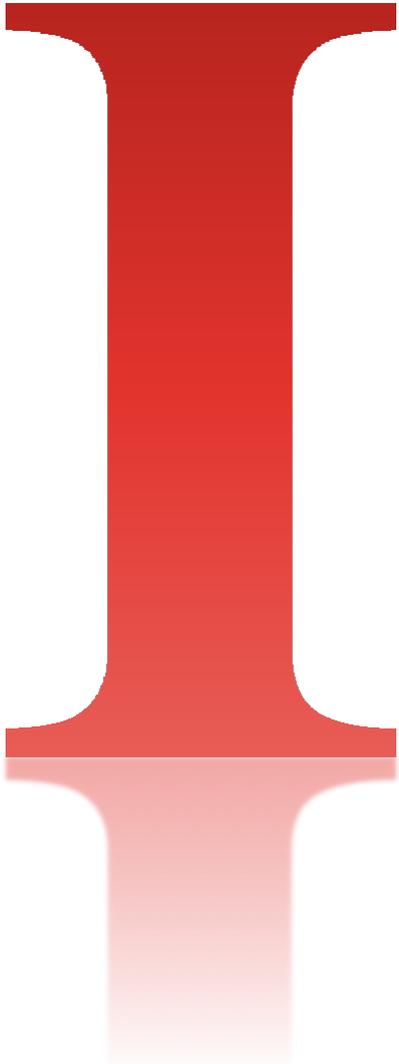
- Timeline starts from notice to the respondent, not from the incident itself. Not from the preliminary inquiry.
- Goal is to avoid undue delay
- Good planning is essential

Planning the Investigation

Common questions to consider:

- Whom to interview?
- When/In what order?
- What information/evidence can be obtained?
- How and when do we notify the parties and witnesses?
- Who needs to be aware of the investigation?
Students involved, physical needs, criminal matters, etc.
- When and how do we share evidence/information with the parties?

Formal Comprehensive Investigation

- 
- Commence a thorough, reliable, impartial, prompt and fair investigation.
 - Determine the strategy for the investigation.
 - Witness interviews
 - Evidence gathering
 - Intended timeframe to complete the investigation
 - Present evidentiary findings
 - Complete the investigation promptly, and without unreasonable deviation from the timeline.

When to Interview Parties and Witnesses

Parties and witnesses should be interviewed as soon as possible:

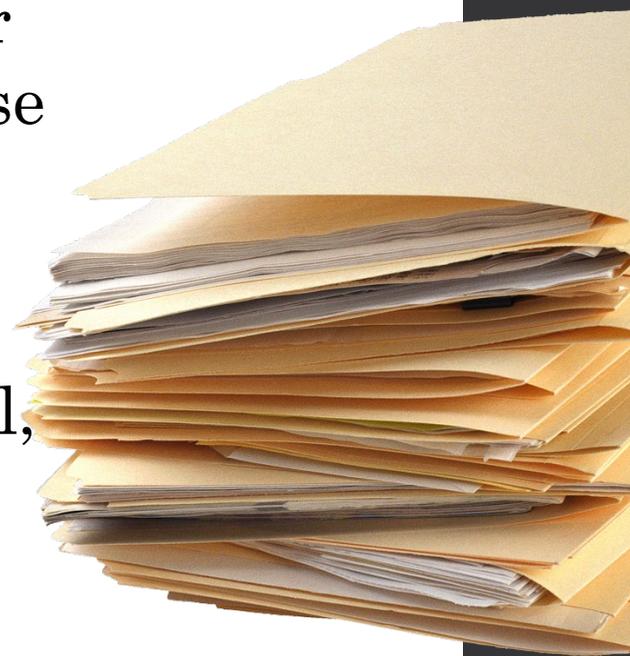
- So that recollections are as fresh and accurate as possible.
- To secure necessary remedies in a timely manner.

Witness Interviews

- Strategize contacting witnesses, ordering witness interviews, and preventing contact between witnesses, where necessary.
- Solicit a witness list from the reporting party.
- Solicit a witness list from the responding party.
- Determine when you are going to question responding party.

