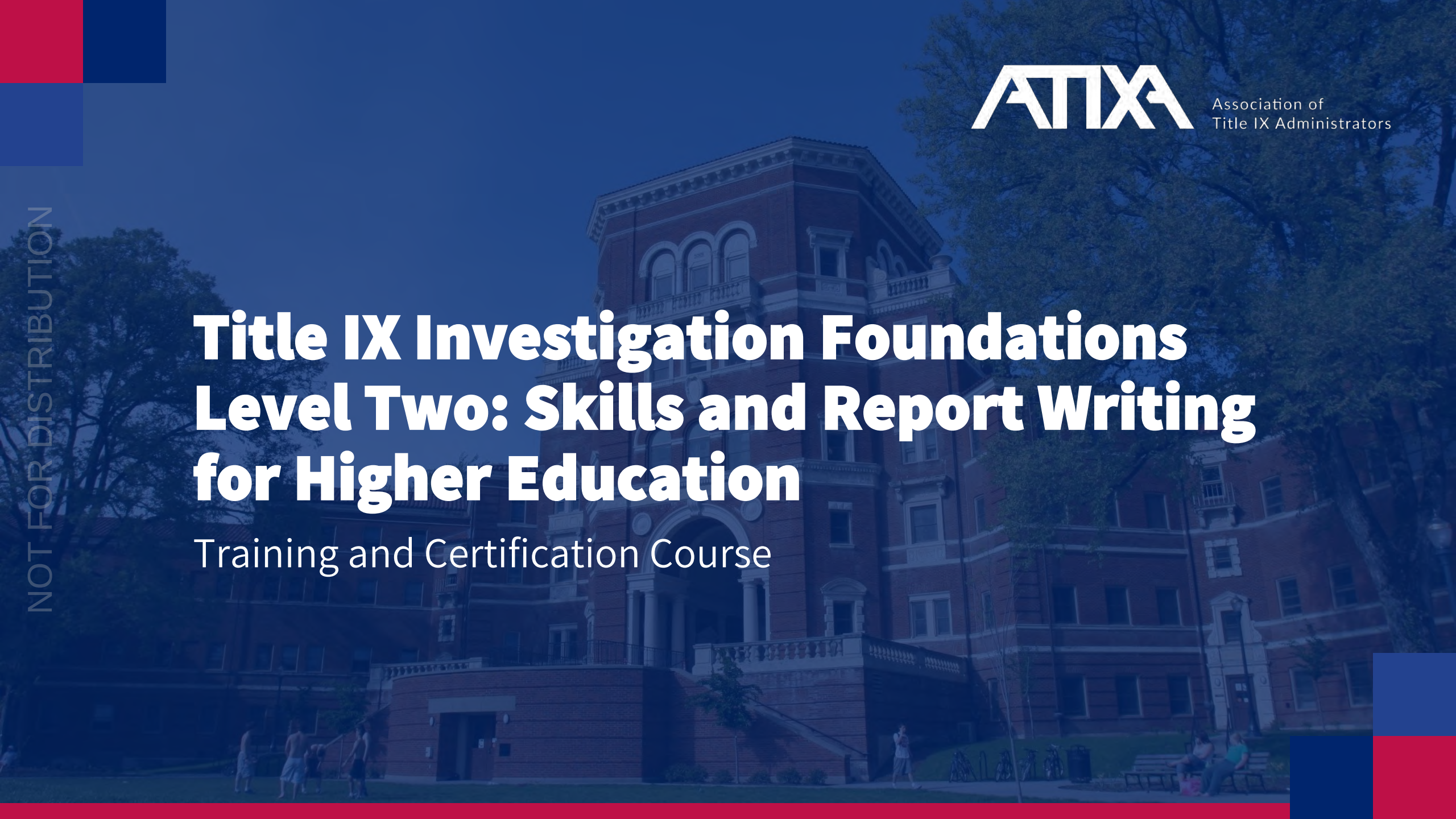


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Title IX Investigation Foundations Level Two: Skills and Report Writing for Higher Education

Training and Certification Course

WELCOME!

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- Please log in to your ATIXA Event Lobby to access the training slides, supplemental materials, and to log your attendance.
- The ATIXA Event Lobby can be accessed by scanning the QR code or by visiting **www.atixa.org/atixa-event-lobby**.
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Any advice or opinion provided during this training, either privately or to the entire group, is **never** to be construed as legal advice or an assurance of compliance. Always consult with your legal counsel to ensure you are receiving advice that considers existing case law in your jurisdiction, any applicable state or local laws, and evolving federal guidance.

Content Advisory

The content and discussion in this course will necessarily engage with sexual harassment, sex discrimination, 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. It is not used gratuitously, and no offense is intended.

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Introduction

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This training builds on foundational investigation skills to strengthen interviewing, evidence management, analysis, and investigation report writing.



Practitioners will learn to use allegations and policy language to guide investigative strategy, develop effective interview questions, and identify appropriate follow-up as information and evidence are gathered.



Investigators will strengthen their ability to organize, compare, and analyze information and evidence; identify areas of agreement, disagreement, and uncertainty; and draft clear, comprehensive investigation reports.

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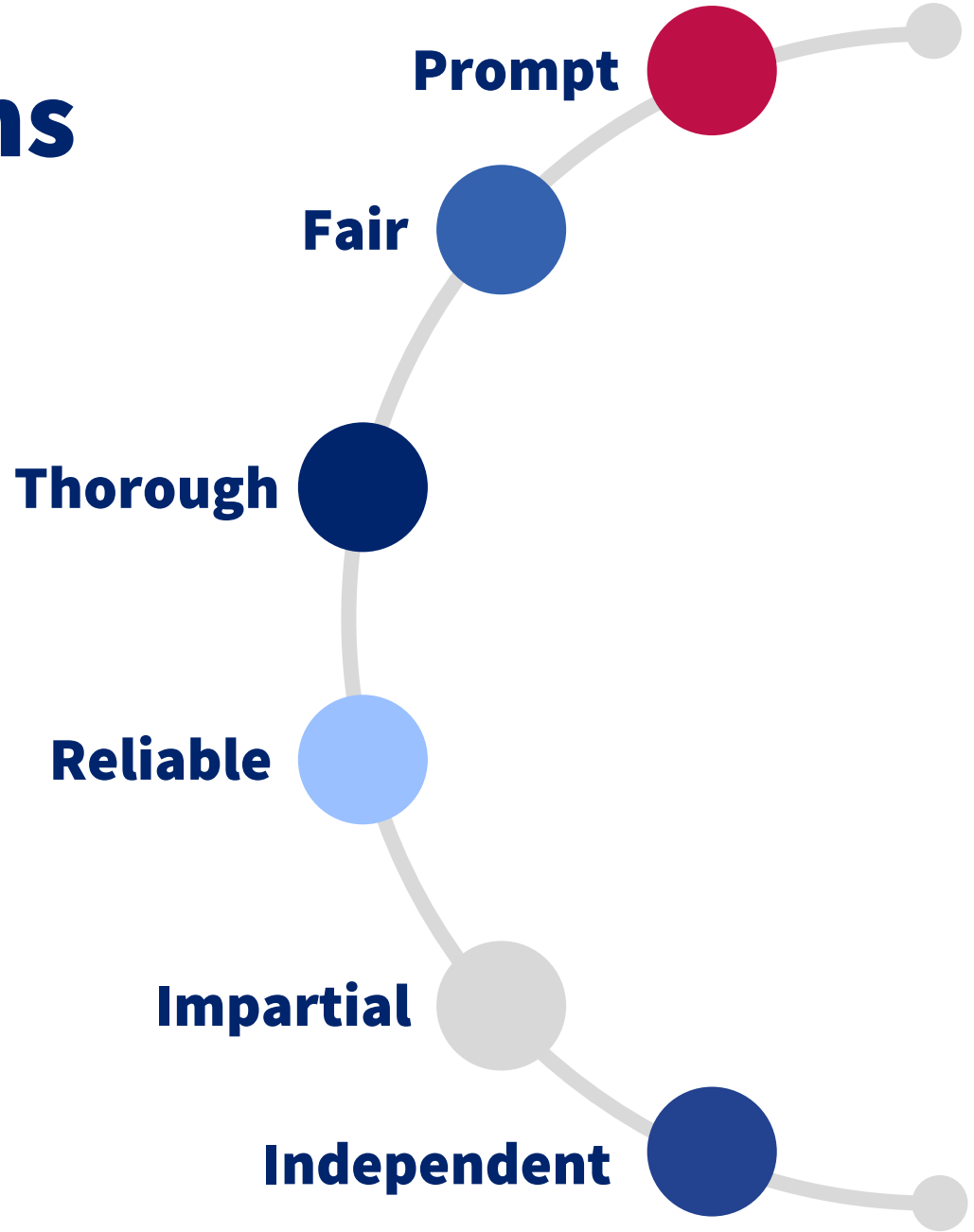
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Start with the End in Mind

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Effective Investigations

- Investigations focus on gathering all available and relevant information
- The institution is responsible for gathering evidence—not the parties
- Investigators must provide a report that accurately and succinctly summarizes the collected evidence



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Gather the Necessary Ingredients

- Investigator = sous chef
- Decision-maker (DM) = chef
- DMs depend upon Investigators to gather, prepare, organize, and present the relevant evidence in the form of an investigation report
- Each alleged policy violation provides the directions for a component of the report
- Incomplete, poorly organized, or selectively gathered evidence can impair decision-making



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Follow the Recipe Card

- The **report template is the recipe card**; it provides a consistent structure for organizing the relevant evidence
- Review the template **before beginning an investigation**
- Consider **what belongs where** and how the organization helps the DM understand the allegations, evidence, and disputed facts
- Organize evidence **logically and neutrally**, rather than building the report around a narrative that favors one party's account
- Make the information easy to find
  - The DM should be able to **trace analysis to the supporting evidence** and understand where accounts agree, differ, or remain unresolved

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What Does the DM Need?

