Civil Rights Investigator Three: Practical Skills

Training & Certification Course
Any advice or opinion provided during this training, either privately or to the entire group, is never to be construed as legal advice. Always consult with your legal counsel to ensure you are receiving advice that considers existing case law, any applicable state or local laws, and evolving federal guidance.
CONTENT ADVISORY

The content and discussion in this course will necessarily engage with sex- and gender-based harassment, discrimination, and violence and associated sensitive topics that can evoke strong emotional responses.

ATIXA faculty members may offer examples that emulate the language and vocabulary that Title IX practitioners may encounter in their roles including slang, profanity, and other graphic or offensive language.
AGENDA

Days 1 & 2

1. Bias & Prejudice Exercise
2. Logistics Review
3. Explaining Your Process
4. Interviewing the Complainant
5. Respondent Interview Exercise
“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.”
## The IX Commandments

<table>
<thead>
<tr>
<th>INVESTIGATION (plus prompt &amp; fair per VAWA Sec. 304)</th>
<th>Thorough</th>
<th>Reliable</th>
<th>Impartial</th>
</tr>
</thead>
<tbody>
<tr>
<td>PROCESS</td>
<td>Prompt</td>
<td>Effective</td>
<td>Equitable</td>
</tr>
<tr>
<td>REMEDIES</td>
<td>Act reasonably to stop discrimination</td>
<td>Act reasonably to prevent recurrence</td>
<td>Act equitably to remedy effects</td>
</tr>
</tbody>
</table>
BIAS & PREJUDICE

- Definitions
- Exercise
“BIAS” DEFINED

- Inclination of temperament or outlook; especially a personal and sometimes unreasoned judgment (merriam-webster.com)

- “Biased” – To cause partiality or favoritism; influence, especially unfairly (dictionary.com)

- Tendency to believe that some people, ideas, etc. are better or worse than others which may result in treating some people inequitably
“PREJUDICE” DEFINED

- Feeling of like or dislike for someone or something especially when it is not reasonable or logical (merriam-webster.com)

- Any preconceived opinion or feeling, either favorable or unfavorable (dictionary.com)

- An illogical feeling of like or dislike for a person or group because of some characteristic or perceived characteristic and preconceived notion(s) about that characteristic (e.g., race, gender, ethnicity, etc.)
BIAS & PREJUDICE

- Conscious vs. Unconscious
- Positive vs. Negative
- Social & Cultural Capital
- Stereotyping
- Cultural Competence
- Multi-partiality
- Social Justice
- Victim Blaming
- Assuming/Presuming “Guilt” of Respondent
- Driven by Context: Fear of Litigation or Reputational Damage
BIAS & PREJUDICE – TYPES OF BIAS

- Conformity Bias
- Beauty Bias
- Affinity Bias
- Halo Effect Bias
- Horns Effect Bias
- Similarity Bias
- Contrast Effect Bias
- Attribution Bias
- Confirmation Bias
BIAS AND PREJUDICE (CONT.)

- Common hot-button areas of bias & prejudice:
  - Sexual orientation
  - Gender, gender identity, and gender expression
  - Racial and interracial
  - Ethnicity
  - Religion or religious beliefs
  - Political views
  - Athletes
  - Fraternity and sorority life
  - Alcohol or drug use
  - Sexual freedom/preferences
  - Disability
  - Appearance/education/class
THE START OF THE MEETING

- The Environment
- The Process Explanation
THE ENVIRONMENT

- Where will the interview take place?
  - Personal office
  - Conference room
  - Are there options?

- Videoconference, phone, and email interviews

- Important aspects:
  - Neutral environment
  - Minimize distractions
  - Sit in their chair - Literally
  - Check lobby/waiting area for distractions and hidden messages
MANAGING EXPECTATIONS

▪ Sometimes, no one is happy at the end of these cases; you are helping to **manage the parties’ frustration**.

▪ People who conduct investigations with skill rest secure in the knowledge that all involved, including witnesses, are treated objectively and fairly.

▪ Provide ample opportunity for interviewee – especially the Complainant and the Respondent – to ask questions.

▪ Be sure Complainant and Respondent understand parameters of the policy, what it does and does **not** cover, how the process may play out, and what the process **can** and **cannot** accomplish through outcomes.
EXPLANATION OF ROLES

- Explanation of Investigator role in the process
  - Neutral fact-finder
- Explanation of others’ roles in the process
  - Decision-makers
  - Appeal Decision-makers
  - Advisors (for all parties)
- A few comments about Advisors:
  - Who can be an Advisor?
    - Lawyers, faculty, parents, victim’s advocates, coaches, friends, roommates, etc.
  - How many?
THE PROCESS (SIMPLIFIED)

- INCIDENT
- INITIAL ASSESSMENT
- FORMAL INVESTIGATION & REPORT
- HEARING
- APPEAL
EXPLAINING EVIDENTIARY STANDARDS

“HOW WE MAKE DECISIONS” - Use words they can understand

- **Insufficient Information**
  - Less than this and the case does not proceed
  - “No reasonable person could make a finding of responsible”

- **Clear and Convincing**
  - Very sufficient evidence

- **Preponderance of the Evidence**
  - More likely than not
  - 50% plus a feather

- **Beyond a Reasonable Doubt**
  - Overwhelming Evidence

- **No Evidence**
  - Non-case
  - False Claim
Break into small groups of 3-4 and have 1 or 2 individuals practice your opening spiel – explain your process, what will happen, etc.
INTERVIEWING THE COMPLAINANT

- Elements of Interview
- Questioning Guidelines
- Small Group Exercise
- Large Group Exercise
QUESTIONING GUIDELINES

What are the goals of questioning?

