

**BASIC
INVESTIGATOR
TRAINING**

June 2023



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INVESTIGATOR TRAINING (BASIC)

Your Presenters

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INVESTIGATOR TRAINING (BASIC)

Advisory Notices



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Advisory Notice #1

This training material is provided for public review in accordance with federal law. The material may be utilized only for non-commercial educational and training purposes with the user assuming all risk for utilization of any content herein. Commercial utilization of this material is strictly prohibited.

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Advisory Notice #2

The presentation handout is intentionally text-heavy in order to serve as an ongoing resource for all civil rights investigators in The Texas A&M University System. Please annotate the document as needed to better ensure that this material is meaningful for you.



Advisory Notice #3

The presenters are not providing legal advice; the presenters are compliance officers and investigators and are offering compliance guidance as provided for under System Regulation 08.01.01. System regulations are subject solely to the interpretation of the System Offices.





Advisory Notice #4

The training program includes material under the current System Regulation 08.01.01, previews some of the changes coming under the next regulation and demonstrates areas where we will be transitioning to new practices prior to the implementation of the new regulation.



Advisory Notice #5

Please note that the material being addressed in this program may involve explicit language that some may find offensive or triggering. Nothing is done in this training for “shock value” but will be consistent with the real-world language and details that we are confronted with in civil rights compliance work. If you find yourself reacting negatively, please step away to the degree that you need to, and please seek appropriate assistance if necessary.



Ground Rules



Ground Rules

1. We intend to start and end on time. Please be prompt.
2. There will be a one-hour break for lunch, and ten-minute breaks in both the morning and afternoon.
3. Please minimize distractions (cell phone, email, internet) to focus on the presentation.
4. We will provide opportunities for questions but ask you to keep track of questions that you have and be sure to ask any unanswered questions before the end of the training program.





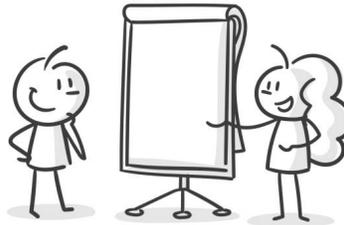
Ground Rules

5. Each person who will conduct civil rights investigations on behalf of a system member or in the System Offices must pass a post-test following the completion of this program.



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Learning Outcomes



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Learning Outcomes

As a result of completing this training, attendees should:

1. Be able to articulate the purpose of the investigation process and the role of the investigator.
2. Be able to articulate and apply listening and questioning skills as needed in the investigation process.
3. Be able to articulate the expectations of System Regulation 08.01.01 as they relate to the investigation process.
4. Be able to articulate the standards of evidence employed in the civil rights process.

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Learning Outcomes

As a result of completing this training, attendees should:

5. Be able to articulate the different types of evidence considered in investigations.
6. Be able to conduct an investigative interview, and identify the steps needed to preserve the information collected in the interview.
7. Be able to articulate the effects of trauma on the investigation process.
8. Be able to articulate how to conduct a credibility assessment of people providing information.

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Learning Outcomes

As a result of completing this training, attendees should:

9. Be able to articulate how to determine if sexual interactions are consensual.
10. Be able to articulate how to write a comprehensive investigation report.



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Day One Agenda

1. Introduction
 - Post-Test
2. The Purpose and Practice of Investigations
 - Purpose
 - Practice
3. Investigation Skills: Listening and Questioning
4. Investigations Skills: Credibility Assessment
5. Introduction of Case Study



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Introduction of Post-Test

We are providing a twenty-question test that we will be utilizing to test your knowledge following the training program. Please keep this document at hand throughout the training and make notes as needed.

Instructions for completing the post-test will be provided at the end of the training program. In order to serve as an investigator in the civil rights process, you must score at least an 80% on the post-test.



Investigations: Purpose and Practice



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Investigations: Purpose

- Role
- Mindset
- Demeanor

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INVESTIGATOR TRAINING (BASIC) 

Investigations: Purpose / Role

Under System Regulation 08.01.01, the role of the investigation process is to collect, compile, and analyze relevant information and evidence in response to a civil rights complaint, to evaluate the inculpatory and exculpatory evidence to determine if the alleged actions took place and to make recommendations for further review of the case.

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Investigations: Purpose / Role

During an investigation, the burden rests on the investigator(s) to identify and collect relevant information and evidence.



Investigations: Purpose / Role

Inculpatory - evidence that would tend to support a finding that a respondent is responsible for or involved in the alleged misconduct.





Investigations: Purpose / Role

Exculpatory - evidence that would tend to support a finding that a respondent did not commit the alleged misconduct.



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Investigations: Purpose / Role

As an investigator, you take no “sides” in the process; your “side” is that of ensuring the neutrality and objectivity of your role as well as the integrity of the investigation process, and the development of a comprehensive investigation report. The investigator must be thorough, reliable, prompt, and fair.



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Investigations: Purpose / Mindset

Thorough – Investigators create a “road map” of the event(s) under investigation and seek to know all relevant details. This means being willing to conduct numerous interviews, being willing to re-interview parties when additional information is needed and documenting all interviews and interactions.



Investigations: Purpose / Mindset

Reliable – Investigators report only the information that they are provided or collect and do not interject personal opinions into the process, either in interviews or in written reports.





Investigations: Purpose / Mindset

Prompt – Investigators create an investigative plan and adapt that plan as the process unfolds, being mindful of deadlines established by the system regulation. Requests for extensions to an investigation are intended to aid investigators to address unusual circumstances and are not intended to make up for a lack of planning.



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Investigations: Purpose / Mindset

Fair – Because investigators are trying to gather all relevant information and evidence, they must provide a space where parties can trust that they can engage in full disclosure without fear of judgment. When analyzing information via the report, investigators are deferential to facts and not to specific parties. Investigators must always strive to be detached, objective, and neutral.