Evidence Gathering

- Engage in the active accumulation of evidence. Listening is key.
- Be mindful of time limitations on certain evidence and act promptly.
- Document receipt of information and other materials as they are obtained in the course of the investigation.
- Verify/authenticate evidence.
- Be thorough in your examination of factual, circumstantial, and hearsay evidence, and ensure that all evidence has been examined, and all leads exhausted.



What *is* evidence?

- Testimony
- Writings
- Statements
- Pictures
- Screenshots of text messages
- Receipts: restaurants, bars, Uber, etc.
- Card access: Cheney, housing, etc.
- Video recordings
- Emails
- Drawings/depictions
- Physical spaces
- Schedules
- Social media
- Physical items like clothing or weapons

TRAUMA-INFORMED INTERVIEWING

-
- Gender-based Misconduct as Trauma
 - Considerations for Interviewing

Trauma-Informed Practice

Trauma-informed practice/interviewing means that we as an organization recognize that trauma is a biological response to crisis and we do not discount complaints based on:

- Ability to react physically.
- Ability to think rationally.
- Ability to consolidate or group memories.

This is a neurobiological response, not a choice.

Trauma-Informed Response

- Promotes safety and refers as necessary
- Recognizes the impact of trauma on a cognitive, physical, psychological, emotional, and neurobiological level.
- Understands how trauma can impact someone's academics/work/social life.
- Recognizes the need for support/positive relationships.
- Is respectful, and considers boundaries and privacy.
- Organizes and words questions to be most effective.

Trauma 101

- Tonic immobility
- Submission
- Freeze
- Disassociation
- Negotiation
- Changes in: routines, behaviors, appearance
- Withdrawal
- Hyper-sexualization
- Crying (or not)

Investigative Impact

- Leave space for non-sequential answers – the timeline is your job, not theirs
- Allow complainant/reporting party to begin where they are able
- Avoid “why” questions: instead of asking “why didn’t you leave?” Ask, “what options did you feel like you had?”
- Sensitive to re-victimization while still seeking elements of offenses
- Pay attention to sensory and peripheral details: textures, tastes, sensations, etc.
- Recognize that disclosure is a process
- Recognize that trauma itself is **NOT** evidence: past trauma, biological response v. policy violation
- Empathetic care: water, breaks

Building Rapport

- Essential
- Introduction of Investigators
- Establish rules and expectations for interview including advisors
- Sympathy v. Empathy

Establish Pre-Interview Ground Rules

- Who will attend?
- How will records be kept? Recording? Access.
- Role of Advisors.
- Role of Attorneys.
- Difference between Advisor/Attorney role in interviews vs. in a hearing
- Involvement of Parents, Union Reps, Roommates, etc.
- FERPA (students)/Employment records/confidentiality.

QUESTIONING

- Goals of Questioning
- Types of Questions

Questioning

- What are the goals of questioning?
 - Learn the facts
 - Establish a timeline
 - Understand each party's perception:
 - Of the event and of the process
 - Try to learn what is more likely than not to have happened
 - Three sides to every story (or more)
- NOT the goals of questioning...
 - Curiosity
 - “Trial within a trial”

Questioning

To consider before asking questions:

- What are the relevant issues?
- What do I need to know?
- Why do I need to know it?
- What is the best way to ask the question?
- Am I minimizing the re-traumatization potential?
- Am I avoiding blaming or biased questions?
- Am I the right person to ask this?

Questioning

- Open-ended questions (tell us...who, what, how?)
- Close-ended questions (Did you, were you?)
 - Use infrequently, but when needed to drill down on a specific issue.
- Careful with Compound Questions
 - I have two questions, First..., Second...
- Try not to ask Multiple Choice Questions
 - Were you a), b), c)
- Avoid gratuitous use of leading questions – (Isn't it the case that...?)

