

Session 4: Investigations and Informal Resolution

Training for Title IX Coordinators, Investigators, Hearing
Coordinators, Appeals Managers and Student Conduct
Administrators

Systemwide Title IX Compliance
Office of the Chancellor
The California State University

The Purpose of the Investigation (Broadly Stated)

1

Gather evidence for the University to determine if Respondent violated the policy.

2

Identify disputed and undisputed facts.

3

Provide an opportunity for the Parties to respond to evidence gathered and prepare for the hearing and/or Informal Resolution.

Additional Addendum B Investigation Procedural Requirements

- Provide written notice at least 3 working days prior to every meeting (5 working days if initial Respondent meeting), and interview with the Parties. It will include **details of the date, time, location, participants and purpose of the interview.**
- University will not restrict the ability of either Party to discuss the allegation or to gather or present relevant evidence.
- Review of evidence (Preliminary Investigation Report) – copies sent to advisor unless Party opts out.
- Explicit requirement that burden rests on the University to gather evidence.
- Role of the *Support Advisor* during investigation and evidence review stage is similar to role in EO 1096/1097/Addendum A.

Gathering Evidence

- Take reasonable steps to gather all **Relevant** evidence from the Parties, other witnesses or other sources.
- Document the steps taken to gather evidence, even when those efforts are not successful.
- Must include with the Preliminary Investigation Report all evidence **Directly Related** to the complaint, even that which it is anticipated will not be relied upon by the Hearing Officer.
- Inform Parties that any evidence that they provide during the investigation will be provided to the other Party and the Hearing Officer.
- **Impartiality** and **equity** → During interviews and when gathering evidence.

Types of Evidence



Relevant Evidence



Directly Related [Not required to be Relevant]



Evidence not directly related or relevant

Directly Related and Relevant Evidence

Addendum B:

Directly Related means anything that is not incidental to a matter at issue.

Relevant defined as having significant and demonstrable bearing on the matter at hand.

Requests to Gather Evidence

- Parties can request that the Investigator obtain evidence. The Investigator should make reasonable attempts to do so, with the following exceptions:
 - Illegally obtained evidence (e.g., conversations recorded without the consent of the participants);
 - Evidence not Directly Related to the complaint;
 - Information protected by a legally recognized privilege;
 - The Complainant's sexual history (with exceptions); and
 - A Party's treatment records if the Party has not given voluntary, written consent to the disclosure of those records.
- Investigator should document when attempts to gather evidence are not made and why.

Scenario #1: Devin and Jules (Students)

- Devin is accused of sexually assaulting Jules. Jules says they were incapacitated when Devin had sex with them in Devin's room. Jules says they had five vodka shots earlier in the evening. Stewart, a neighbor, says he saw Jules vomiting only minutes before Jules entered Devin's room. Devin asks the investigator to find out how much food Jules ate in the hours before Jules entered Devin's room and whether Jules and Stewart are friends. Devin also wants to know Jules' academic major.

Devin and Jules

- Question 1: Is evidence relating to what Jules ate "relevant"? And if it's collected, would it be considered "directly related" to the investigation?
 - ☞ A: Relevant and directly related
 - ☞ B: Relevant but not directly related
 - ☞ C: Directly related but not relevant
 - ☞ D: Neither

Devin and Jules (continued)

- Question 2: Is evidence relating to whether Stewart, the witness, is friends with Jules "relevant"?
 - A: Yes
 - B: Maybe – we need more information
 - C: No, it's not relevant
 - D: Why did I agree to attend this training?

Devin and Jules (continued)

- Question 3: Is Jules' academic major relevant? And if not, would it nevertheless be considered "directly related" to the investigation?
 - ☞A: Yes, it's relevant
 - ☞B: We need more information to determine if it's relevant, but it is "directly related"
 - ☞C: Neither
 - ☞D: Help!

Scenario #2: Hadley and Blake (Employees)

- Hadley is accused of making inappropriate sexual comments to a co-worker, Blake, several times a week. Hadley says they would never do such a thing. Hadley heard rumors that Blake's father is in prison for drug offenses and wants the investigator to collect evidence about the conviction ("like father, like child," Hadley says). Blake in turn wants the investigator to confirm that Hadley has been accused of sexually harassing other employees in the department.

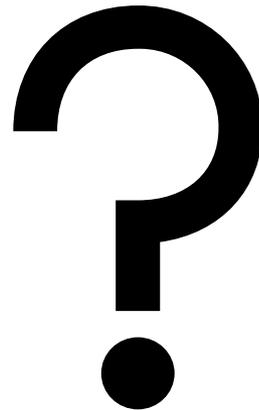
Hadley and Blake

- Question 1: Is evidence relating to Blake's father being convicted of a crime relevant?
 - ☞ A: Yes
 - ☞ B: Maybe – we need more information
 - ☞ C: No
 - ☞ D: Calgon, take me away!

Hadley and Blake (continued)

- Question 2: Would evidence relating to whether Hadley sexually harassed other employees be relevant?
 - ☞ A: Yes
 - ☞ B: Maybe – we need more information
 - ☞ C: No

LET'S PAUSE FOR QUESTIONS



Evidence Review

Evidence Review – Preliminary Investigation Report

Provide ALL evidence obtained as part of the investigation that is Directly Related to the allegations raised in the Formal Complaint, including inculpatory or exculpatory evidence whether obtained from a Party or other source.