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Investigations: Purpose / Demeanor

Professional –

- Focused on the task at hand
- Seeks all relevant information; follows facts and evidence
- Wary of making assumptions; never assumes they know everything
- Doesn't share personal opinions or conclusions
- Never has an investment in the outcome



Investigations: Purpose / Demeanor

Professional –

- Tracks details closely
- Always seeks witnesses and evidence to corroborate information provided
- Remembers this is an interview, not an interrogation
- Listens carefully to statements and answers
- Remembers to be an active listener





Investigations: Purpose / Demeanor

Professional –

- Asks questions only after pausing to listen to what is said
- Asks questions in a direct but non-accusatory manner
- Doesn't allow gaps or questions to go unanswered
- Maintains eye contact



Investigations: Purpose / Demeanor

Professional –

- And...most importantly... Doesn't write conclusions until the end of the investigation



INVESTIGATOR TRAINING (BASIC)



Investigations: Practice

- Overview (Big Picture)
- Breaking down the Stages
- What Makes a High-Quality Investigation?

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INVESTIGATOR TRAINING (BASIC)



Investigations: Practice

Overview of the Process

Reporting & Intake

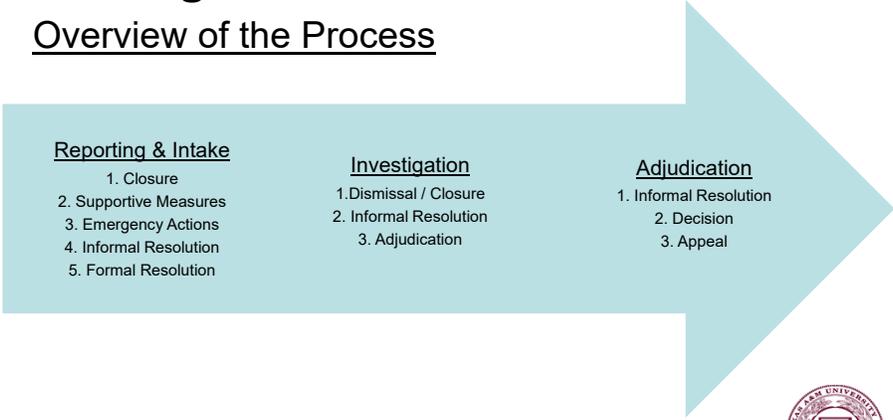
1. Closure
2. Supportive Measures
3. Emergency Actions
4. Informal Resolution
5. Formal Resolution

Investigation

1. Dismissal / Closure
2. Informal Resolution
3. Adjudication

Adjudication

1. Informal Resolution
2. Decision
3. Appeal



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INVESTIGATOR TRAINING (BASIC)



Investigations: Practice

Overview of Investigation Stages

**Pre-
Investigation**

- Notice of Allegations (NOA)
- Pre-Investigation Meeting (Civil Rights Officer/designee and Investor(s))

Interviews

- Complainant, Witnesses, Respondent, Additional Interviews (C, W, R, C, R, W, C, R)
- Interview Summaries and Development of Exhibits

Report

- Initial Draft Report (IDR)
- Final Draft Report (FDR)
- Final Investigation Report (IR)

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Investigations: Practice

Pre-Investigation Meeting

- Review the allegations made and the initial allegation questions to be addressed through interviews
- Determine the scope of the investigation (regulations and rules)
- Single or Co-Investigators? Roles?
 - o Identities and Balance
 - o Complexities of the Investigation/Subject Matter
 - o Preferences/Strengths
- Anticipated Interviews and Review of Evidence
 - o Complainant(s), Respondent(s), Witnesses
 - o What evidence is available or might be available?
 - o What experts/officials might we need to consult?

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Investigations: Practice

Pre-Investigation Meeting

- Scheduling of Interviews
 - o Who is responsible and how will it be done?
 - o 30 min? 45 min? 60 min? Provide time for documentation of interview summary
 - o How will additions or edits be made to the witness list?
- Where to conduct interviews
 - o Type of interview – in person? Video? Telephone? Written?
 - o Will the interviews be recorded?
 - o What building? What room? Who can attend? Role of Advisor?
 - o Emphasis should be on a neutral, quiet, clean, and private setting where the investigator(s) is able to control access and where a safety plan can be developed
 - o What about off-site in special circumstances?



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Investigations: Practice

Preparing for Interviews

- Setting up the Room (In-Person)
 - o Privacy and Safety
 - o What to wear
 - o Water/drinks, tissues, paper, pen, computer
 - o Seating strategy
 - o Accessibility?
 - o Greetings and establishing rapport
- Setting up the Room (Virtual)
 - o Instructions
 - o Check that the technology is working
 - o Make sure you know who is in attendance



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Investigations: Practice

Interviews

- Opening Statement
 - o Introductions and preferred names
 - o Describe the purpose of the interview process
 - o Establish the expectation of truthfulness
 - o Address note-taking/recording
 - o Address privacy
 - o Address retaliation
 - o Address summary of interview and post-interview follow up
 - o Invite questions at all times throughout the interview process
 - o Ask if they have questions now
 - o Review the Interview Acknowledgement Form



Investigations: Practice

Interview Summaries

- Prepare a written summary of the interview
- Summary includes:
 - o Overall topic list
 - o Details of the interview as they relate to information relevant to the subject matter surrounding the allegation(s)
 - o Any direct quotes that you initially believe may be pertinent to the allegation(s)
- Summary should either be reviewed immediately at the end of the interview or emailed to the party/witness, with the investigator providing a window of 48 business hours to respond





Investigations: Practice

Initial Draft Report

- Report includes (see template):

- Complainant and Respondent Names
 - First citation by full name and further citations by last name
 - Substitute replacement of "complainant" and "respondent" is only acceptable when there is a single complainant and a single respondent
- Summary of Complaint (generally 1-3 paragraphs that provide a basic overview of the allegations) – can be the same information utilized in the Notice of Allegations
- List of exhibits
- List of interviews
- Allegation Questions that focus on the behavior as opposed to the regulation(s) or rule(s)



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Investigations: Practice

Initial Draft Report

- Allegation Question (example):

Let's critique:

Did Doe create a hostile work environment for Smith by calling her racial epithets?

