



Conducting Title IX Investigations

NOVEMBER 10, 2020 – MPTC CIVIL RIGHTS INVESTIGATOR TRAINING

Goals

- Deepen your understanding of the Interim Sexual Harassment and Grievance Procedure.
- Understand what your role in the investigation process includes (and excludes).
- Learn best practices for conducting quality investigations.
- Review what due process requires in the investigation process.

Before it Gets to You

- Complainant makes a complaint to a Title IX Coordinator.
- Title IX Coordinator conducts intake and notifies the complainant of their rights.
- Title IX Coordinator discusses supportive measures with complainant.
- Complainant files a Formal Complaint (or Title IX Coordinator files over Complainant's objection).
- Formal Complaint is determined to be "valid."
- The Complaint is not resolved through an "informal resolution."
- Both parties receive written notice summarizing the allegations and notifying them that an investigation will be conducted.

Your Role as Investigator

- Your role is to conduct a thorough investigation and gather evidence relevant to whether an act of Discrimination or Harassment occurred.
- All aspects of the investigation should be aimed at gathering that evidence.
- Will this help the decisionmaker? What will they want to know?
- The burden of gathering evidence is on the investigators.
- The investigator's role does not include counseling, sanctioning, providing supportive measures, determining "right" from "wrong," engaging in restorative justice, fixing relationship problems, etc.

Due Process Considerations

- Constitutionally required.
- Both parties are entitled to it!
- Legitimacy of process and outcome depends on using appropriate procedural methodology.
- You must remain free from conflicts of interest and recognize your biases.

Due Process Ingredients

- Notice and an opportunity to be heard.
 - Adequate summary of allegations for respondent (paragraph or so).
- Policies and procedures must be well-drafted and clear.
- And we must follow them!
- Consistency as between the parties.
- Access to advisors throughout the process.
- Access to copies of reports and evidence.
- Right to be kept informed of the process as it unfolds.
- Right to reasonable timelines.

Investigation Tools

- Interviews with parties.
- Interviews with third-party witnesses.
- Gathering and review of documentary evidence.

Interviewing Tips

- Typically interview complainant before respondent and interview respondent last.
- How many witnesses do you need? What's disputed?
- Remember what you're investigating. Have an investigatory reason for each question you ask.
- Be organized. Pre-planning is key. Have a plan and a script (including questions you must ask) but don't let it box you in too much.
- Be thoughtful about interview arrangements (schedule, privacy, lighting, smells, appearance, etc). Support victims of trauma.
- Use your interview to create a timeline of events.

Interviewing Tips (cont'd)

- Base your questions on the allegations.
- Base your questions on what you're asked to demonstrate.
- Base questions on relevant issues.
- Base your questions on the elements of the allegation.
 - Hostile Environment Sexual Harassment – “unwelcome conduct that a reasonable person would find so severe, pervasive, and objectively offensive that it denies a person equal educational access.”

Interviewing Tips (cont'd)

- Explain the interview at the outset. Tell them that you will have to ask some detailed questions. May have to play devil's advocate. May have to have them clarify some things.
- Ask one question at a time.
- Act non-judgmentally during interview.
- Start with broader, more open-ended questions and become more focused as time goes on.
- Understand the response before moving on.
- Don't answer for the interviewee.
- Seek objective information from witnesses (“what do you mean when you say . . .”)
- Use “circling” technique if you believe the witness is being dishonest.

Interviewing Tips (cont'd)

- Take detailed notes. What's in writing is better evidence than your recollection.
- Use direct quotes when specific words are important.
- Give the interviewee the opportunity to review and approve your notes at the end of the interview.
- Tell the interviewee how to follow up with you after the interview.
- Reassure parties with reminders about protection from retaliation.
- No not promise confidentiality.

Concluding Interview

- When information gathering is concluded, investigators prepare an investigative report.
- Report and evidence sent to parties and advisors with at least 10 days to respond.
- Report to be used during hearing.
- We will train separately on preparing investigative reports.
- Attempt to complete the process within 60 calendar days, but may be extended if necessary.

Case Study