- Complaint Information
- Allegations
- Applicable Policies and Relevant Definitions
- Investigation Timeline
- Relevant Background
- Incident Timeline
- Relevant Evidence Summary
- Credibility Assessment
- Analysis



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Determine What You Are Cooking

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Intake and Investigation Steps

1. Receive Notice/Complaint
2. Initial Assessment and Jurisdiction Determination
3. Determine Basis for Investigation
4. Notice of Investigation and Allegations (NOIA)
5. Establish Investigation Strategy
6. Formal Comprehensive Investigation
7. Draft Investigation Report
8. TIXC Reviews Draft Report and Evidence
9. Parties Review Draft Report and Evidence
10. Final Investigation Report



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Initial Instructions

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- Title IX Coordinator (TIXC) determines the **allegations**, **scope**, **applicable policies**, and **jurisdiction** during their Initial Assessment
- The Investigator and parties receive this information via the Notice of Investigation and Allegations (NOIA)
- NOIA may be modified as Investigator collects additional information
  - Notify the TIXC if allegations need to be added, removed, or modified

Report Sections

- Introduction
- Investigation Scope
- Allegation(s) Overview
- Relevant Policies
- Jurisdiction

Review these Investigation Report Template sections

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Determine Your Shopping List

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Models of Proof

- The specific elements of each violation
- Tell the Investigator and DM what elements are needed to determine whether each policy was violated
  - Are all elements required?
    - Look for **and** in the policy provision
  - Are any substitutions allowed?
    - Look for **or** in the policy provision
- Investigators collect evidence specific to the alleged policy violations
  - Policy language informs focused and appropriate interview questions
  - DMs rely upon Investigators to collect all available relevant evidence

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Definition: Fondling*

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The intentional touching of the clothed or unclothed genitals, buttocks, groin, breasts, or other body parts of the Complainant by the Respondent without the consent of the Complainant for the purpose of sexual degradation, sexual gratification, or sexual humiliation. The Respondent causing or directing the Complainant's intentional touching of the Respondent's clothed or unclothed genitals, buttocks, groin, breasts, or other body parts without consent of the Complainant for the purpose of sexual degradation, sexual gratification, or sexual humiliation. This includes instances where the Complainant is incapable of giving consent because of their age or incapacity due to temporary or permanent mental or physical impairment or intoxication for the purpose of sexual degradation, sexual gratification, or sexual humiliation.

*ATIXA's recommended definition encompasses the regulatory definition. Consult with legal counsel before adopting this definition.

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Model of Proof: Fondling

- The **intentional touching** of the **clothed or unclothed genitals, buttocks, groin, breasts, or other body parts** of the Complainant **by the Respondent**
  - **without the consent of the Complainant**
  - **for the purpose** of **sexual degradation**, **sexual gratification**, or **sexual humiliation**
- Or the **Respondent caused or directed** the Complainant's **intentional touching of the Respondent's clothed or unclothed genitals, buttocks, groin, breasts, or other body parts**
  - **without consent of the Complainant**
  - for the purpose of sexual degradation, sexual gratification, or sexual humiliation
- Including instances where the Complainant is incapable of giving consent because of their age or incapacity due to temporary or permanent mental or physical impairment or intoxication for the purpose of sexual degradation, sexual gratification, or sexual humiliation

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Fondling Shopping List

- Respondent intentionally touched Complainant
- Clothed or unclothed genitals, buttocks, groin, breasts, or other body parts (only need one)
- Without Complainant's consent
- For the purpose of sexual degradation, sexual gratification, or sexual humiliation (only need one)

OR

- Respondent caused or directed Complainant to intentionally touch Respondent
- Clothed or unclothed genitals, buttocks, groin, breasts, or other body parts (only need one)
- Without Complainant's consent
- For the purpose of sexual degradation, sexual gratification, or sexual humiliation (only need one)

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Gather the Ingredients

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Determine Your Investigation Strategy

- What does the DM need to establish whether a violation occurred?
- Who might have that information?
  - What questions will elicit that information from interviewees?
- What else might show that information?
  - How can it be obtained?
- Are there any potential barriers to gathering the information?
  - How might you overcome them?
- How will you address information that isn't available?

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Practice: Developing Your Strategy

Allegation: Yanil alleges that Mila placed Yanil's hand on her breast without his consent while they were watching a movie in Yanil's residence hall room

- Referring back to your shopping list, what elements do you need to collect for a **Fondling** allegation?
  - Who might have that information?
  - What else might show that information?
  - Are there any potential barriers to gathering the information?
  - How will you address information that isn't available?

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Practice: Developing Your Strategy (2)

- If consent is disputed, what information would a DM need to evaluate it?
  - Whether force was present
  - Information bearing on capacity/incapacity
  - Words and actions before/during the contact
  - Prior interactions, if relevant
  - Observable indicators
  - What each person knew or perceived at the time

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Understanding Evidence

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Evidentiary Questions

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When considering evidence to obtain, ask:

- Is there a reasonable investigative purpose for obtaining the information based on the allegations, model of proof, or a credibility issue?
- What fact at issue, evidentiary gap, or credibility consideration could it help clarify?
- Is it relevant, directly related, neither, or potentially impermissible?
- What would you ultimately do with it?
  - Summarize or cite it in the investigation report
  - Use it primarily to generate additional questions or identify other evidence
  - Include it in the directly related evidence file
  - Exclude/redact it
  - Document that you attempted but were unable to obtain it

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Relevant Evidence

Investigators are responsible for gathering relevant evidence

- **Relevant** means related to the allegations under investigation
  - Evidence is relevant if it has value in proving or disproving a fact at issue
  - Evidence can also be relevant to credibility assessments
- It is the Investigator's responsibility to objectively summarize all **relevant** evidence in their report



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Directly Related Evidence

- Connected to the complaint but neither inculpatory nor exculpatory and will not be relied upon by the Decision-maker
  - Provides background or contextual information
- Must be provided to the parties and their Advisors for review
  - ATIXA recommends providing an organized directly related evidence file
- Decision-maker(s) ultimately determine what is relevant, directly related, or neither



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Privileged and Medical Information

The party must provide permission to obtain and/or include:

- Evidence protected under a legally recognized privilege
- Treatment-related records made or maintained by:
  - Physician
  - Psychiatrist
  - Psychologist
  - Other recognized professionals/ paraprofessionals



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Relevant Evidence Exclusions

- Evidence of the **Complainant's sexual predisposition** is never relevant
- Evidence of the **Complainant's prior sexual behavior** is not relevant except:
  - If offered to prove that someone other than the Respondent committed the alleged conduct; or
  - If offered to prove consent with respect to prior consent with the Respondent
- Even if admitted/introduced by the Complainant
- Does not apply to Respondent's prior sexual behavior or predisposition

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Sources of Evidence

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Potential sources of evidence include, but are not limited to:

- Parties
- Witnesses
- Electronic communications
- Social media
- Photos/video/audio
- Institutional records
- Access/card-swipe records
- Academic or employment records
- Receipts and transaction records
- Physical evidence
- Law enforcement evidence
- Other third-party records

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Practice: Evidence Collection

Complainant submits screenshots of four texts exchanged with Respondent immediately after the alleged incident. The screenshots appear to be excerpts from a longer conversation.

- Would you seek the complete conversation? Why or why not?
- What might you ultimately do with it?
- What else might you do with the messages?

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Practice: Evidence Collection #2

In a stalking complaint, Complainant alleges that Respondent repeatedly called after being told to stop. Complainant provides screenshots of Complainant's call log showing six calls from Respondent. Respondent claims Complainant continued calling Respondent as well.

- Would you seek the complete call log for the relevant period? Why or why not?
- What allegation or disputed fact makes the call log worth seeking?
- What date range is reasonably necessary?
- Does the complete log corroborate or contradict either account?
- Which entries are relevant?
- Does the whole log need to appear in the report?
- What should appear in the evidence file?

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Practice: Evidence Collection #3

Complainant reports that Respondent followed Complainant back to Complainant's residence hall after Complainant told Respondent that Complainant wanted to be left alone. Respondent states Respondent went directly back to Respondent's own residence hall and did not follow Complainant. The institution maintains electronic card-access records for all residence halls.

- Would you seek or collect the records? Why or why not?
- What are you trying to learn from them?
- How would you classify them once obtained?
- What might you ultimately do with them?

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Practice: Evidence Collection #4

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Complainant reports that Respondent followed Complainant from a campus event to a parking garage, confronted Complainant near Complainant's vehicle, and blocked Complainant's path when Complainant attempted to leave. Respondent acknowledges speaking with Complainant in the garage but denies following Complainant or preventing Complainant from leaving.

The Investigator learns that campus security cameras cover portions of the event venue, the walkway leading toward the parking garage, and several areas within the garage.

- Would you collect it?
- What are you trying to learn?
- How broadly should you collect?
- What if the cameras do not capture the alleged confrontation itself?
- What if you obtain 45 minutes of footage but only three minutes are relevant?

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From Collection to Report

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Evidence Gathered

Investigators may gather evidence before determining its relevance

Directly Related Evidence

Parties must have an opportunity to inspect and review evidence directly related to the allegations

Relevant Evidence

The investigation report fairly summarizes the relevant evidence

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Managing Evidence

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Evidence Preservation

- **Evidence can disappear; plan accordingly**
- Discuss the need to preserve evidence with parties and witnesses as soon as feasible
  - Ask parties to record names of witnesses and contact information
  - Save relevant communications in a secure location, not just on a phone/tablet/etc.
    - Screenshots
    - Date stamps
  - Photograph/videorecord physical evidence
    - Clothing
    - Damaged property
    - Injuries
- Also consider preservation for evidence in the institution's possession

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Evidence Management

- **Manage evidence for the next person who needs to use it**
- Ask: Could someone unfamiliar with the investigation locate, identify, and understand the evidence without asking you?
- Electronic databases are becoming an industry standard
- Properly record and categorize evidence provided to Investigator or TIXC
  - Quick access (indexed, digitized)
  - Organized
- Ensure the evidence is not compromised
  - Establish/maintain chain of custody
  - Do not modify evidence in any way, unless the Investigator clearly indicates doing so
    - Example: renaming an electronic file

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File Management Tips

- Establish a **standard file-naming convention**
- Rename files upon receipt ~~(if appropriate)~~ rather than retaining ambiguous names such as IMG_4837.jpg or Screenshot (12).png
- Use consistent **party, witness, and evidence identifiers**
- Preserve original files when creating **working, converted, annotated, or redacted copies**
  - Unredacted versions should be available for viewing, when appropriate
- Maintain consistent **version control** for documents that change during the investigation
- Organize evidence using a **standard folder structure**

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File Management Tips (Cont.)