Better Version:

Did Doe direct terms such as "****", ****, and ****" toward Smith while in the office?



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Investigations: Practice

Initial Draft Report

- Allegation Questions:

- Are initially formed in the pre-investigation interview
- Are usually solidified after meeting with the complainant and hearing from witnesses
- May be further modified after meeting with the respondent and additional witnesses
- Allegation questions reflect the investigator's understanding of the evidence that has been collected in comparison to the system regulation and member rules, rather than the Complainant's understanding.



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Investigations: Practice

Initial Draft Report

- Allegation Question (example):

Let's critique:

Did Doe intentionally sexually assault Smith?

Better Version:

Did Doe engage in sexual intercourse with Smith? If so, was that sexual intercourse consensual?



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Investigations: Practice

Initial Draft Report

- Allegation Question (example):

Let's critique:

Did Doe engage in Quid Pro Quo sexual harassment of Smith?

Better Version:

Did Doe proposition Smith seeking sexual contact?

Did Doe suggest that Smith would get a pay increase by engaging in sexual contact with Doe?



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Investigations: Practice

Initial Draft Report

- Report includes (see template):

- Allegation Questions that focus on the behavior as opposed to the regulation(s) or rule(s)
- Examination of evidence for each question
 - Note inculpatory evidence supporting the complainant's allegation
 - Note exculpatory evidence supporting the respondent's defense
 - Assess the credibility of people who have provided inculpatory and exculpatory evidence
 - Only include information from parties and witnesses that are specific to the allegation
 - Take only highlighted (relevant to specific allegation) material from exhibits and place it in the body of the section – do not place the entire witness summary/exhibit into the report
 - Avoid references to exhibits in the body of the report whenever possible. Making reference to them in the Examination of Evidence or Conclusion sections requires that the exhibits be shared as a part of the investigation report review process. All facts pertinent to the allegations should be in the report, and not hidden in exhibits.



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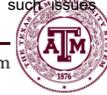


Investigations: Practice

Initial Draft Report

- Report includes (see template):

- o Conclusion
 - o The allegation occurred/did not occur/cannot be substantiated by the available evidence
 - o If determining that the allegation did not occur, is there substantial evidence to make the allegation arguable?
 - o Do not use subjective language (e.g., "It appears as though...", "In the opinion of the investigator...")
 - o Add no more than a paragraph explaining the conclusion (should refer back to information from the examination of evidence – no new references here)
- o Final Comments
 - o Use this section to identify and summarize any potential system regulation or member rules violations that result from the investigation process that is not already identified through the allegation question(s).
 - o Do not include commentary or observations about other parties or departments or problematic practices, nor make recommendations for outcomes/sanctions. Any identification of such issues should be directed to the civil rights officer via a separate memorandum.



Investigations: Practice

Initial Draft Report

- Once the Initial Draft Report (IDR) is prepared:

- Provide report to Civil Rights Officer for spot check
- Civil Rights Officer forwards the report to SECO Staff, OGC Staff, and OGC Legal Assistant – copying Investigator(s)
- Feedback from OGC/SECO to be provided directly to the Investigator(s), but will copy the Civil Rights Officer
- NO OTHER PEOPLE ARE TO HAVE ACCESS TO THE IDR





Investigations: Practice

Final Draft Report

- Once feedback has been provided to the Investigator(s) by SECO & OGC, the investigator:
 - o Answers questions and concerns raised in the feedback from the system
 - o May seek additional feedback from the system if desired/needed
 - o Prepares a final draft report that will be sent by the Investigator(s) or the Civil Rights Officer to the parties for a ten (10) business day review period
 - o The report is to be accompanied by any exhibits that are specifically referred to in the body of the report (other than the listing of exhibits)
 - o The report shared with parties **must not** include any internal commentary from the member, OGC, and/or SECO; this document should be a "clean" copy



Investigations: Practice

Final Investigation Report

- If the ten (10) business day report review period passes with no comments submitted, the Investigator(s) finalizes the report, with an acknowledgement that feedback was not received
- If one or both parties submit commentary, the commentary is to be added to the exhibit list as it is submitted to the investigator; the investigator(s) then determines if the feedback requires any adjustment to the body of the report before it is submitted for review
- The final investigation report is forwarded to OGC & SECO in the same manner as the IDR; a review may be waived by joint agreement of the member and the system if there have no substantive changes to the report since the IDR





Investigations: Practice

Final Investigation Report

- Once the investigator(s) finalizes the investigation report, it is forwarded to the Civil Rights Officer for a review of charges (under the coming regulation); the Civil Rights Officer sends the charge letter (or dismissal letter) along with the final report and exhibits to the adjudicatory authority. A copy of the final report and the charge letter are submitted by the Civil Rights Officer to the complainant(s) and respondent(s), as well as uploaded into the reporting portal for OGC and SECO.



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Investigations: Practice

What Makes a High-Quality Investigation?

