Agenda

- Investigation Skills
- The Investigation Plan & Process
- Investigative Report Writing
Title IX Flow Chart

Remember: A lot often happens before we reach an Investigation, try to keep the process cohesive and situate the Investigation within the larger process.
Investigation Skills
Purpose of Investigation

To collect, sort, and summarize evidence so that the decision-maker can determine whether the Respondent should be held responsible for the alleged conduct.

*Interviewing skills are an important and often overlooked aspect of the investigation process*

Jackson Lewis P.C.
Your Interviewing Persona: 
Journalist
A Note on Tone Throughout the Investigation Process

Anticipate fear, embarrassment, and confusion

Interview 

Develop rapport to put the interviewee at ease

Ask tough questions directly, but without hostility

Be calm and matter-of-fact about explicit content
The Importance of Corroboration

Corroboration = confirmation from another source

What information/source could confirm or rebut key aspects of a party’s statement?
Critical Importance of Prohibited Conduct Definitions

• Whether the Respondent’s conduct violated CIA policy is the central issue

• Relevant definitions should be referred to often and guide investigator and decision-maker actions
What do decision-makers need?
*Use these to guide the investigation process*

- Clear list of policy violations at issue based on alleged conduct
- Clear sense of each party’s narrative/perspective
- Clarity on which facts are disputed and which facts are undisputed
- Clear understanding of what evidence was collected and what evidence (if any) was unavailable
The Investigation
Plan & Process
The Four Stages of an Investigation

**STAGE 1**
**Plan**
- Refresh on CIA procedures, policies, and values
- Create investigation plan, calendar, and log

**STAGE 2**
**Collect Evidence**
- Interview Complainant, Respondent, and other witnesses
- Collect other forms of evidence

**STAGE 3**
**Sort Evidence**
- Classify evidence as relevant, directly related, or not directly related
- Provide evidence to parties and consider their responses

**STAGE 4**
**Summarize Evidence**
- Create report
- Provide report to parties and decision-makers
Creating an Investigation Plan & Calendar

Plan

- Review CIA procedures, policies, values
- Number of Complainants
- Number of Respondents
- Form(s) of misconduct
- Number of incidents
- Seriousness and complexity of case
- Estimated number of witnesses

Calendar

- +10 days (required) for parties to review & respond to evidence
- +10 days (required) for parties to review report prior to hearing
  - 15 days after receipt of final report under CIA Policy

Share tentative calendar with Title IX Coordinator to set target date for hearing

Estimate time needed to complete collection and sorting of evidence
**Keeping an Investigation Log**

**What:** A simple record of your investigatory activities, from the day you get the case until the day you send out the investigative report

**Where:** Your school’s project management software or OneNote, Excel, or whatever program works for you

**Who:** Mostly just for your own reference, but this is a work document that could be viewed by others

<table>
<thead>
<tr>
<th>What should be logged?</th>
<th>Formal Notices</th>
<th>Communications with Witnesses</th>
<th>Receipt/Collection of Evidence</th>
</tr>
</thead>
<tbody>
<tr>
<td>Meetings &amp; Interviews</td>
<td></td>
<td>Delays</td>
<td>Unsuccessful Searches for Evidence</td>
</tr>
</tbody>
</table>
Setting Up an Interview

- Be discreet
- Choose venue (In person, Video call, Telephone)
- If party, send formal notice
- Consider a partner if possible
- Draft an interview outline
Your Interview Outline

• Enough detail to free your mind, but not an exact script

• List the information you need to convey

• Include the elements of the policy violation(s) and brainstorm questions to explore each one

• Think about what the hearing officers (decision-makers) would want or need to know
## List the Information You Need to Convey

<table>
<thead>
<tr>
<th>Step</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Describe your role – neutral, objective, and just collecting information</td>
<td>Assure that no conclusions have been made and that decision-makers will decide</td>
</tr>
<tr>
<td>2. Discuss confidentiality and what will be shared with whom</td>
<td>Address importance of truthfulness and CIA's policy on false statements</td>
</tr>
<tr>
<td>3. Explain CIA's amnesty policy</td>
<td>Ask for documents and invite future follow up</td>
</tr>
<tr>
<td>4. Remind of prohibition against retaliation (both parties)</td>
<td>If party, remind of resources and support</td>
</tr>
</tbody>
</table>
| 5. Ask if the interviewee has questions and be prepared to answer common ones |"
Asking Questions: The Interview Funnel