- Keep related evidence together (e.g., original submission and subsequent authentication information)
- Avoid maintaining duplicate copies in multiple locations when a single authoritative version can be referenced
- Use file formats that are **accessible, readable, and reasonably durable**
- Periodically confirm that links, files, recordings, and other electronic evidence remain **functional**
- Store evidence in the institution's **approved, secure system**, rather than individual email accounts or local devices, when available

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Managing Sensitive Information

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Store information in secure locations:

- Electronic
  - Password protection or encryption; multi-factor authentication
  - Limited access, deadline for access, auditable storage
  - View or save information on appropriate devices
- Physical
  - Locked; limited access
- Remove personally identifiable information
- Communicate information storage practices to parties

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FERPA, Title IX, and Student Records

- A Title IX investigation report involving a student is generally an **education record** under the **Family Educational Rights and Privacy Act (FERPA)** when it is directly related to the student and maintained by the institution
- A report involving a student Complainant and student Respondent may be an education record of **both parties**
- FERPA protection does **not** mean that information cannot be used or disclosed as required or permitted by the Title IX process

The investigation report can simultaneously be an education record protected by FERPA and a document that must be shared as required by the applicable Title IX grievance process

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Employee Records and Investigation Reports

- Title IX investigation reports involving employees may be subject to **state employment, personnel record, public record, or other applicable laws**
- Institutional policy and applicable law may affect **how an investigation report is maintained, accessed, and disclosed**
- An investigation report may contain information drawn from **personnel or employment records**, including:
  - Employment history or status
  - Performance or disciplinary records
  - Prior complaints or other employment-related information
- Investigators should include employment information **only when appropriate to the investigation** and avoid unnecessary personnel information

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Record Reminders

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Investigators should:

- Include information necessary to create an accurate and complete investigation report
- Avoid unnecessary personally identifiable information about students or employees who are not parties
- Use consistent identifiers and appropriate redactions when necessary
- Follow institutional procedures for **accessing, maintaining, sharing, and securing** institutional records and investigation materials
- Consult the TIXC, legal counsel, or other appropriate institutional official when questions arise about access to or disclosure of institutional records

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Redaction Practices

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- **Avoid redaction that makes the report difficult to understand or use**
- When identifying information needs privacy, use **role identifiers** rather than blacking out names
  - Complainant/Respondent/Witness
  - C/R/W1/W2
  - Initials, when appropriate
- **Use identifiers consistently** throughout the report, evidence file, and appendices
- Consider whether different versions are necessary for different audiences (e.g., an unredacted version for the DM or legal counsel)
- **Example:**
  - **Original:** Teagan stated that Jesse smacked her with an open hand
  - **Redacted:** "Complainant stated that Respondent smacked Complainant with an open hand"

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Law Enforcement Evidence

- **Do not rely on a law enforcement investigation as a substitute for the institutional investigation**
- Identify potentially relevant evidence held by law enforcement
  - Reports and supplemental reports
  - Photographs, video, or audio
  - Interview statements or recordings
  - Physical or forensic evidence/documentation
  - Dispatch, incident, or other records
- Determine what evidence is available and **when it may be obtained, if at all**

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Law Enforcement Evidence (Cont.)

- Document relevant evidence that was sought but could not be obtained
- When evidence is obtained:
  - Identify its source
  - Assess authenticity and completeness
  - Determine whether context or clarification is needed
  - Note any limitations on use, access, or disclosure
- Consider whether a law enforcement officer or other person should be interviewed to **explain or authenticate** evidence
- Independently assess the evidence for relevance to the institutional allegations

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Comprehensive Complaint File

Title IX Coordinator should maintain:

- Supportive measures and interim action correspondence and documents
- Emergency removal or administrative leave documents (if applicable)
- Communication regarding Informal Resolution (if applicable)
- Signed releases of information for Advisors
- Advisor Non-Disclosure Agreements (NDAs) (if applicable)
- Dismissal information (if applicable)
- Allegations of bias or conflict of interest and response

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Documenting the Investigation

- Maintain a contemporaneous record of **investigation steps and significant decisions**
- Retain records of **substantive communications** with parties, witnesses, and other sources
- Document significant investigation decisions and the rationale when appropriate
- Document interviews consistently
- Provide an opportunity for **interviewee verification** of interview documentation, consistent with institutional procedures

The investigation record should allow someone unfamiliar with the investigation to understand what was done, what was obtained, what could not be obtained, and what follow-up occurred

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Investigation File

FORMAL COMPLAINT AND INTAKE INFO

- Initial report
- Formal complaint
- Notes from Intake

NOIA AND POLICIES

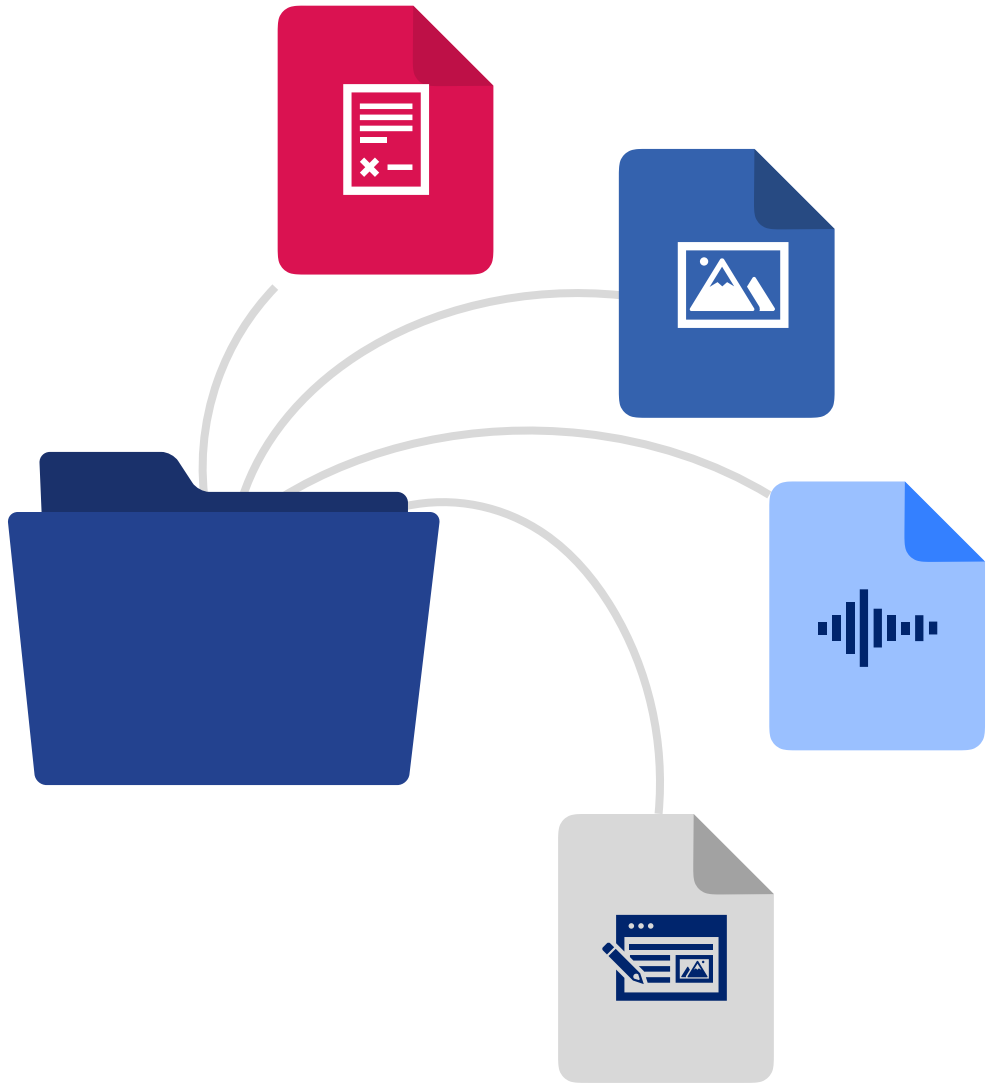
- Original NOIA and any updates
- Policies and procedures in place at the time of the incident(s) and at the time of the investigation

PARTY AND WITNESS DOCUMENTS

- Verified interview transcripts/summaries
- Associated evidence
- Correspondence with Investigator

ADDITIONAL EVIDENCE

- Evidence and evidence log
- Authentication information



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Investigation File (Cont.)

- Background information (education, employment, etc.)
- Witness flowcharts
- Contact log
- Investigator notes
- Timelines for incident and investigation
- Investigation report
- Investigation file becomes part of the **comprehensive complaint file**
- Title IX-related records must be maintained for a minimum of **seven years**

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Evidence Log

- Evidence Log is akin to having a receipt
- For each evidentiary item, can another person determine:
  - What it is
  - Where it came from
  - When and how it was obtained
  - Whether it has been authenticated or verified, if necessary
  - Where the complete item is located
  - How the evidence relates to the investigation

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Evidence File

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- **Investigation Report:** Includes a summary of relevant evidence
- **Evidence File:** All relevant and directly related evidence in complete form
  - Redact information that is not relevant or directly related
- Include evidence source, date, authentication, or other identifying information
- Maintain electronically
- **Ask:** Could a DM navigate the evidence file without assistance from the Investigator?

Report Sections

- Investigation Timeline
- Evidence and Witness List
- Relevant Evidence
- Evidence File

Review these Investigation Report Template sections

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Interviewing

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Interviewing Skills

Investigators build and improve skills over time and with practice:

- Appropriate questioning
- Active listening
- Seeking clarification
- Identifying gaps
- Body language and non-verbal communication (use caution)



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Interviewing Considerations

- Anticipate heightened confidentiality concerns
  - Prepare to answer questions; don't dodge them
  - Be clear about expectations, especially limiting other parties or witnesses from discussing the complaint or the individuals involved
  - Ensure interviewees are aware of how the information they provide will be maintained and whether a statement can be retracted
- Be mindful of power dynamics and Investigator role as an authority figure in the Title IX process and the institution
- Visible reactions may impact rapport building or push a witness to dig deeper
  - Consider how facial expressions and demeanor may impact interviewees
  - Whether Investigator is impassive or expressive, they should be intentional and keep it neutral

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Investigation Material Disclosures

- Parties must be able to **discuss the allegations under investigation and gather and present relevant evidence**
- During the grievance process, parties and Advisors may receive **investigation materials containing information about other individuals**
- Institutional procedures may address the **use, sharing, or redistribution of institutionally created investigation materials**

The Investigator's role is to prepare investigation materials for appropriate disclosure, not to determine or enforce restrictions on what parties may subsequently do with them

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Bias

- **Bias:** Prejudice for or against **a person or group,** or an unwillingness/inability to be influenced by factual evidence
  - A preference or tendency to like or dislike
  - Implicit or explicit
  - Formed from stereotypes, societal norms, and experiences
- Title IX Grievance Process must be free from bias
- Bias can influence an Investigator's perception:
  - Of Complainants and Respondents
  - Of the content or context of the allegation(s)