- Final Report is both **Accurate** and **Thorough**
 - ✓ Demonstrates High Effort to gather all relevant evidence and reach a conclusion supported by that evidence
 - ✓ Process is Flexible and Adaptable
 - ✓ Demonstrates High Attention to Detail
 - ✓ Demonstrates High-Level Analytical Thinking



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<p>High Accuracy, Low Thoroughness: The “Cookie Cutter” Investigation</p> <ul style="list-style-type: none"> - Low effort to understand “big picture” and high effort to provide the details - Process is unplanned or tied too tightly to a plan (inflexible) - Presented at face value, lacking analytical thinking - Misses implications of the details 	<p>High Accuracy, High Thoroughness: The “High Quality” Investigation</p> <ul style="list-style-type: none"> - High effort to provide a “big picture” that is supported by the details - Process is planned but highly flexible - Analytical thinking results in the details determining the conclusion - Details continually analyzed in the light of new information
<p>Low Accuracy, Low Thoroughness: The “I didn’t even try” Investigation</p> <ul style="list-style-type: none"> - Low effort to understand “big picture” and low effort to provide the details - Process is unplanned and counter-productive - Presented at face value, lacking analytical thinking - Misses implications of the details 	<p>Low Accuracy, High Thoroughness: The “Predetermined Conclusion” Investigation</p> <ul style="list-style-type: none"> - High effort to paint “big picture” independent of the details - Process highly planned and tightly controlled without regard to details - Analytical thinking steers facts to a particular conclusion - Details skewed to the conclusion

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Investigations: Practice

What Makes a High-Quality Investigation?

A high-quality investigation is a direct reflection of how well an investigator does their job. When evaluating investigation and reports and the work of investigators, we will focus on all of the following:

- Is the investigator treating everyone equitably and with respect?
- Does the investigator demonstrate an understanding of 08.01.01?
- Is the investigator applying the training provided by SECO?
- Is the investigator utilizing templates and resources from the website?
- Is the investigator demonstrating an intentional and flexible process?
- Is the investigator writing a report that includes all relevant information and does not include unnecessary information?
- Is the investigation conducted in a timely manner?

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Investigations: Practice

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INVESTIGATOR TRAINING (BASIC)



Investigations Skills: Listening and Questioning



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INVESTIGATOR TRAINING (BASIC) 

Listening Skills

- Active Listening
- Intentional Listening
- Listening Tips

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INVESTIGATOR TRAINING (BASIC) 

Listening Skills

Activity #1

Active Listening

Active listening activity: “Are you hearing me?”

Choose a Partner A and a Partner B. Partner A will share a story of something important that has happened to or for them in the past five years that they are willing to share in public.

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Listening Skills

Activity #1

Active Listening

Active listening activity: "Are you hearing me?"

Partner B will now share a story of something important that has happened to or for them in the past five years that they are willing to share in public.



Listening Skills

Activity #1

Active Listening

- What do positive listening skills look like?
- How do positive listening skills make the story-teller feel?
- What do negative listening skills look like?
- How do negative listening skills make the story-teller feel?





Listening Skills

Activity #2

Intentional Listening

Intentional listening activity: "Are you really hearing me?"

Choose Partner A and Partner B. Partner A will share a different story of something important that has happened to or for them in the past five years that they are willing to share in public.



Listening Skills

Activity #2

Intentional Listening

Intentional listening activity: "Are you really hearing me?"

Partner B will now tell Partner A what they believed were the most important parts of the story and describe the feelings that they believe Party A associates with the story.





Listening Skills

Activity #2

Intentional Listening

Intentional listening activity: “Are you really hearing me?”

Partner B will now share a different story of something important that has happened to or for them in the past five years that they are willing to share in public.



Listening Skills

Activity #2

Intentional Listening

Intentional listening activity: “Are you really hearing me?”

Partner A will now tell Partner B what they believed were the most important parts of the story and describe the feelings that they believe Party A associates with the story.





Listening Skills

Activity #2

Intentional Listening

- How accurate were both partners in describing back the story and associated feelings to each partner?
- As a listener, do you feel a difference between your normal conversational listening and intentional listening?
- If yes, what is that difference?
- How do you stay “in the moment” when listening?



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Listening Skills

Listening Tips

- Stay Focused on the Interviewee
- Maintain open body posture
- Routinely offer eye contact
- Remain cognizant of your own listening “quirks”
- Minimize external distractions
- Provide uninterrupted time for story-telling whenever it is yielding relevant information



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Listening Skills

Listening Tips

- Demonstrate empathy (not sympathy)
- Restate and validate as appropriate
- Mirror positive mannerisms
- Note words and terms in need of further definition
- Stay emotionally uninvolved with the content
- Utilize positive silence



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Questioning Skills

- O/C/O Questioning Method
- The 5 W's and 1 H
- Money Questions
- Deception
- Closing Questions
- Questioning Tips & Cautions



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Questioning Skills

Activity #3

Partner Interview, Part One

Choose Partner A and Partner B. Partner A will interview Partner B about their life, using only open-ended questions. They may not ask any questions about details, or ask any questions requiring a yes/no or other detailed response (number, date, time, etc.)



Questioning Skills

Activity #3

Partner Interview, Part Two

Partner B will interview Partner A about their life, using only closed-ended questions. They may not ask any questions that invite broad disclosure, but must only utilize questions intended to evoke a yes/no or other detailed response (number, date, time, etc.)





Questioning Skills

Activity #3

Partner Interview, Processing

Partner A and Partner B should now briefly discuss items that they wanted to know but were unable to ask about.



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Questioning Skills

Activity #3

Partner Interview, Processing

Large Group Discussion:

1. How complete of a picture were you able to secure when you were asking questions (open or closed)?
2. What was the value of asking open-ended questions? What was missing?
3. What was the value of asking closed-ended questions? What was missing?
4. What is a takeaway from this exercise?