STAGE 2
Collect Evidence

Broad, open questions

Careful clarification of answers

Information you need
Useful Open Questions

- **Let’s talk about** what you remember from that night...
- **How** did you feel about...?
- **What** did you do after...?
- **What** happened next?
- **What** did you mean when you said...?
- You mentioned that... can you **tell me more** about that?
- **How** did you become involved in...?
- **What** is your understanding of...?
How to Ask Questions

Ask how interviewee is defining words
You said the Respondent acted “crazy.” In what sense?

Push beyond euphemisms
When you said you could tell that the Complainant “wanted to get with” you, what did you mean by that?

“Exhaust” each topic
Is there anything we haven’t covered about the time in the park that you think would be helpful for me to know?
From Oral Interview to Written Document

Notes v. Transcription
- Two-person team
- Voice-to-Text Technology

The Write Up – Some Recommendations
- Write-up of interview immediately afterwards
- Third person v. first person
- Prioritize information that relates to elements
- Focus on key areas where facts are disputed
- Review interview write-up with interviewee

The Ideal Product

A first-person statement that:
1. Clearly and concisely tells the story
2. From the perspective of the party or witness
3. With particular focus on disputed facts and the elements of the alleged policy violation(s)
4. Without including privileged or irrelevant information
Parties may inspect and review relevant and directly-related evidence

A. Relevant
B. Directly Related
C. Not Even Directly Related

Prior to finalizing the report

Ten days to submit a written response

A. Relevant

Investigators Collect Evidence

Parties Review Evidence

Investigators Finalize Report
The investigative report fairly summarizes relevant evidence.
What do these terms mean when sorting evidence?

**Relevant**
Information that makes a material fact more or less likely to be true. A material fact is of consequence to the decision at hand: Whether the Respondent should be held responsible for the alleged conduct.

**Directly related**
Information that has a clear relationship to the allegations at issue but does not make a material fact more or less likely to be true.

**Not even directly related**
Information that has no or only an indirect relationship to the allegations at issue.
Intent of the rules is to provide the parties with access to all the **relevant** evidence

- Philosophy: *Increased Access = Increased Fairness*
- No party should be surprised at a hearing with information that was known to the investigators but not shared with them

**Parties should have access to the “directly related” evidence just in case**

- There may be legitimate disagreements about what is relevant
- Allowing the parties to review directly-related evidence (and having the directly-related evidence available at the hearing) gives each party a chance to argue that the information is relevant

**Schools cannot decide to categorically exclude certain types of evidence**

- Character evidence, lie detector tests, expert witnesses, prior disciplinary history, etc.
- May be deemed not relevant on a case-by-case basis
Two Kinds of Evidence are Off Limits

• Don’t access, consider, disclose, or otherwise use a party’s records that are made by a physician, psychiatrist, psychologist, etc. without voluntary written consent to do so for the grievance process.

• Don’t require, allow, rely upon, or otherwise use or seek disclosure of information protected under a legally recognized privilege unless the privilege has been waived.
One Kind of Evidence is Automatically Not Relevant

THE RAPE SHIELD RULE

Questions and evidence about the Complainant’s sexual predisposition or prior sexual behavior are not relevant.

Exceptions:

1. Offered to prove that someone other than Respondent committed the conduct.
2. Concern specific incidents of prior sexual behavior with Respondent and offered to prove consent.

In contrast, questions/evidence about Respondent’s sexual predisposition or prior sexual behavior may be relevant.
Investigative Report Writing
NOT in the Investigation Report

• Legal jargon

• References to legal consultation

• Physical descriptions of the parties (unless directly relevant)

• Personal opinions/value judgments

• Conclusions that should be made by the decision-maker(s)
### A Simplified Approach to Report Writing

An investigative report must meet two standards:

<table>
<thead>
<tr>
<th>SLIDE 3</th>
<th>Summarize Evidence</th>
</tr>
</thead>
<tbody>
<tr>
<td>An investigative report must meet two standards</td>
<td></td>
</tr>
<tr>
<td>One is imposed by law: The school must “create an investigative report that fairly summarizes the evidence”</td>
<td></td>
</tr>
<tr>
<td>The other is practical: The report should give the decision-maker(s) (and the parties) a good understanding of the case so that they can hit the ground running, focus on the thorny issues, and make the tough decisions</td>
<td></td>
</tr>
<tr>
<td>Investigators aren’t really supposed to be in the business of drawing conclusions, weighing evidence, or determining whether witnesses are credible</td>
<td></td>
</tr>
<tr>
<td>And there’s no requirement that the report be some kind of narrative or legal brief</td>
<td></td>
</tr>
</tbody>
</table>

**Minimize writing** – with the important exception of the witness statements – and make the report a compendium of simple forms and lists.
Investigative Report Table of Contents

Section 1  Key Data Sheet

Section 2  Description of the procedural steps

Section 3  Party and witness statements

Section 4  Description of other evidence (attach or provide link), including the source and date received
### Section 1: Investigative Report Key Data Sheet

<table>
<thead>
<tr>
<th>Date of report</th>
<th>April 22, 2022</th>
</tr>
</thead>
<tbody>
<tr>
<td>Title IX Coordinator</td>
<td>Joanna Smith</td>
</tr>
<tr>
<td>Investigator(s)</td>
<td>Susan Friedfel and Laura Ahrens</td>
</tr>
<tr>
<td>Complainant(s)</td>
<td>Madison Smith, Student, Class of 2023</td>
</tr>
<tr>
<td>Respondent(s)</td>
<td>Jamie Jones, Student, Class of 2022</td>
</tr>
<tr>
<td>Allegation(s)</td>
<td>Stalking</td>
</tr>
<tr>
<td>Date(s) of alleged Incident(s)</td>
<td>February 28, 2022</td>
</tr>
</tbody>
</table>
### Section 2: Investigative Report Procedural Description (p. 1 of 3)

<table>
<thead>
<tr>
<th>PROCEDURAL STEP</th>
<th>DATE/ADDITIONAL INFORMATION</th>
<th>DOCUMENTS (IF ANY)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Date of Formal Complaint</td>
<td>March 3, 2022</td>
<td>Tab 2.1</td>
</tr>
<tr>
<td>Notice of Allegations provided to parties</td>
<td>March 7, 2022</td>
<td>Tab 2.2</td>
</tr>
<tr>
<td>Amended notice</td>
<td>N/A</td>
<td></td>
</tr>
<tr>
<td>Initial dismissal analysis</td>
<td>Completed March 11, 2022</td>
<td></td>
</tr>
<tr>
<td>Initial dismissal result</td>
<td>Dismissed in part and referred to student conduct</td>
<td>Tab 2.3</td>
</tr>
<tr>
<td>Dismissal notice to parties</td>
<td>March 11, 2022</td>
<td>Tab 2.4</td>
</tr>
<tr>
<td>Dismissal appeal</td>
<td>Filed by Complainant on March 18, 2022</td>
<td>Tab 2.5</td>
</tr>
<tr>
<td>Dismissal appeal result</td>
<td>Denied on March 22, 2022</td>
<td>Tab 2.6</td>
</tr>
</tbody>
</table>
### Section 2: Investigative Report Procedural Description (p. 2 of 3)

<table>
<thead>
<tr>
<th>PROCEDURAL STEP</th>
<th>DATE/ADDITIONAL INFORMATION</th>
<th>DOCUMENTS (IF ANY)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Interviews</td>
<td>Madison Smith – March 28, 2022</td>
<td>Tab 2.7</td>
</tr>
<tr>
<td></td>
<td>Jamie Jones – March 29, 2022</td>
<td>Tab 2.8</td>
</tr>
<tr>
<td></td>
<td>Carmen Escobedo – March 29, 2022</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Akela Appleberry – March 31, 2022</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Jonathan Irving – March 31, 2022</td>
<td></td>
</tr>
<tr>
<td>Site visit(s)</td>
<td>N/A</td>
<td></td>
</tr>
<tr>
<td>Other methods</td>
<td>Parties/witnesses asked for electronic communications and social media posts</td>
<td>Tab 2.9</td>
</tr>
<tr>
<td>used to gather evidence</td>
<td>Residence hall security camera footage requested from campus police</td>
<td>Tab 2.10</td>
</tr>
</tbody>
</table>
### Section 2: Investigative Report Procedural Description (p. 3 of 3)