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Mitigating Bias

- Investigate in pairs
- Investigators review each other's questions
- Follow institutional policy and procedures
- Avoid assumptions
- Ask comparable questions, when appropriate
- Treat early information as something to explore, not a conclusion to confirm
- Revisit questions as new evidence develops



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Questioning Considerations

- An interview is a conversation designed to elicit information in a non-accusatory manner
- Use policy definitions to inform questions
- Ask purposeful questions:
  - What do I need to know?
  - Why do I need to know it?
- Start with broad questions
  - Closed ended questions may be appropriate for certain details
- Explore all gaps in information; follow-up on unanswered questions
- Avoid unnecessary repetition
- Choose or blend effective questioning strategies/methodologies

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Questioning Techniques

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Following
vs.
Leading



Explaining
vs.
Defending



Clarifying
vs.
Challenging



Curiosity
vs.
Suspicion

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Trauma and Investigations

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Understanding Trauma

- **Trauma** is exposure to an event or events that create a real or perceived threat to life, safety, sense of well-being or bodily integrity, and can be:
  - Acute, chronic, or complex
  - Neurological, biological, psychological, social, and emotional impacts
  - Developmental, intergenerational, historical, secondary, vicarious, or collective
- Responses to trauma can vary, depending on a variety of factors
- **ATIXA Position Statement:** Application of trauma-informed practices in our field has gotten ahead of the actual science
- **ATIXA Recommendation:** Incorporate trauma-informed investigation and interviewing methods without compromising gathering credible, relevant evidence
- **Trauma-informed practices should not influence evidence evaluation**

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Trauma-Informed Practices

- To encourage open sharing, while mitigating the likelihood of re-traumatizing individuals, Investigators can consider infusing the following practices:
  - Approach all individuals with the assumption that trauma (recent or distant) can impact anyone **AND** its impact can be far-reaching
  - Use clear language; ensure individuals understand their rights and options
  - Be prepared for non-linear storytelling; be patient in allowing individuals to share information in their own way
  - Ensure that offers and referrals for support and resources are made to all parties
  - Consider the physical space and overall environment
    - Seating arrangement
    - Tone and décor
    - Body language

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Trauma-Informed Interviewing

In addition to asking questions about what happened, Investigators may seek information about:

- Thought processes
  - Do you recall what was going through your mind then?
- Sensory information
  - What do you remember seeing?
  - What do you remember hearing?
- Response (physical, emotional, verbal)
- Disclosures and/or documentation



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Practice: Trauma-Informed Interviewing

For each question/statement below:

1. Determine what information the question is trying to obtain
2. Identify what, if anything, is problematic
3. Decide whether you would keep it, revise it, or not ask it

- Why didn't you leave?
- What were you wearing?
- Why would Complainant file a complaint if it wasn't true?
- Tell me what you remember happening next?
- Did anyone see this happen?

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Further Interview Considerations

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Disability Considerations

- Collaborate with disability/accessibility services staff as appropriate
- Possible accommodations
  - Communication services
  - Extended time
  - Accessible materials
  - Additional support persons
  - Other reasonable accommodations



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Language Considerations

- Interpretation or translation services may be needed for meaningful participation
  - Use **qualified interpreters**
- Do not equate language proficiency, accent, word choice, or communication style with credibility
- Use clear, direct language; avoid idioms, slang, jargon, acronyms, and unnecessarily complex questions
- Shared language does not guarantee shared meaning; clarify ambiguous terms and confirm understanding when necessary



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Interview Challenges: Resistance, Reluctance, and Lying

- Offer a reminder of Investigator's role as a neutral fact-gatherer
- Review retaliation, amnesty policies, expectation of truthfulness
- Maintain rapport and avoid accusation
  - "Help me understand…"
  - "I think I'm missing something…"
  - "Can you tell me more about that?"
- Use language mirroring
- Allow opportunity for interviewee to restate
- Avoid statements reflecting moral judgment

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Practice: What Would You Ask Next?

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Scenario: Yanil alleges that Mila placed his hand on her breast without his consent while they were watching a movie on his bed in his residence hall room.

- You are interviewing Yanil. After each response, consider:
  - What information do you still need?
  - What would you ask next?
  - Why does that information matter?

Interview Exchange 1

Investigator: Tell me what happened while you and Mila were watching the movie.

Yanil: We were lying on my bed watching the movie, sort of spooning. After a while, she pulled my arm around her and put my hand on her breast.

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Practice: What Would You Ask Next? (2)

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Scenario: Yanil alleges that Mila placed his hand on her breast without his consent while they were watching a movie on his bed in his residence hall room.

- You are interviewing Yanil. After each response, consider:
  - What information do you still need?
  - What would you ask next?
  - Why does that information matter?

Interview Exchange 2

Yanil: I pulled my hand away pretty quickly. I didn't say anything. I was kind of surprised and didn't know what to do.

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Practice: What Would You Ask Next? (3)

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Scenario: Yanil alleges that Mila placed his hand on her breast without his consent while they were watching a movie on his bed in his residence hall room.

- You are interviewing Yanil. After each response, consider:
  - What information do you still need?
  - What would you ask next?
  - Why does that information matter?

Interview Exchange 3

Yanil: She didn't really react. We kept watching the movie. A few minutes later, we started kissing.

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Practice: What Would You Ask Next? (4)

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Scenario: Yanil alleges that Mila placed his hand on her breast without his consent while they were watching a movie on his bed in his residence hall room.

- You are interviewing Yanil. After each response, consider:
  - What information do you still need?
  - What would you ask next?
  - Why does that information matter?

Interview Exchange 4

Yanil: I think I kissed her first. I wasn't upset with her or anything. I just didn't want her to put my hand there.

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Practice: What Would You Ask Next? (5)

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What else would you want to know before concluding the interview?

- What happened before they began watching the movie?
- Nature of Yanil and Mila's relationship
- Prior interactions that are relevant to this interaction
- Communications before or after
- Whether anyone saw them immediately before or afterward
- Whether Yanil discussed the interaction with anyone
- Whether other evidence may exist

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Notetaking and Recording

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Create an accurate and useable record of each interview

- Identify the date, participants, and method of interview
- Capture the interviewee's **material statements with sufficient context**
- Distinguish between:
  - Direct quotations
  - Paraphrased statements
  - Investigator observations or annotations
- Note significant questions, follow-up questions, and responses
- Clarify ambiguous statements **during the interview when possible**

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Notetaking and Recording (Cont.)

- Document when an interviewee:
  - Cannot recall or does not know
  - Declines to answer
  - Corrects or changes an earlier statement
- Document what was said and observed; avoid stereotypes, opinions, labels, diagnoses, or premature conclusions
- Review notes promptly after the interview for completeness and accuracy
- If recording, preserve the original recording and follow institutional procedures for transcription, retention, and access
  - **Recording interviews has become the industry standard and a best practice**

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Recording Interviews

- Follow **institutional policy and applicable law** regarding recording interviews
- Recording interviews and generating accurate transcripts can strengthen the **investigation record**
  - Enables the Investigator to focus on the interview rather than extensive note-taking
  - Creates an accurate source for preparing interview and evidence summaries
  - Helps the Investigator to revisit testimony, clarify apparent inconsistencies, and examine statements in context
  - Preserves a reliable record when questions later arise about what was said

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Recording Interviews (Cont.)

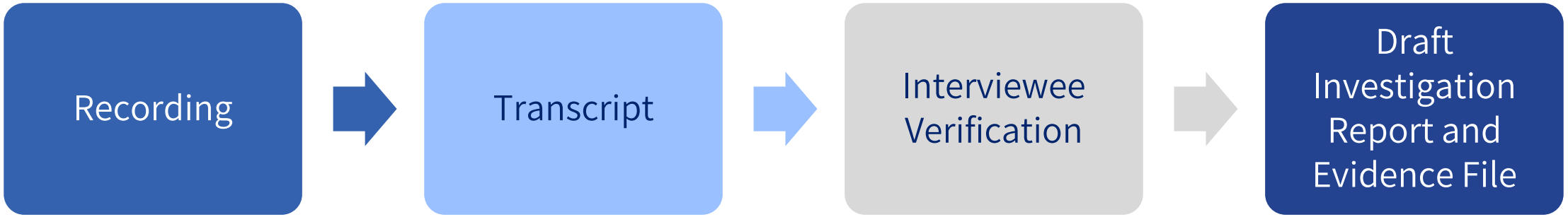
- When a transcript is created:
  - Review it for accuracy before relying on it
  - Provide it to the interviewee for **verification, not approval**
  - If an interview is not recorded, provide the interviewee an opportunity to verify the **interview summary**
- Interviewees may clarify or change prior statements, but the original statement remains part of the investigation record
- Give the interviewee an opportunity to **explain the reason for the change** and determine whether additional follow-up is needed

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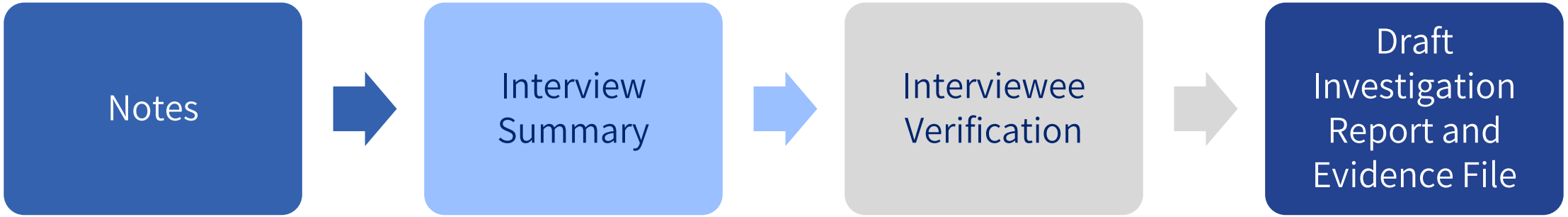
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Information Flow

Option 1: Recording



Option 2: Notetaking



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Wrap-Up Interview Questions

- “Is there anyone else that you think I should talk to?”
- “Are there any questions you expected, but that I didn’t ask?”
- “Is there anything else you think I need to know?”
- “What questions should I pose to other witnesses/parties?”
- **FOR THE PARTIES:** “Are there any questions that you would like me to ask any witness or other party?”