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Questioning Skills

ATIXA Framework

ATIXA offers us a helpful guide for asking questions:

1. What do I want to know?
2. Why do I want to know it? (relevance)
3. Is now the best time to ask it?
4. What is the best way to ask it? (directly or indirectly)
5. Am I the best person to ask it? (if there are two investigators)



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Questioning Skills

O/C/O Questioning Method

Begin with **Open-ended** questions

- Allows interviewee to tell a narrative of what is important/ stands out/ and/or is prepared (uninterrupted)
- Creates a framework or outline of the story as the person sees it
- Is usually very incomplete and invites follow-up questions to collect details



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Questioning Skills

O/C/O Questioning Method

Open-ended questions:

- Please tell me...
- Please describe...
- What...
- How...



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Questioning Skills

O/C/O Questioning Method

Move to **Closed-ended** questions

- Allows the interviewer to develop definitions of terms that have been used but lack specificity
- Allows the interviewer to collect details about events, places, timelines, and people
- Enables the interviewer to better understand the overall course of events



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Questioning Skills

O/C/O Questioning Method

Closed-ended questions:

- Tell me what you mean by...
- Where...
- When...
- Do/Did you...
- Are you...
- Have you...
- Is this...
- Please show me... (inviting drawing or demonstration)



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Questioning Skills

O/C/O Questioning Method

Return to **Open-ended** questions

- Allows the interviewer to gather information about causes, intentions, effects, and reactions
- Completes the picture of the event by attaching the motivations and feelings surrounding the event



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Questioning Skills

O/C/O Questioning Method



Open-ended questions:

- What led you...
- How did this...
- How did you feel...
- Tell me more about...
- Help me understand...



Questioning Skills

The 5 W's and 1 H



- **Who**...
- **What**...
- **When**...
- **Where**...
- **Why**...
- **How**...





Questioning Skills

The Problem of **Why** Questions

- “Why” questions ask for reasons or justifications, as opposed to seeking recall or reflection
- “Why” questions may call for an answer that someone does not possess, but because it is seeking reasons or justification, often leads to defensiveness



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Questioning Skills

The Problem of **Why** Questions

- Instead of “**Why** did you say/do that...?”
 - “**What** led you to say/do that...”
- Instead of “**Why** do you think...?”
 - “**What** do you suppose...”

Both reframing examples invite deeper reflection rather than a reaction



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Questioning Skills

Money Questions



As an investigator, you have been tasked with collecting evidence to determine if one or more allegations of wrongful conduct are true. Yet many investigators never ask the “money” question --- “Did you ...?”



Questioning Skills

Money Questions



- Require a person to provide a definitive “yes” or “no” to a question and allow the investigator to line up facts and evidence that may either support or challenge this answer
- Can be helpful in aiding a party to differentiate between denying that they did something versus acknowledging that they did something but inviting the context of what led someone to take specific actions





Questioning Skills

Deception



- In some cases, investigators may become suspicious that information being provided by a party or witness is incomplete, misleading, or false
- Investigators cannot let this suspicion consume the investigator (or the investigation) and allow the investigator to become overly focused



Questioning Skills

Deception



- Suspicion of deception is not sufficient to undermine the credibility of parties within the report
- Rather, it is up to the investigator to distinguish causes for why someone's credibility might be impeached (this will be covered under Credibility Assessment)
- What the suspicion gives cause to the investigator to do is to continue asking questions, to probe further into the story, and seek details that might be corroborated





Questioning Skills



Deception

- Investigators do not explicitly conclude that a party or witness is lying to them; they instead provide the statement of that person and juxtapose it to the evidence that has been collected
- There is a substantive difference between:
 - "As the investigator, I conclude that Smith was lying to me..." *versus*
 - "While Smith claims he was not in the room, this assertion is inconsistent with the video evidence and the testimony of three witnesses."



Questioning Skills



Define Terms

- Don't allow parties to use undefined terms – get definitions before moving on

Sample terms to define:

- | | |
|-----------------------|--------------------|
| hooked up | drunk (or high) |
| had sex | harassed |
| friends with benefits | stalked |
| relationship | disrespectful/rude |
| intimidated/coerced | discriminated |





Questioning Skills



Closing Questions

- Investigators should generally end with questions that invite additional information and a broader perspective.
 - Is there anyone else you think I/we should talk to?
 - Are there questions that I/we should have asked you but did not?
 - Is there anything else that you think I/we should know?



Investigations: Practice

Interviews

- Closing Statement
 - o Provide contact information and invite additional information
 - o Address summary of interview and post-interview follow up
 - o Reiterate privacy
 - o Reiterate retaliation
 - o Thank them for their participation





Questioning Skills

Questioning Tips

- Create a timeline of the event(s) and be able to place the evidence and testimony collected into this timeline to see where there are areas of corroboration and/or dispute
- Be patient and provide time for people to answer; utilize the power of silence
- Strive for equitable treatment of all parties being interviewed; treat all parties with respect



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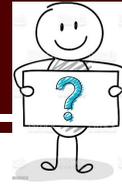
Questioning Skills

Questioning Tips

- Remember that the party controls the content that they provide to us, but the investigator controls the process by which the information is gathered. If we lack information at the end of an investigation, it is most often because the investigator did not ask questions that needed to be asked, allowed a party not to answer a question, and/or did not ask parties to provide definitions for the terms they were using.



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Questioning Skills

Questioning Tips

- Demonstrate empathy, not sympathy or agreement
- Acknowledge that a person may be experiencing the effect of a traumatic event, but understand that you cannot diagnose whether or not trauma is present
- If a person is getting emotional, offer the option of a break
- Always remember to ask follow-up questions, clarification questions, and re-ask questions when you do not have a clear answer



Questioning Skills

Questioning Cautions

- Do not provide witnesses with more information than they are entitled to
- Do not threaten parties with what you may write in the report
- Do not ask leading questions (answers embedded)
- Avoid multi-part and multiple-choice questions
- Avoid confirmation bias by asking questions framed to a conclusion that you may be reaching





Questioning Skills

Questioning Cautions

- Avoid using the interview as a “teachable moment”
- Don’t demonstrate discomfort with the language or subject matter that is being addressed
- Don’t try to “fix” their emotions; they are allowed to be angry, cry, etc.