<table>
<thead>
<tr>
<th>PROCEDURAL STEP</th>
<th>DATE/ADDITIONAL INFORMATION</th>
<th>DOCUMENTS (IF ANY)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Relevant/DR evidence provided to parties</td>
<td>April 6, 2022</td>
<td></td>
</tr>
<tr>
<td>Responses (due in 10 days)</td>
<td>Received from Jamie Jones on April 12, 2022</td>
<td>Tab 2.11</td>
</tr>
<tr>
<td></td>
<td>No response received from Madison Smith as of April 18, 2022</td>
<td></td>
</tr>
<tr>
<td>Investigative Report provided to parties (at least 10 days before hearing)</td>
<td>Posted to SecureView on April 22, 2022</td>
<td></td>
</tr>
<tr>
<td>Responses to Investigative Report</td>
<td>Received from Jamie Jones on April 25, 2022</td>
<td>Tab 2.12</td>
</tr>
<tr>
<td></td>
<td>Received from Madison Smith on April 28, 2022</td>
<td>Tab 2.13</td>
</tr>
</tbody>
</table>
The investigator(s) drafted each of the following party and/or witness statements after interviewing that individual. As evidenced by the party or witness signature at the bottom of each statement, each individual has reviewed their corresponding statement and confirmed its accuracy.

Carmen Escobedo ............Tab 3.1
Akela Appleberry ............Tab 3.2
Jonathan Irving .............Tab 3.3
Section 4: Description of Other Relevant Evidence

This section contains a description of other relevant evidence (in addition to the party and witness statements) deemed relevant by the investigator and, where applicable, it contains that relevant evidence itself (i.e., copies of relevant documents etc.).

This section also contains, compiled under Tabs 4.6 – 4.12, evidence that the investigator(s) deemed to be directly related to the allegations, but not relevant.

Finally, Tab 4.13 contains a description of potentially directly related and/or relevant evidence that either does not exist, could not be located, or that the parties and/or witnesses declined to provide.
## Section 4: Description of Other Relevant Evidence

<table>
<thead>
<tr>
<th>ITEM</th>
<th>SOURCE</th>
<th>DATE RECEIVED</th>
<th>DOCUMENTS (IF ANY)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Text messages between Madison Smith and Jamie Jones (from January 31, 2022 to February 15, 2022)</td>
<td>Madison Smith</td>
<td>3/22/2022</td>
<td>Tab 4.1</td>
</tr>
<tr>
<td>Text messages between Madison Smith and Jamie Jones (from January 31, 2022 to February 20, 2022)</td>
<td>Jamie Jones</td>
<td>3/24/2022</td>
<td>Tab 4.2</td>
</tr>
<tr>
<td>WhatsApp messages between Jamie Jones and Jonathan Irving (from February 1, 2022 to February 3, 2022)</td>
<td>Jonathan Irving</td>
<td>3/28/2022</td>
<td>Tab 4.3</td>
</tr>
<tr>
<td>Facebook Messenger messages between Madison Smith and Carmen Escobedo</td>
<td>Madison Smith</td>
<td>3/22/2022</td>
<td>Tab 4.4</td>
</tr>
<tr>
<td>Security camera footage from exterior of Stoddard Hall</td>
<td>Campus Police</td>
<td>3/17/2022</td>
<td>Tab 4.5</td>
</tr>
</tbody>
</table>

Clip 1: February 28, 2022, 9:52pm – 9:54pm
Clip 2: February 28, 2022, 12:21am – 12:23am
Questions?

Susan Friedfel

Susan.Friedfel@jacksonlewis.com • (914) 872-8060
Thank you.
These materials are the exclusive property of Jackson Lewis, P.C. All rights reserved, © 2022. The publishing of these materials on this website is authorized by Jackson Lewis, P.C. solely for use by this institution in compliance with Regulation 34 CFR §106.45(b)(10)(i)(D). No other use or dissemination by this institution or any third party is authorized without the prior written consent of Jackson Lewis, P.C. The information and materials provided during this program are for educational purposes only and not intended to be legal advice.