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Parties' Questions for Others

Document each question suggested or requested by a party and how it was addressed

Already Answered	Asked	Rephrased and Asked	Not Asked
Document the question and where the answer appears	Document the question and response	Document the original question, revised question, response, and reason for revision	Document the question and rationale for not asking it

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Writing the Report

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Using Interview Information in the Report

- **Summarize** when the relevant information can be conveyed accurately and efficiently
- **Paraphrase** when the interviewee's meaning matters but the precise wording does not
- **Quote directly** when the exact language is important to meaning, context, credibility, or a disputed fact
- Clearly attribute statements to the person who made them
- Distinguish **firsthand information** from information the interviewee learned from others
- Do not attribute an Advisor's statement to a party
- Use enough surrounding context to avoid changing the meaning of a quotation

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Incorporating Direct Quotations

Introduce the quotation with a complete sentence	Cole described how his relationship with Devyn evolved over time: “We were friends, and then we became friends with benefits.”
Use an introductory or explanatory phrase	When asked to describe his relationship with Devyn, Cole responded, “We are friends with benefits.”
Incorporate the quotation part of the sentence	Cole described his relationship with Devyn as “friends with benefits.”
Use a short phrase as part of the sentence	Cole used the term “friends with benefits” to describe his relationship with Devyn.

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Interview to Investigation Report

- What information is relevant to the allegations?
- What information provides necessary context for understanding that evidence?
- What information does not need to appear in the report?
- Where should the information that is included appear?

Report Sections

- Investigation Timeline
- Evidence and Witness List
- Relevant Evidence
- Evidence File
- Appendices

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Practice: Interview to Investigation Report

- What information from Yanil's interview would a DM expect to see in the investigation report?
- Consider Yanil's statements that:
  - Mila took his hand and placed it on her breast
  - He pulled his hand away quickly
  - He did not verbally object
  - He was surprised and did not know what to do
  - They continued watching the movie
  - A few minutes later, he initiated kissing
  - He later texted Marcus that something "weird" happened



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Generative Artificial Intelligence: Risks

- Title IX documents (e.g., notices, investigation reports, evidence files) have sensitive student and employee information
  - Uploading these materials into a public artificial intelligence (AI) platform may result in that information becoming public
  - Once uploaded, it may become impossible to remove
- Title IX investigations require individualized human judgment based on the entire record
  - AI-generated summaries may omit context, mischaracterize testimony, or include "hallucinations" (i.e., generated false, fabricated, or misleading information that sounds completely real)
- These concerns should be relayed to parties, witnesses, **and** Advisors

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Generative AI: Safeguards

- Only use institution-approved technology with appropriate contractual privacy, security, retention, and access protections
- Do not use AI to independently draft investigation reports
- Verify every citation, quotation, factual statement, and characterization of the evidence when an approved AI tool is used for limited administrative assistance
- Maintain a record of when an approved AI tool was used, for what purpose, what information was entered, and who reviewed the output
- Remind parties, witnesses, Advisors of the risks of uploading to AI, including if it violates institutional policies

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Credibility

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Credibility Overview

- Credibility assessments involve identifying factors that can help a Decision-maker evaluate whether evidence is accurate and reliable
  - Primary considerations are **consistency** and **corroboration**
  - Refrain from focusing on irrelevant inaccuracies/inconsistencies
- Credibility is not synonymous with a person being “truthful” or “honest”
  - Avoid moral judgment phrases in reports such as “lying,” “honest,” “deceitful,” “sincere” etc.
- Evasion, misleading testimony, or memory errors may impact credibility
- Avoid too much focus on **non-relevant** information
- Use significant caution if relying on demeanor to determine credibility

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Primary Credibility Factors

Corroboration

- Aligned testimony and/or physical evidence

Consistency

- Is a person's account consistent over time?

Inherent Plausibility

- Does the explanation make sense?
- Be careful of bias influencing sense of "logical"

Motive to Falsify

- Do they have a reason to lie?

Past Record

- Is there a history of similar behavior?



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Corroboration

- Focuses on whether statements and evidence gathered from a party or witness are supported by "external" evidence (e.g., the statements or evidence provided by others)
  - Corroboration may bolster credibility
  - As with consistency, corroboration does not mean **truthful**; credibility is more about assessing **reliability**
  - In practice, lack of corroboration may be a better tool to assess credibility
- Compare statements and evidence offered by parties or witnesses against each other
  - What consistent, reliable, and plausible external information corroborates a person's account?

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Corroborating Evidence

- Strongest indicator of credibility
- Independent, objective authentication
- Corroboration of central vs. environmental facts
- Not simply aligning with friendly witnesses
- Contemporaneous witness accounts
- Outcry witnesses
- Allegiances

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Consistency

- Typically measures internal consistency of an individual's account over time
  - Consistent accounts may bolster credibility
  - However, consistent does not mean **truthful;** credibility is more about assessing **reliability**
- Inconsistency may be a better tool to assess credibility than consistency
- Carefully parse words or language to assess how (in)consistent a detail may be
- Written statements, texts, and other messages are often central to consistency analysis
- When someone gives inconsistent testimony, it presents an opportunity to clarify, recognize deviations, and explore what their basis may be

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Inherent Plausibility

- Does what the party described make sense?
  - Consider environmental factors, trauma, relationships
- Is it believable on its face?
- “Plausibility” is a function of “likeliness”
- Is the party’s statement consistent with the evidence?
- Is their physical location or proximity reasonable?
- How good is their memory?

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Motive to Falsify

- Does the party have a reason to lie?
- What's at stake if the allegations are true?
  - Academic or career implications
  - Personal or relationship consequences
- What if the allegations are false?
  - Other pressures on the Complainant
- Reliance on written document while answering questions



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Past Record

- Is there evidence or records of past misconduct?
- Are there determinations of responsibility for substantially similar misconduct?
- Check record for past allegations
  - Even if found “not responsible,” may evidence pattern or proclivity
- Written/verbal statements, pre-existing relationships



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Demeanor

- Physical presentation and speech patterns are not determinative of credibility
  - Individuals can be good at picking up non-verbal cues
  - **However,** individuals are terrible at using demeanor to determine credibility
- Demeanor cues may indicate cause for additional questioning
  - "I noticed when I asked you about…you crossed your arms. Can you tell me why your posture changed?"
  - "I noticed when I started asking you questions about…your responses became much shorter. Can you explain that for me?"
  - "I noticed you rolled your eyes when I mentioned….Can you tell me about your reaction?"

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Inconsistencies, Affect, and Credibility

- Differentiate between **more** versus **inconsistent** versus **contradictory** information if an individual's account changes
- Variations in testimony on minor or insignificant details should not significantly impact credibility
- One's affect ≠ evidence



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Trauma and Credibility

- Investigators can only assess available relevant evidence
  - Avoid substituting trauma indicators for evidence
  - Trauma is neutral; it neither enhances or detracts from proof
  - Lack of evidence from an individual often negatively impacts their credibility
- Avoid blaming questions, or questions that imply that a Complainant could have or should have made different choices
- Avoid reaching potential outcomes based on what a person “should” or “would” have done
  - Response to alleged behavior
  - Timing of report

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Bias in Credibility Assessment

- **Anchor Bias:** Giving disproportionate weight to information received, or impressions formed, early
- **Confirmation Bias:** Favoring information that supports an emerging view
- **Implicit Bias:** Applying assumptions or stereotypes when interpreting information or behavior
- **Demeanor Bias:** Giving undue weight to presentation style, affect, confidence, or emotional response
- **Halo/Horns Effect:** Allowing an overall positive or negative impression to influence assessment of specific information



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Common Credibility Assessment Errors

- **Equating demeanor with credibility**
  - Treating nervousness, eye contact, emotion, confidence, or communication style as reliable indicators of truthfulness
- **Treating every inconsistency as equally significant**
  - Failing to distinguish material inconsistencies from differences in peripheral details
- **Explaining away inconsistencies**
  - Assuming trauma, stress, memory, or another factor accounts for an inconsistency without evidence supporting that explanation
- **Expecting perfect consistency**
  - Treating ordinary differences in recall or expression as evidence that an account is unreliable

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Common Credibility Assessment Errors (Cont.)

- **Overlooking corroboration—or overstating what it corroborates**
  - Failing to identify precisely which part of an account another source supports
- **Making global credibility judgments**
  - Concluding that a person is generally "credible" or "not credible" rather than assessing the reliability of information relevant to disputed issues
- **Substituting credibility assessment for evidence analysis**
  - Deciding whom to believe rather than examining how the available evidence aligns, conflicts, and bears on the disputed information

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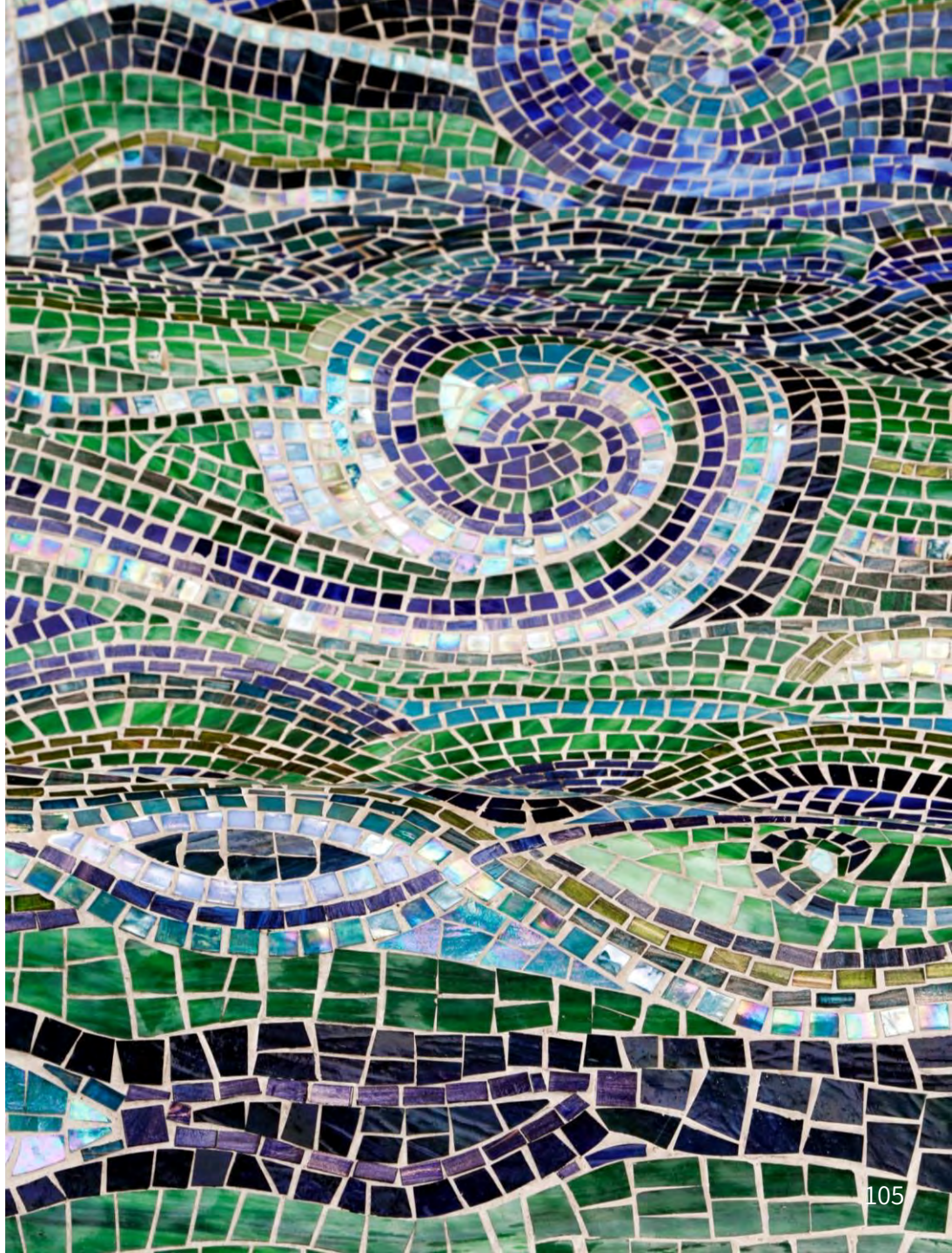
Prepare the Ingredients