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Questioning Skills

Questioning Cautions

- Stay at 20,000 feet – don’t let the party pull you into the fray
- If you suspect a rehearsed story, ask questions out of sequence and/or re-ask questions in different words
- If multiple parties are all saying “exactly” the same thing, probe further for specifics less likely to be rehearsed
- Don’t become the person’s emotional support, but make sure that resources have been provided



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Questioning Skills

Questioning Cautions

One of the keys to being a successful investigator is never becoming an issue in the investigation. By conducting oneself professionally and avoiding judgment and unnecessary confrontations, the focus of the investigation remains where it should be – on the parties and on the evidence.



Questioning Critique

Activity #4

As a large group...

Let's consider each of the following sex-based questions from an investigator and offer an assessment of whether or not we think it is an effective question:





Questioning Critique

Activity #4

Sex-Based Questions

1. What was your goal when you offered to take the person home?
2. It's fair to say that you had way too much to drink, isn't it?
3. I have a couple of questions: First, could you tell they were incapacitated?; and second, why did you give them another drink when they already appeared to be really drunk?
4. How did you know that you had consent to...?



Questioning Critique

Activity #4

Sex-based Questions

5. Do you have a mother or sister? How would you feel if this happened to her?
6. How many drinks had you consumed... 2? 5? 10?
7. Do you remember the training session you completed on Title IX and consent and harassment?
8. Why would you say that?



INVESTIGATOR TRAINING (BASIC)



Listening and Questioning Skills



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INVESTIGATOR TRAINING (BASIC)

Credibility



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Credibility Assessments

The credibility of parties and witnesses can greatly influence the outcome of our complaint resolution processes, and the federal government expects us to assess the credibility of parties and witnesses in sex-based processes. But credibility is not often well-understood. Just how can someone be deemed to be credible, and another person be considered not credible, or how can a person maintain credibility in one area of the investigation and lose it in another?



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Credibility Factors

- Plausibility
- Relevance
- Consistency
- Bias
- False Information
- Admissions



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Credibility Factors

Plausibility

Plausibility is a measure of believability and likelihood:

- Is conceivable and/or supported by corroborating evidence
- The less likely something is to be true, the greater the evidence required to establish a likely outcome
- In general (Occam's Razor, Probability Theory, etc.), when all things are equal the simpler option is the more likely, barring sufficient evidence to the contrary
- Plausibility is more affected by the quality of the evidence rather than the quantity of it



Credibility Factors

Relevance

Relevance is a measure of whether or not the evidence is germane to the allegation(s) under review

- Is offered by someone who could reasonably have such knowledge
- Is inculpatory or exculpatory by itself, or reinforces the conditions under which inculpatory or exculpatory evidence is being evaluated
- Relates substantively to the specific allegations and/or specific pattern of behavior rather than to "like" incidents, circumstances, or people





Credibility Factors

Consistency

Consistency is a measure of the reliability of the information and the people providing it

- Does not contradict itself over multiple tellings (major inconsistencies versus minor inconsistencies)
- Comes from a source that cannot be substantively discredited
- Too much consistency may present a cause for concern



Credibility Factors

Bias

Bias is a measure of the degree to which people's stories may be influenced by the people involved, the subject matter involved, and/or their own experiences

- Bias of parties/witnesses for or against individuals
- Bias of parties/witnesses based on the subject matter
- Bias of parties/witnesses based on their own experiences
- Bias brought into an investigation by the investigator(s)





Credibility Factors

False Information

If someone is demonstrated to have provided the investigator with false information, it presents a challenge to their credibility in the overall process

- What did they provide false information about?
- Did they acknowledge providing false information?
- Why were they providing false information?
- Does this carry over into portions of their participation or can it be seen as more limited?



Credibility Factors

Admissions

If someone admits to wrongdoing, does that add to or detract from their credibility overall?

- What are they admitting to?
- Why are they admitting to it?
- Is their admission supported by the available evidence?
- Is the admission seeking to mitigate damage and consequence or does it present as a true acceptance of responsibility?





Credibility Activity

Activity #5

Scale of Credibility

Based solely on the information provided, please rank the following people from most credible (1) to least credible (5).

1. An underaged respondent who lies about an alcohol violation during an investigation over a sexual assault allegation.
2. A complainant making an allegation about something that happened between the complainant and respondent without any evidence or witnesses.
3. A witness unrelated to both parties who observed the incident in question.
4. A respondent who lies about their alibi for the day of the incident in question.
5. A witness for the respondent who provides evidence on their behalf

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Credibility Assessments

Initial Draft Report

- Preferred Credibility Statements:

- o "The investigator found no cause to question the credibility of statements made by Doe."
- o "The investigator found that Smith's credibility was challenged by..."
 - o Cite Persuasiveness, Relevance, Consistency, Application of Bias, False Information, or Admission factor(s)
- o "The investigator found that Ortega's credibility was reinforced by..."
 - o Cite Persuasiveness, Relevance, Consistency, Lack of Bias, Corroboration, or Admission factor(s)

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Credibility Assessments



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INVESTIGATOR TRAINING (BASIC)

Case Study –



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Case Study

- Introduction
 - o Case Study Group Assignments
 - o Case Study Rules
 - o Case Study Introduction
 - o Handout of Role Player Materials



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Case Study

- Introduction
 - o Case Study Group Assignments
 - We have provided a list of groups that will be working together, we will make changes centrally as needed
 - Please determine the roles that you plan to fill



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Case Study

- Introduction

o Case Study Rules

- Complainant, Respondent, and (2) Witnesses – review your scripts closely tonight; stick to the script and do not add any complicating factors
- Investigators – discuss how you want to proceed in the interviews; be sure to allow each investigator to take the lead at different times; prepare a personalized opening statement tonight
- In groups not divisible by 6, we can have people rotate in as investigators by mutual agreement



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Case Study

- Case Study Introduction (1/2)

During an intake meeting with the Title IX Coordinator at Huntsville A&M University, a second-year graduate assistant (Complainant) filed a verbal allegation of sexual harassment against the tenured professor who serves as their supervisor. According to the complainant, the respondent invited them to attend a conference that took place a couple of weeks ago and provided the student with the opportunity to participate in presenting research material at a conference program. The student accepted and everything was fine until they arrived at the conference and the student found out that they would be staying in the same room as the respondent.