Questioning

- Have a purpose for asking **every** question
- Be sure to ask a question, not make a speech
- Ask questions about the allegations and the evidence and the policy elements
- Don't be accusing or argumentative
- Don't make questions too long or confusing
- Rephrase questions as necessary

Questioning

- Listen carefully and adapt follow-up questions.
- Avoid evaluative responses to a person's answers
- Do not moralize
- Seek to clarify terms and conditions that can have multiple meanings or a spectrum of meanings such as “hooked up,” “drunk,” “sex,” “fooled around,” and “had a few drinks.”
- Do not ask questions that invite a reporting party to second-guess their actions, as this may be perceived as blaming.

INTERVIEWING SKILLS

-
- Demeanor of Investigator(s)
 - Interview Skills
 - Case Study

Remember: As an investigator,
you have no “side” other than
the integrity of the process!

Demeanor of Investigators

- Work to establish a baseline of relaxed conversation.
- Maintain good eye contact.
- Listen carefully to the answers to your questions.
 - Avoid writing while party/witness is talking, if possible.
 - Do not be thinking about your next question while party/witness is talking.
- Ask questions in a straightforward, non-accusatory manner.
- Use active listening skills to prompt or keep party/witness talking.

Interview Skills

- Explain process, your role as a neutral fact-finder, and applicable privacy protections and limitations.
- Discuss thoroughness and the need for completeness; make sure parties don't leave facts out (i.e. alcohol/drug use). Explain amnesty policy.
- Create comfort with language and sensitive subjects.
- Be professional: gather the facts, make no judgments, and make no unnecessary statements about the parties.

Interview Skills

- Take the allegations from start to finish through a process of broad to narrow questions and issues that need to be addressed.
- Ask questions about the allegations, the evidence, and the policy elements.
- Focus on areas of conflicting evidence or gaps of information.
- Drill down on timelines and details.
- Don't leave a question or gap unanswered.
- Pay attention to alcohol/drug consumption and timing of consumption, if relevant.

Interview Skills

- Be cognizant of the difference between what is “believed” (conjecture) and what was “witnessed” (facts).
- Ask who else you should talk to and ask for any relevant documentation (i.e. texts, emails, etc.).
- Let parties/witnesses know you may need to follow up with them as the investigation progresses.
- Recommend that the parties consult their advisors before discussing the investigation with others.
- Request that witnesses respect the privacy of the parties by not discussing the case with others.

Rapport Building

- Understand the goals of an interview versus an interrogation. An interview is a conversation designed to elicit information in a non-accusatory manner.
- Is the person comfortable that you will conduct the investigation fairly and objectively? Team or peer-led investigations can help create a rapport much more easily.

Interviewing Witnesses

- Rather than label the allegations as “sexual misconduct” or “sexual harassment”, describe the behavior neutrally.
- Ask questions, and address the need for complete truthfulness.
- Ask if either party discussed the alleged incident with the witness.

CHALLENGING WITNESSES

Reluctant Witnesses

Set the tone:

- Thank them
- Review your role as a neutral fact-finder
- Put them at ease – ask about them without being phony
- Acknowledge any hesitation/awkwardness as normal
- Review retaliation against a witness
- Review immunity
- Review privacy
- Review expectation of truthfulness

Reluctant 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 expectations of the school and rationale for the duty to participate.
- Advance preparation will help when open-ended questions don't work.

Other Considerations



- Consider carefully who should lead the interview.
- Ask open-ended questions first
- Allow time
- Use breaks
- Remain calm and professional
- Allow for flexibility

THE INVESTIGATION REPORT & MAKING A DETERMINATION

-
- The Investigation Report
 - Standard of Proof
 - Analysis and Determination

The Investigation Report

The investigation report is the one comprehensive document summarizing the investigation, including:

- Results of interviews with parties and witnesses.
- Unbiased summary or compilation of other information collected
 - E.g.: copies of texts, emails, and social networking messages, information from law enforcement, medical exams, video surveillance and photographs, etc.
 - Remember that the parties have the right to review ALL available evidence prior to a decision/hearing.

The Investigation Report

- Explain unsuccessful attempts to collect information and/or interview witnesses.
- Highlight key factual findings for each allegation.
- The report should reference or contain all policies and procedures currently applicable.

Understanding Evidence Thresholds