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Analysis

Analysis asks:

- What does the evidence collectively tell us?
- Where do the accounts agree, differ, or remain unresolved?
- How do we organize that information around what the DM needs to decide?



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Review: Fondling Shopping List

- Respondent intentionally touched Complainant
- Clothed or unclothed genitals, buttocks, groin, breasts, or other body parts (only need one)
- Without Complainant's consent
- For the purpose of sexual degradation, sexual gratification, or sexual humiliation (only need one)

OR

- Respondent caused or directed Complainant to intentionally touch Respondent
- Clothed or unclothed genitals, buttocks, groin, breasts, or other body parts (only need one)
- Without Complainant's consent
- For the purpose of sexual degradation, sexual gratification, or sexual humiliation (only need one)

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Yanil and Mila Evidence

What evidence did we gather concerning:

- Intentional touching/causing or directing touching
- Specified body part
- Consent
- Sexual degradation, sexual gratification, or sexual humiliation

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Practice: Sorting Evidence

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Element	Evidence Supporting the Element	Evidence Contradicting/ Complicating the Element	Gaps
Intentional touching/causing or directing touching	Mila acknowledges taking/moving Yanil's hand to her breast		Clarify precisely how the contact occurred and whether either party describes it differently
Specified body part	Both accounts identify contact with Mila's breast	No apparent contradictory evidence	

Evidence may be relevant to more than one element and may support more than one reasonable interpretation

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Practice: Sorting Evidence (2)

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Element	Evidence Supporting the Element	Evidence Contradicting/ Complicating the Element	Gaps
Consent	Yanil says he did not want Mila to put his hand there and pulled his hand away quickly	Mila says she believed Yanil was receptive based on preceding touching/flirting; Yanil did not verbally object; Yanil later initiated kissing	What occurred immediately before Mila moved his hand? What words/actions, if any, communicated permission for **this specific contact**?

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Practice: Sorting Evidence (3)

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Element	Evidence Supporting the Element	Evidence Contradicting/ Complicating the Element	Gaps
Sexual Degradation		No evidence that Mila intended to demean, debase, or reduce Yanil's dignity through the contact	Did Mila say or do anything before, during, or after the contact suggesting a degrading purpose?
Sexual Humiliation		Contact occurred privately; no evidence identified of embarrassment, exposure, ridicule, or an intent to humiliate	Did Mila say or do anything suggesting an intent to embarrass or humiliate Yanil? Was anyone else present or made aware of the contact?

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Practice: Sorting Evidence (4)

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Element	Evidence Supporting the Element	Evidence Contradicting/ Complicating the Element	Gaps
Sexual Gratification	Nature and location of the contact; Mila intentionally moved Yanil's hand to her breast	No direct evidence yet regarding Mila's purpose; preceding flirtation/physical interaction provides context but does not itself establish purpose	Although arousal is not required, learning more about Mila's purpose may nonetheless speak to this element; however, this was alleged intentional touching of a private body part

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Ingredient Inventory

As you review the evidence you've collected, look for:

- Unresolved material questions
- Unexplored inconsistencies
- Evidence referenced but not obtained
- Missing corroborating sources
- Unanswered interview questions
- Newly identified witnesses/evidence
- Evidence requiring authentication or clarification

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Information Not Obtained

Document all efforts to obtain evidence and explain any information that could not be obtained

- Did/does not exist
- Cannot be located
- Party/witness not available or declines to respond to question(s)
- Party/witness declined to submit information
- Deleted, destroyed, or damaged
- Unable to access without a court order
- Cannot be released based on an ongoing criminal and/or agency investigation

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Unanswered Questions

- **ATIXA recommends including unanswered questions asked** during the investigation to:
  - Demonstrate a thorough investigation
  - Help guide the Decision-maker to topics that may need further exploration
- **If relevant, document in the evidence summary**
  - Example: “Witness 2 declined to provide additional information regarding Witness 2’s text conversation with Complainant on February 19, 2024. Witness 2 was informed that Complainant voluntarily submitted screenshots of the text messages in question for purposes of this investigation.”

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Mise en Place: Organize the Ingredients

The DM shouldn't have to search the kitchen for the ingredients

- When did things happen?
- What does the relevant evidence tell us?
- How does the evidence fit together around the alleged policy violations?
- On what does the DM need to focus?



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Consult the Recipe Card

- **Incident Timeline:** Includes information necessary to understand the sequence of relevant events
- **Relevant Evidence Summary:** Distills the relevant information gathered during the investigation
- **Analysis:** Connects and evaluates the relevant evidence to identify areas of agreement, dispute, corroboration, inconsistency, and unresolved questions for the DM

Report Sections

- Incident Timeline
- Relevant Evidence
- Analysis

Review these Investigation Report Template sections

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Appendices

- Supplement the report without interrupting its flow
  - Policies
  - Complaint (depending on length)
  - Lengthy documents
- Parties' feedback on the investigation report and Investigator responses
- Parties' questions for others and responses
- Description, date of receipt, source, method of receipt, and verification/authentication information



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Incident Timeline

- Is most useful when timing, sequence, duration, or course of conduct is material to the allegation (e.g., incapacitation and stalking)
- Complements, rather than duplicates, the Relevant Evidence Summary
- Investigator should:
  - Focus on relevant events rather than every available detail
  - Represent differing accounts without resolving disputed facts
  - Connect events to supporting evidence sources
  - Use chronology to clarify relationships among multiple pieces of evidence
  - Help the DM identify areas of agreement, disagreement, and uncertainty

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Incident Timeline Example

10:00 PM

Marty's

C and R meet at Marty's Convenience Store and purchase beer, wine, and bread

Travel

C and R travel to R's on-campus apartment and begin consuming alcohol and watching Netflix

Restroom

C uses the restroom and begins feeling "like it took a lot of effort to move [her] limbs" and "everything was going on around [her] in slow motion"

1:47 AM

Roommate Text

W2 texts R and tells him that W2 and W3 are coming back to the apartment; R says he is "entertaining"

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Incident Timeline Example (2)

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Bedroom

R leads C down the hallway from the living room into his bedroom

~2:00 AM

Roommates Return

W2 and W3 arrive at the apartment and have a brief interaction with R in the hallway; R obtains a condom from the bathroom

Alleged Sexual Assault

R engages in penile-vaginal penetration with C; condom is used

4:03 AM

Complainant Text

C texts W1 after C woke up nude with marks on her neck, pain in her genital region, and no recollection of removing her clothes

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Incident Timeline Example (3)

~4:30 AM

Pick-up

W1 picks up C outside of R's residence hall and transports C to the hospital for a sexual assault examination

- Timeline established by using all available information
  - Receipts
  - Text message time stamps
  - Witness statements
  - Party statements
  - Building access records
  - Other

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Relevant Evidence Summary

- Identify the **source** of the information
- Provide enough context for the DM to understand its significance
- Present inculpatory and exculpatory information neutrally
- Use quotations selectively when exact language matters
- Direct the reader to underlying evidence as appropriate
- Avoid unnecessary repetition and immaterial detail

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Organizing the Relevant Evidence Summary

- Content may dictate the most logical organization structure for this section
- Can organize in multiple ways, depending on number of Complainants, Respondents, witnesses, or allegations, as well as the nature and type of the allegations themselves
- Some common approaches
  - By interviewee
  - By allegation
  - Chronological by interview
  - Chronological by incident timeline

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Practice: Organizing the Relevant Evidence Summary

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Using the evidence in the **Organizing the Relevant Evidence Summary** document in the Course Lobby, determine how you would organize the **Relevant Evidence Summary**

- Which information is necessary to include?
- What should be **summarized, paraphrased,** or **directly quoted**?
- Which evidence should be presented together rather than source-by-source?
- Where do the sources **agree**? Where do they **differ**?
- Which differences are material to the allegation?
- How should Marcus's recollection be distinguished from what the contemporaneous text messages actually show?
- How can the evidence be presented without implying a conclusion about consent or credibility?