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Case Study

- Case Study Introduction (2/2)

While the first night went uneventfully and the conference presentation went well, on the second night the Respondent propositioned the Complainant, kissed their neck and started to open their robe, and told them that now that the Respondent had helped the Complainant with their career, it was time to return the favor and help the Respondent out. According to the Complainant, the Respondent told the Complainant that they might as well just agree to “fuck and enjoy,” since people back on campus were going to think it happened either way. The Complainant refused the advances and locked themselves into the room for the night.



Case Study



INVESTIGATOR TRAINING (BASIC)



SEE YOU TOMORROW

WOOHOO!!!

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INVESTIGATOR TRAINING (BASIC)



Day Two Agenda

1. Federal Law
2. State Law
3. System Regulation 08.01.01
4. Standards of Evidence
5. Case Study Preparation and Interviews
6. Types of Evidence
7. Trauma and Rape Trauma

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Federal Law



Select Federal Laws

- Title IX
- Violence Against Women Act (VAWA)
- Title VII
- Americans with Disabilities Act (ADA)
- Pregnant Workers Fairness Act (PWFA)





Title IX

37 simple words...

“No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance.”

Title IX of the Education Amendments of 1972



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Title IX

Historical Areas of Enforcement:

- Equity in Athletics Opportunities
- Equity in Scholarships/Financial Aid
- Equity in Program Access
- Sex-based Harassment
- Pregnant and Parenting Students
- Gender Identity, Gender-based Stereotypes, and Sexual Orientation

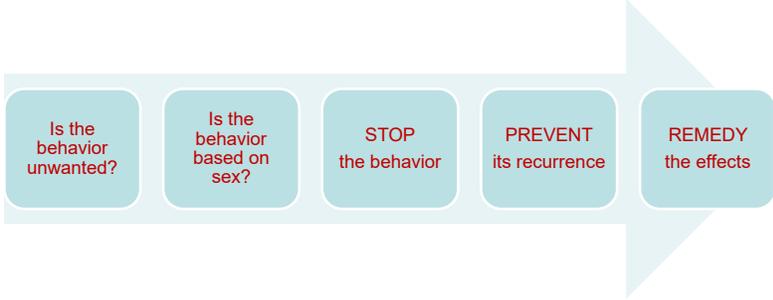


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INVESTIGATOR TRAINING (BASIC) 

Title IX

Member Obligations:



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INVESTIGATOR TRAINING (BASIC) 

VAWA (2022 Reauthorization)

Changes:

- New and Expanded Definitions (domestic violence, economic abuse, technological abuse, restorative practice, etc.)
- Mandated Campus Climate Survey

VAWA is where some of our due process requirements in sex-based cases emanate from (besides Title IX)

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Title VII

Title VII of the Civil Rights Act of 1964

Protects employees and job applicants from employment discrimination based on race, color, religion, sex, and national origin (if their employer has 15 or more employees)



Americans with Disabilities Act

Prohibits discrimination against people with disabilities in several areas, including employment, transportation, public accommodations, communications, and access to state and local government programs and services for both employees and job applicants; ADA also prohibits discrimination in programs or activities that receive federal financial assistance





Pregnant Workers Fairness Act

(Goes into effect 6/27/2023)

The PWFA is a new law that requires covered employers to provide “reasonable accommodations” to a worker’s or applicant’s known limitations related to pregnancy, childbirth, or related medical conditions unless the accommodation will cause the employer an “undue hardship.”

The PWFA applies only to accommodations.



State Law





Select State Laws

- Senate Bill 212 (2019)
- House Bill 1735 (2019)
- House Bill 449 (2019)



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86 (R) Senate Bill 212

AN ACT; relating to a reporting requirement for certain incidents of sexual; harassment, sexual assault, dating violence, or stalking...

- Requires employees to report incidents to TIXC or DTIXC (criminal/employment penalties for not doing so)
- Requires confidential reporters to provide Clery data
- Provides immunity to those reporting in good faith
- Adds CEO reporting requirement
- Enforced by THECB



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86 (R) House Bill 1735

AN ACT; relating to a reporting requirement for certain incidents of sexual; harassment, sexual assault, dating violence, or stalking...

- Requires policies
- Confidentiality requirements
- Trauma-informed training for police
- Collaboration with Third Parties (MOUs)
- Due process requirements
- Enforced by THECB



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86 (R) House Bill 449

AN ACT; relating to a requirement that a public or private institution of; higher education include a notation on a student's transcript...