- Learn the facts
- Establish timeline(s)
- Understand each party’s perception
  - Incident(s), relationships, and the process
- Gather enough information to determine facts and their relative importance and relevance
- Try to learn what is more likely than not to have happened
- Use questions to elicit details, eliminate vagueness, and fill gaps where information is missing
QUESTIONING GUIDELINES

▪ WHAT DO I WANT TO KNOW?

▪ WHY DO I WANT TO KNOW IT?

▪ WHAT IS THE BEST WAY TO ASK IT?

▪ AM I THE BEST PERSON TO ASK IT? (if there is a second Investigator)
RESTATE/REFRAME

- Restate/summarize what is said
- Launder the language (but don’t change the meaning)
  - Remove negative or inflammatory language and emotions unless such words/terms advance the investigation and/or enhance authenticity
- Helps validate that you are listening
- Helps ensure you understand what is being said
- “So, it sounds like…”
- “Tell me more…”
COMPLAINANT STATEMENT

- Respondent (Rob) met Annie at a party.
- Rob convinced Annie to come to his house after a party.
- At the house, there was consensual making out.
- Rob held Annie down and raped her. When he was done, he got up and went to the bathroom to shower.
- As she was leaving, Annie noticed a light on by Rob’s webcam in his room.
- The next morning, Annie also found BDSM porn in Rob’s Twitter likes, with bondage and rape fantasies.
CHARACTERS

▪ **Annie (Complainant)**
  ▪ 21 years old, Junior, Transfer to Northern State College, new to campus, met Brittany & rooming together, living in on-campus apartment

▪ **Rob (Respondent)**
  ▪ 22 years old, Senior, Traditional student, athlete on the rugby team and friends with Evan
CHARACTERS

▪ **Brittany (Roommate)**
  ▪ 21 years old, Junior, Traditional student, Annie’s roommate who she had met up with a few times before they moved in together, knows Evan and is the reason they get invited over for the party.

▪ **Evan (Party Host)**
  ▪ 22 years old, Senior, lives at the Rugby house, friends/teammates with Rob

▪ **Billy (Roommate)**
  ▪ 22 years old, Senior, Rob’s roommate, on the Rugby team
STRATEGY FOR COMPLAINANT INTERVIEW

In small groups, discuss the following:

▪ What information do you have?
▪ What information do you need?
▪ Start to formulate questions for the Complainant, including how you might ask them
Using a case study, the faculty will play the role of Complainant and allow the participants to practice their questioning techniques.
In small groups, discuss the following:

▪ What information do you have?
▪ What information do you need?
▪ Who do you need to speak with?
▪ Who do you want to speak with next?
▪ Start to formulate questions for the Respondent, including how you might ask them.
Using a case study, the faculty will play role of Respondent and allow participants to practice their questioning techniques.
QUESTION THE RESPONDENT

- Respondent (Rob) convinced Annie to come to his house after a party.
- At the house, there was consensual making out.
- Rob held Annie down and raped her. When he was done, he got up and went to the bathroom to shower.
- Annie found stacks of pornography, including magazines, posters, and commercial and homemade DVDs when looking for her clothes.
- One DVD had a woman on the cover being raped in the same way Rob raped Annie. Annie took the DVD to prove it.

Combine with your notes from Annie’s interview.
ADDITIONAL INTERVIEW EXERCISES

Time Permitting

▪ Interview additional witnesses
  ▪ Who?

▪ Re-interview Complainant

▪ Practice telling the Respondent and Complainant that the investigation is terminating
Questions?
Thanks for joining us today.
LIMITED LICENSE AND COPYRIGHT. By purchasing, and/or receiving, and/or using ATIXA materials, you agree to accept this limited license and become a licensee of proprietary and copyrighted ATIXA-owned materials. The licensee accepts all terms and conditions of this license and agrees to abide by all provisions. No other rights are provided, and all other rights are reserved. These materials are proprietary and are licensed to the licensee only, for its use. This license permits the licensee to use the materials personally and/or internally to the licensee’s organization for training purposes, only. These materials may be used to train Title IX personnel, and thus are subject to 34 CFR Part 106.45(b)(10), requiring all training materials to be posted publicly on a website. No public display, sharing, or publication of these materials by a licensee/purchaser is permitted by ATIXA. You are not authorized to copy or adapt these materials without explicit written permission from ATIXA. No one may remove this license language from any version of ATIXA materials. Licensees will receive a link to their materials from ATIXA. That link, and that link only, may be posted to the licensee’s website for purposes of permitting public access of the materials for review/inspection, only. Should any licensee post or permit someone to post these materials to a public website outside of the authorized materials link, ATIXA will send a letter instructing the licensee to immediately remove the content from the public website upon penalty of copyright violation. These materials may not be used for any commercial purpose except by ATIXA.