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From Evidence to Analysis

The Credibility and Analysis sections of a report require the Investigator to:

- Bring together relevant evidence from multiple sources
- Identify material areas of agreement and disagreement
- Consider corroborating, contradictory, and credibility-related evidence
- Connect the evidence to the applicable policy elements
- Explain the significance of evidence when it may not be readily apparent
- Identify material questions the evidence does not resolve
- Stop short of determining whether Respondent violated policy

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Summary, Credibility Assessment, and Analysis

- **Summary:** Presents the relevant information from the evidence
- **Credibility Assessment:** Brings related evidence together to show where sources agree, differ, corroborate, or contradict one another
- **Analysis:** Explains how the evidence relates to the disputed questions and policy elements the Decision-maker must resolve

The Investigator organizes and analyzes the evidence; the DM determines what the evidence proves based on the standard of evidence

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Investigating Fondling Allegations

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Revisit the Fondling Shopping List

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- Respondent intentionally touched Complainant
- Clothed or unclothed genitals, buttocks, groin, breasts, or other body parts (only need one)
- Without Complainant's consent
- For the purpose of sexual degradation, sexual gratification, or sexual humiliation (only need one)

OR

- Respondent caused or directed Complainant to intentionally touch Respondent
- Clothed or unclothed genitals, buttocks, groin, breasts, or other body parts (only need one)
- Without Complainant's consent
- For the purpose of sexual degradation, sexual gratification, or sexual humiliation (only need one)

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Fondling Analysis

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Requires a three-part analysis:

1. Was the touching intentional?
   a. If no, no violation
   b. If yes, move on to Question 2
2. Was the touching consensual?
   a. If yes, no violation
   b. If no, move on to Question 3
3. Was the touching for the purpose of sexual degradation, sexual gratification, or sexual humiliation?
   a. If no, no violation
   b. If yes, policy violation

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Sexual Degradation, Gratification, and Humiliation

- For the purpose of **Fondling** analysis:
  - **Physical contact is required**
  - If the contact involves **private body parts**, the contact is considered for the purpose of **Sexual Gratification** unless specific criteria are met
  - If the contact **does not involve private body parts**, the context surrounding the physical contact is assessed for the presence of indicators of Sexual Degradation, Sexual Gratification, or Sexual Humiliation
  - Typically, a single touch of a non-private body part is not enough to establish Sexual Degradation, Sexual Gratification, or Sexual Humiliation on its own
- Behaviors that could be sexually degrading and humiliation may be part of allegations allegations of Hostile Environment Harassment, Fondling, and Dating and Domestic Violence allegations but are not separate elements in those offenses

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Sexual Degradation

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ATIXA Model Definition:

- Refers to conduct that reduces a person to a sexual object, demeans them on the basis of sex, or portrays them as inferior, subservient, or lacking dignity because of a person's sex or sexual characteristics
- Key aspects include the reduction or objectification of a person's sense of value, not just making the person feel embarrassed
- May manifest as:
  - Verbal
  - Physical/Positional
  - Behavioral/Role-Based
  - Body-Based

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Sexual Humiliation

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ATIXA Model Definition:

- Refers to conduct that causes embarrassment, shame, or loss of dignity through sexualized means
- Sexual humiliation typically involves verbal, physical, or psychological acts that target a person's sense of dignity, self-worth, or bodily autonomy, while being tied to sexual activity, sexuality, or sexual identity
- May manifest as:
  - Verbal
  - Exposure-Based
  - Situational
  - Social

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Sexual Gratification

- ATIXA suggests the following decisional rubric for assessing when it is reasonable to find that the contact in question is **NOT** for purposes of sexual gratification:
  - The contact can be proven inadvertent
  - The contact is for a legitimate medical (or other privileged) purpose and thus is conduct for which consent should have been sought and obtained by the provider
  - The contact involves a Respondent who is pre-sexual, based on maturity/age (thus their intent is not sexual)
  - The contact involves a Respondent who cannot developmentally understand sexual contact or that their contact is sexual
  - The contact is something like butt-slapping on a team and is both minimal and unlikely to have sexual motivation or purpose, as shown by the context of the act(s)

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Fondling Analysis Considerations

Reminder: Evidence of Sexual Degradation or Sexual Humiliation must include a nexus to a physical touch under the Fondling definition

Aspect	Sexual Degradation	Sexual Humiliation
Key Distinction	Objectification and dehumanization are central	Embarrassment and ridicule are central
Core Focus	Lowering status, stripping away respect, or objectifying someone	Shame, embarrassment, ridicule, or being made to feel foolish/exposed
Emotional Impact	Creates feelings of worthlessness or being “less than”	Creates feelings of shame or awkwardness

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Fondling Analysis Considerations (Cont.)

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Aspect	Sexual Degradation	Sexual Humiliation
Verbal Examples	Calling someone demeaning names (“slut,” “whore”), referring to them as an object or “thing”	Mocking sexual performance, laughing at size or appearance, teasing in embarrassing ways
Physical Examples	Forcing someone to crawl, kneel, or serve like a pet; spitting on them as a show of dominance	Forcing someone into silly or awkward sexual positions, making them act in a ridiculous way
Exposure Examples	Treating the person as furniture, a tool, or a disposable body part	Public nudity or forced sexual exposure designed to embarrass
Social Angle	Degradation often emphasizes hierarchy, dominance, and loss of status	Humiliation often involves ridicule or laughter, sometimes in front of others/publicly

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Fondling Considerations for Investigators

- Not all touching of a private body part is a sexual trespass
- Must become skilled at parsing out the policy (i.e., definition of fondling)
- In addition to the three-part intent analysis, there will need to be a thorough consent analysis:
  - The presence of force may be an indicator of sexual degradation
  - Incapacity may be a factor when determining sexual humiliation
- Consent analysis must be both subjectively and objectively applied

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Consent Construct

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ATIXA's Model Consent Policy Definition

Consent is:

- knowing,
- voluntary, and
- clear permission
- by word or action
- to engage in sexual activity



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Overview of The Three Questions

1. **FORCE:** Was force used by the Respondent to obtain sexual or intimate access?
2. **INCAPACITY:** Was the Complainant incapacitated?
   a. If so, did the Respondent know? **OR**
   b. Should the Respondent have known that the Complainant was incapacitated?
3. **CONSENT:** What clear words or actions gave the Respondent permission for each specific sexual or intimate act that took place as it took place?

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Force

Was force used by the Respondent to obtain sexual or intimate access?

Physical Violence

- Hitting, restraint, pushing, kicking, etc.

Threats

- Objective and subjective analysis of the viability of the threat (true threat if public)

Intimidation

- Implied threat that menaces and/or causes reasonable fear

Coercion

- Unreasonable amount of pressure for sexual access (e.g., isolation, frequency, intensity, duration)

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Incapacity

Was the Complainant incapacitated?

- **Incapacitation:** a state where an individual cannot make rational, reasonable decisions because they **lack the capacity** to give knowing consent
  - Unable to understand who, what, when, where, why, or how
  - Incapacity ≠ impaired, drunk, intoxicated, or under the influence
  - Situational awareness
  - Consequential awareness

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Incapacity (Cont.)

- What was the reason for incapacity?
  - Alcohol or other drugs (prescription or non-prescription)
  - Mental/cognitive impairment
  - Injury
  - Asleep or unconscious
- Blackouts are frequent issues
  - Blackout ≠ incapacitation (automatically)
    - Blackout = working memory is functional; short-term memory not retained
    - Partial blackout must be assessed as well
  - Although memory is absent in a blackout, verbal and motor skills may still function, as may decision-making capacity

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Incapacity Analysis

- If the Complainant **was not** incapacitated, move to the Consent Analysis
- If the Complainant **was** incapacitated, but:
  - The Respondent did not know, **AND**
  - The Respondent would not have reasonably known of the Complainant's incapacity = no policy violation, move to Consent Analysis
- If the Complainant **was** incapacitated, and:
  - The Respondent **knew it or caused it** = policy violation
  - The Respondent **should have known it (reasonable person)** = policy violation
  - **Remember:** the Respondent's own intoxication cannot be used as a defense because of the reasonable person standard (though it could mitigate sanctions)

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Evidence of Incapacity: Potential Context Clues

- Slurred speech
- Odor of alcohol on the breath
- Shaky equilibrium; disorientation
- Passing out/unconsciousness
- Throwing up
- Known blackout
- Outrageous or unusual behavior (requires prior knowledge)

Incapacitation determination is made contextually **given all the available relevant evidence**



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Prior Knowledge Construct

- Did the Respondent previously know the Complainant?
  - If so, was the Complainant acting differently than previous similar situations, or out-of-character?
- Evaluate what, if anything, the Respondent observed the Complainant consuming
  - Use a timeline analysis
- Determine if the Respondent provided any substances to the Complainant

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Consent Analysis

What clear words or actions gave the Respondent permission for each specific sexual or intimate act that took place as it took place?

- Is there any relevant sexual or intimate pattern or history between the parties?
- What verbal and/or non-verbal cues were present during any acts or portion of the encounter that the parties agree were consensual? Non-consensual?
  - Contemporaneous communication
- Critical to gather evidence regarding detailed and specific intimate behaviors
- Investigators sometimes think it isn't trauma informed to probe, but probing is part of the job – Investigators must probe gently and with tact

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Analysis in Investigation Reports

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Analysis vs. Determination

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Analysis

- Identifies what is disputed
- Connects evidence to policy
- Examines corroboration and contradiction
- Discusses material credibility considerations
- Explores competing evidence interpretations
- Highlights unresolved questions

Determination

- Resolves the dispute
- Decides whether an element is established
- Assigns weight to the evidence
- Makes ultimate credibility determinations
- Selects the interpretation supported by the standard of proof
- Concludes whether the available evidence satisfies the standard of evidence

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Analytical Actions

Action	Example
Connect	"Both parties agree that…"
Contrast	"The parties provided different accounts of…"
Corroborate	"Yanil's account that he contacted Marcus that evening is corroborated by…"
Qualify	"Marcus did not witness the interaction and therefore cannot corroborate…"
Contextualize	"Yanil reported that the parties began kissing several minutes after the alleged contact"
Identify a Limitation	"Neither party identified a witness who observed the alleged contact"
Connect to Policy	"Regarding consent, the parties provided differing accounts of the interaction immediately preceding the contact"

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Analytical Traps

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Avoid Analytical Shortcuts

- Treating an allegation or denial as proof itself
- Counting witnesses or pieces of evidence rather than evaluating their significance
- Treating every inconsistency as equally important
- Assuming corroboration of one fact corroborates the entire account
- Filling evidentiary gaps with assumptions
- Treating absence of evidence as evidence of absence without considering whether evidence would reasonably be expected
- Using trauma, demeanor, stereotypes, or bias as substitutes for evidence

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Effective Analysis

- Organized around the material questions the DM must resolve
- Connects related evidence from multiple sources
- Identifies meaningful agreement, disagreement, corroboration, and contradiction
- Integrates relevant credibility considerations
- Explains the significance and limitations of evidence
- Addresses evidence that may support competing interpretations
- Identifies material issues that remain unresolved
- Connects the evidence to applicable policy elements
- Provides clear evidentiary analysis without making the determination

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Yanil and Mila – Yanil's Interview Summary

Yanil described his relationship with Mila as friendly and flirtatious. He reported that while they were watching a movie on his bed in his residence hall room, Mila moved his hand onto her breast. Yanil stated that he quickly pulled his hand away. He and Mila later kissed during the interaction. Afterward, Yanil texted Marcus about what had happened and described the interaction as "weird."