Material Disputed and Undisputed Facts

Must send to Party AND Support Advisor (if any).

Discretion as to method of sending (electronic or hard copy – file sharing platform with limitations on download acceptable).

10 Working Days for review.

Types of Evidence

Directly Related and Relevant

- Include in Preliminary Investigation Report.
- Include in Final Investigation Report.

Directly Related

- Include in Preliminary Investigation Report.

Not Directly Related

- Do **not** include in Preliminary Investigation Report or Final Investigation Report.

Privileged Materials

- Do **not** include in Preliminary Investigation Report or Final Investigation Report.

Excluded Evidence

- Illegally obtained evidence (e.g., conversations recorded without the consent of the participants).
- Evidence not Directly Related to the complaint.
- Information protected by a legally recognized privilege.
- The Complainant's sexual history (with exceptions).
- A Party's treatment records if the Party has not given voluntary, written consent to the disclosure of those records.

Treatment Records

- Party's treatment records require voluntary, written consent.
- Records include those that are made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in the professional's or paraprofessional's capacity, or assisting in that capacity, and which are made and maintained in connection with the provision of treatment to the Party.

Final Investigation Report

Fairly summarize
Relevant
evidence
(inculpatory and
exculpatory).

Must send to
Party AND
Support
Advisor (if
any).

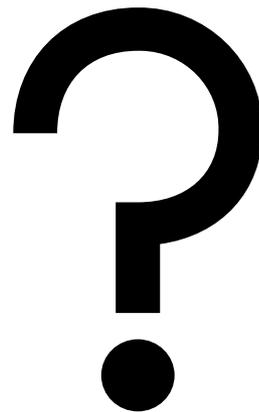
10 Working
Days prior to
hearing.

Party may
provide
written
response.

Timeframes

- Absent a determination of good cause made by the Investigator or Title IX Coordinator (of which the Parties will receive written notice):
 - (i) the investigation should be concluded within **100 Working Days** from the date that the Notice of Allegations is provided to the Parties; and
 - (ii) the Final Investigation Report should be completed and provided to the Parties within **10 Working Days** after the Review of Evidence has concluded.

**LET'S PAUSE
FOR QUESTIONS**



Informal Resolution

Preliminary Assessment

- As part of an Informal Resolution, **at the request of both Parties**, Campuses will provide a written preliminary assessment of the evidence.
- The assessment will be provided by the Title IX Coordinator.
- Neither the fact nor the substance of the assessment will be shared with the Hearing Officer or considered Relevant at the Hearing.
- The written response will be attached to the Final Investigation Report and provided to the Hearing Officer, if appropriate, and the Parties.
- Inform Parties not to include any reference to the preliminary assessment in response to Final Investigation Report and that any such references will be redacted.

Informal Resolution Procedural Requirements

- ✓ Cannot be required.
- ✓ Only available after a Formal Complaint has been filed and any time prior to reaching a determination regarding responsibility.
- ✓ Requires the Parties' voluntary, written consent to engage in the Informal Resolution process.
- ✓ Facilitated by the Title IX Coordinator or a Deputy Coordinator.
- ✓ Unavailable in student Complainant and employee Respondent cases.
- ✓ No later than 60 Working Days after both Parties provide voluntary, written consent to participate in the Informal Resolution process.

Informal Resolution – Written Notice

- The allegations of Sexual Harassment, as defined by Addendum B;
- The requirements of the Informal Resolution process including that once the Informal Resolution process is finalized neither Party is permitted to file another Formal Complaint arising from the same allegations;
- An explanation that at any time prior to agreeing to a resolution, any Party has the right to withdraw from the Informal Resolution process and resume the Formal Complaint process;
- An explanation of any consequences resulting from participating in the Informal Resolution process, including the records that will be maintained or could be shared; and
- The Parties' right to consult with a Support Advisor, if any.

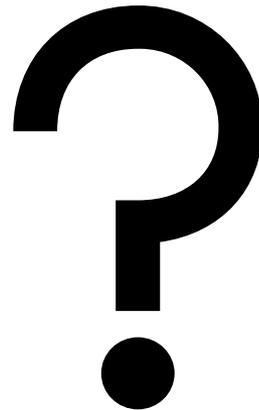
Informal Resolution Procedural Requirements

- Parties must be notified that at any time prior to agreeing to a resolution, any Party has the right to withdraw from the informal resolution process.
- Parties must be notified of **any consequences** resulting from participating in the informal resolution process, including the records that will be maintained or could be shared.

Informal Resolution Terms

- Can include sanctions including expulsion.
- Informal resolution agreements are to be treated as contracts; the parties remain free to negotiate the terms and once entered into, it becomes binding according to its terms.
- Not appealable by either party.
- Parties and Title IX Coordinator must sign the agreement.
- Prior to signing the Informal Resolution, the Title IX Coordinator will consult with the Student Conduct Administrator and/or other appropriate University Administrator responsible for the implementation of the terms.

ADDITIONAL QUESTIONS





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