Redacted Version

Complainant described Complainant's relationship with Respondent as friendly and flirtatious. Complainant reported that while the Parties were watching a movie on Complainant's bed in Complainant's residence hall room, Respondent moved Complainant's hand onto Respondent's breast. Complainant stated that Complainant quickly pulled Complainant's hand away. The Parties later kissed during the interaction. Afterward, Complainant texted Witness 1 about what had happened and described the interaction as "weird."

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Yanil and Mila – Mila's Interview Summary

Mila described her relationship with Yanil as friendly and flirtatious and reported that they had kissed previously. She acknowledged moving Yanil's hand onto her breast but said she believed he was receptive based on the physical interaction that preceded it. Mila recalled that Yanil's hand remained briefly before he moved it and that he did not verbally object. She also reported that Yanil initiated the kissing that occurred later.

Redacted Version

Respondent described Respondent's relationship with Complainant as friendly and flirtatious and reported that the Parties had kissed previously. Respondent acknowledged moving Complainant's hand onto Respondent breast but said Respondent believed Complainant was receptive based on the physical interaction that preceded it. Respondent recalled that Complainant's hand remained briefly before Complainant moved it and that Complainant did not verbally object. Respondent reported that Complainant initiated the kissing that occurred later.

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Yanil and Mila – Credibility Assessment

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Yanil and Mila agree that Mila moved Yanil's hand to her breast and that Yanil subsequently moved his hand away. Their accounts differ regarding the interaction immediately preceding the contact and what that interaction communicated about whether Yanil welcomed the contact.

Redacted Version

Complainant and Respondent agree that Respondent moved Complainant's hand to Respondent's breast and that Complainant subsequently moved Complainant's hand away. The Parties' accounts differ regarding the interaction immediately preceding the contact and what that interaction communicated about whether Complainant welcomed the contact.

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Yanil and Mila – Analysis

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In evaluating consent, the Decision-maker may want to consider the Parties' differing accounts of the interaction immediately preceding the contact, as well as Yanil's account that he removed his hand shortly after Mila initiated the contact. The timing and sequence of these events may inform the Decision-maker's analysis.

Redacted Version

In evaluating consent, the Decision-maker may want to consider the Parties' differing accounts of the interaction immediately preceding the contact, as well as Complainant's account that Complainant removed Complainant's hand shortly after Respondent initiated the contact. including the timing of that response. The timing and sequence of these events may inform the Decision-maker's analysis.

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Sharpening Your Writing

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Formal vs. Informal Language

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Formal Language

- Medical/anatomical terms
- Accurate terms for alcohol or other drugs, their composition, and use
- Full words – we would, cannot, percent
- Last name, role, titles
- Third-person writing

Informal Language

- Colloquial or slang terms for anatomy (“junk”) or sexual acts (“smashing”)
- “Weed,” “hunch punch,” “hammered”
- Contractions – we’d, can’t
- First name or nickname
- Empathic writing/taking a position

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Word Choice

- Investigation report writing is **clear and factual**
- Avoid:
  - Unnecessary adverbs and adjectives
  - Conclusory words
  - Bias language
  - Judgmental statements

Common Pitfalls

- Abbreviations, initialisms, and acronyms
- Absolutes
- Clichés
- Exaggerations
- Generalizations
- Idioms
- Inconsistency
- Jargon
- Repetition

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Word Choice Exercise: Part 1

Consider the difference a single word makes:

- The Respondent **fondled** the Complainant's breasts while they were sitting next to each other at the movie theater
- The Respondent **felt** the Complainant's breasts while they were sitting next to each other at the movie theater
- The Respondent **caressed** the Complainant's breasts while they were sitting next to each other at the movie theater
- The Respondent **touched** the Complainant's breasts while they were sitting next to each other at the movie theater
- The Respondent **groped** the Complainant's breasts while they were sitting next to each other at the movie theater

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Word Choice Exercise: Part 2

Now that you've considered each of the statements, where would you place the described actions on a continuum from least severe/egregious to most severe/egregious?



The Respondent:

- Fondled
- Felt
- Caressed
- Touched
- Groped

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Word Choice Examples

Poor Phrasing Example: "On September 21, 2016, four upperclassmen male students brought unwelcome sexual activity to Jane Doe and another female student in a stairwell at Maplewood."

Doe v. Metropolitan Government of Nashville and Davidson County, No. 20-6225 (6th Cir. May 19, 2022)

Recommended Revision: Four male upperclassmen engaged in sexual activity with Jane Doe and another female student in a Maplewood stairwell on September 21, 2016. Jane Doe and the other female student allege the sexual activity was unwelcome.

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Active vs. Passive Voice

- **Active Voice:** Used when the subject performs the action
  - Focuses on the doer of the action
  - Best practice
  - **Example:** “You ate six donuts”
- **Passive Voice:** Used when the action is performed upon the subject
  - Focuses on the action; doer is unknown, implied, or irrelevant
  - **Example:** “Six donuts were eaten by you”

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Tense

- Investigation reports are a narrative of events that have already occurred
  - **Past tense is best practice**
  - Avoid changing tenses
    - Exception: Investigator actions for the present or future
- **Present Tense:** expresses anything that is happening now, or is ongoing, constant, or habitual
- **Past Tense:** indicates past events, prior conditions, or completed processes
- **Future Tense:** indicates actions or events that will happen in the future

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Neutral Perspective

- **Investigators may write from the first- or third-person point of view**
  - Third-person creates more distance between the reader and the parties
    - **First-Person:** I asked Complainant to describe what happened next, but Complainant could not recall.
    - **Third-Person:** The Investigator asked Complainant to describe what happened next, but Complainant could not recall.
- Investigators' writing can unintentionally reflect their own biases
  - Focus on information and evidence, not opinions or suppositions
  - Describe evidence in a neutral manner; avoid emotional language or moralizing
- Model language can help maintain a neutral perspective regardless of Investigator
  - Designed so that the report is consistent in tone/format/voice no matter who writes it

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Enhancing User-Friendliness

- Table of Contents
- Page numbers
- Line Numbers
- File naming conventions
- Internal document links
- Incorporating screenshots or summaries of referenced documents



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Footnotes

- Provide a space for definitions, context, or source information that would disrupt the flow of the report
- Description of electronic devices or applications
- References to appendices or evidence file
- Background information
- Relevant evidence source(s)
- If the Investigator is offering context from their own knowledge, make sure it is clearly indicated as such
  - Example: The Investigator notes from personal familiarity with the building that Room 19 is approximately halfway down the hall from the elevator

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Footnotes (Cont.)

- Consider who will be reading the report now and potentially in the future
  - Technology evolves
  - Slang shifts
  - Pop culture references change
  - Businesses come and go
  - Generational differences
  - Cultural differences
- Do not assume common knowledge
- In text, the footnote marker follows punctuation except for the em dash (—)
  - I.e., .[1] vs. [1]—

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Report Review

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Internal Report Review and Feedback

- TIXC and/or legal counsel reviews draft investigation report prior to providing it to the parties, after providing it to the parties, or both
  - ATIXA recommends having legal counsel review before providing the report to the parties
- Reviewer(s) identifies gaps, logic leaps, typographical errors, and substantive issues
- Reviewer(s) should not rewrite any section of the report, but can ask questions and provide suggestions
- Investigator should review and incorporate helpful edits and suggestions

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Six Cs for Report Reviews

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01

CLEAR

Readers can understand the report without needing to interpret vague language or guess at missing details

02

CONCISE

Complex information is distilled into its most essential elements without sacrificing accuracy

03

COHERENT

Connects the dots between evidence, analysis, and recommendations

04

CONCRETE

Includes specific, tangible facts instead of abstract ideas

05

CONSISTENT

Uses the same terminology, formatting, and analytical frameworks from beginning to end

06

CRITICAL

Objectively evaluates evidence for credibility assessment and synthesis

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Feedback Examples

- Respondent said, “You can touch me too if you want.” Complainant did not say if she touched Respondent.
  - **Comment:** Why is this unanswered? As a primary element of their defense, the Respondent is arguing Complainant reciprocated the sexual contact. This is important information.
- Witness 4 also said that Complainant did not explain what Complainant meant when she said she was considering getting Respondent in trouble.
  - **Comment:** Did the Complainant say what she meant by this comment?
- Complainant was told there was no appeal process.
  - **Comment:** By whom? Do you know?

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Parties' Review and Response

- ATIXA recommends sharing the draft investigation report alongside the directly related evidence file
- Must provide **10 days** for written response:
  - Any evidence obtained as part of the investigation that is directly related to the allegations raised in a formal complaint
    - Be sent to each party and Advisor in an electronic format or hard copy
    - Include evidence upon which the Recipient does not intend to rely
    - Include exculpatory and inculpatory evidence
- Check with TIXC on who sends to the parties, typically this is the Investigator

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Tips for Report and Evidence File Sharing

- Use a secure file-sharing platform
  - Consider functional and time limit restrictions as appropriate for the institution's community and process
- Include a separate watermark for each party and Advisor
- Clearly mark **draft** and **final** versions, including draft number
- Ensure the parties have a user-friendly method for providing feedback
- Remind about not disclosing institutional work product, including use of AI



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Post-Review Investigator Response

- Follow-up on all areas, as needed
  - Additional evidence
  - Additional witnesses
  - Questions
- Include each party's review and comment in an appendix
  - Note if a party declined to comment
- Include Investigator response to review and comment in an appendix
  - Rationales for responses
- May footnote additions or clarifications following the review

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Finalize the Report

- Address all appropriate feedback
- Conduct any necessary follow-up investigation
- Resolve identified gaps, logic issues, and unclear attribution where possible
- Document information that remains unavailable or unresolved
- Incorporate party responses and Investigator responses in the appropriate appendix
- Confirm that citations, quotations, evidence references, and links are accurate and functional
- Ensure the report and evidence file are consistently organized and clearly labeled as **final**
- Complete a final review for accuracy, neutrality, completeness, and usability
- Provide the final report and evidence file to the appropriate institutional officials for the next stage of the process

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Questions?

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- Build skills with **20-Minutes-to…Trained** videos
- Get practical guidance at **Time with IX**
- Streamline your work with **TIXKit** templates
- Schedule a **Training and Certification**
- Expand your network in **Mentor Match**
- Explore **Thought Leadership** from ATIXA experts
- Stay informed with the **"More Likely Than Not" Podcast**

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