- Requires higher education institutions to include transcript notations for disciplinary reasons
- Requires that higher education institutions must complete the disciplinary process if a student withdraws with a pending complaint
- Enforced by THECB



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A&M System Regulation 08.01.01



The Texas A&M University System

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A&M System Regulation 08.01.01

- Important Definitions
- Prohibited Conduct
- Supportive Measures
- Emergency Actions
- Informal Resolution
- Advisors
- Related Allegations



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A&M System Regulation 08.01.01

- Unrelated Allegations
- Reluctant Parties
- Recording Interviews
- Report Writing and Outcomes
- Timeline and Mechanics of Investigation
- Extensions



A&M System Regulation 08.01.01

Status of Current Proposed System Regulation 08.01.01

Regulation Overview

Definitions

Regulation

1. Responsibilities of Members
2. Responsibilities of All Employees and Students
3. Responsibilities of the Office of General Counsel (OGC) and the System Ethics and Compliance Office (SECO)
4. Civil Rights Complaint Processing





A&M System Regulation 08.01.01

4. Civil Rights Complaint Processing

- 4.1 Reporting and Administration
- 4.2 Intake of Civil Rights Complaints
- 4.3 Civil Rights Investigations
- 4.4 Adjudication of Civil Rights Cases
- 4.5 Adjudication of Discrimination Complaints (appendix)
- 4.6 Adjudication of Sex-Based Harassment Complaints (appendix)
- 4.7 Noncompliance with the Regulation
- 4.8 Resolution of Noncompliance Allegations
- 4.9 Record Keeping



A&M System Regulation 08.01.01

Important Definitions (proposed language)

Consent – clear, voluntary, and ongoing agreement to engage in a specific sexual act. Persons need not verbalize their consent to engage in a sexual act for there to be permission. Permission to engage in a sexual act may be indicated through physical actions rather than words. A person who is asleep or mentally or physically incapacitated, either through the effect of drugs or alcohol or for any other reason, or whose agreement was made by threat, coercion, or force, cannot give consent. Consent may be revoked by any party at any time.





A&M System Regulation 08.01.01

Important Definitions (proposed language)

Coercion – the act, process, or power of compelling a person to take an action, make a choice, or allow an action to happen that they would otherwise not choose or give consent to by subjecting the person to physical harm or serious non-physical harm or threatening the person with such harm when the threat of harm can reasonably be believed to exist.



A&M System Regulation 08.01.01

Important Definitions (proposed language)

Complicity – an action knowingly taken and/or an intentional lack of action to aid someone else in committing a violation of this regulation. Employees are expected not to aid others in committing a violation of this regulation and/or through a lack of action allow a violation to commence and/or continue. As noted in Section 2.1, employees are expected to report any such violation. Students are expected not to aid others in committing a violation of this regulation and/or to remove themselves from any setting in which a violation of this regulation is taking place. The degree to which an individual is considered complicit is subject to investigation and adjudication under this regulation.





A&M System Regulation 08.01.01

Important Definitions (proposed language)

Predation – an intent to engage in acts of misconduct prior to their occurrence demonstrating premeditation, planning, forethought, and/or the use of force and is reflected in communicated intent (physical, verbal, visual, or written), threats directed at a party, attempts to incapacitate a party, attempts to isolate a party, utilizing physical force or violence, or other actions that a reasonable person would construe as a pre-meditation to engage in actions that are unwanted by/against the complainant. Committing any of these actions with an individual under the age of consent is also considered predatory. Predation is considered an aggravating factor during the sanctioning phase of the adjudicatory process.



A&M System Regulation 08.01.01

Important Definitions (proposed language)

Designated Administrator – an administrator responsible for conducting a review of all available evidence, reaching decisions with respect to violations of system regulations and member rules and imposing sanctions for any violations found when the case is adjudicated without a formal hearing. No person may serve as a designated administrator in a matter in which there is a clear conflict of interest or personal bias.





A&M System Regulation 08.01.01

Important Definitions (proposed language)

Hearing Officer – A staff or faculty member responsible for reviewing all available evidence, reaching decisions with respect to violations of system regulations and member rules, and imposing sanctions for any violations found when the case is adjudicated through a formal hearing. No person may serve as a hearing officer in a matter where there is a clear conflict of interest or personal bias, or when that person has not completed the required training. Whether a member uses a hearing officer, hearing panel, or both for purposes of conducting formal hearings shall be articulated in the member's rule.



A&M System Regulation 08.01.01

Important Definitions (proposed language)

Hearing Panel – A group of staff and/or faculty members responsible for reviewing all available evidence, reaching decisions with respect to violations of system regulations and member rules, and imposing sanctions for any violations found when the case is adjudicated through a formal hearing. No person may serve on a hearing panel in a matter where there is a clear conflict of interest or personal bias. Hearing Panels shall consist of three individuals who make their determinations by majority vote. Hearing Panels shall be advised by a hearing panel advisor who will monitor compliance with this regulation and member rules during the proceeding, as well as oversee and advise the hearing panel during deliberations. The hearing panel advisor shall not have a vote on the outcome of the hearing. Whether a member uses a hearing officer, hearing panel, or both for purposes of conducting formal hearings shall be articulated in the member's rule.





A&M System Regulation 08.01.01

Important Definitions (proposed language)

Sex-Based Harassment – harassment on the basis of sex that is:

(1) Quid pro quo harassment – an employee, agent, or other person authorized by the member to provide an aid, benefit, or service under the member’s education program or activity explicitly or impliedly conditioning the provision of such aid, benefit, or service on a person’s participation in any unwelcome sexual activity;



A&M System Regulation 08.01.01

Important Definitions (proposed language)

Sex-Based Harassment – harassment on the basis of sex that is:

(2) Hostile environment harassment – unwelcome sex-based conduct that is sufficiently severe or pervasive that, based on the totality of the circumstances and evaluated subjectively and objectively denies or limits a person’s ability to participate in or benefit from the member’s education program or activity (i.e., creates a hostile environment). Whether a hostile environment has been created is a fact-specific inquiry that includes consideration of the following:

- a. The degree to which the conduct affected the complainant’s ability to access the recipient’s education program or activity;
- b. The type, frequency, and duration of the conduct;
- c. The parties’ ages, roles within the recipient’s education program or activity, previous interactions, and other factors about each party that may be relevant to evaluating the effects of the alleged unwelcome conduct;
- d. The location of the conduct, the context in which the conduct occurred, and the control the recipient has over the respondent; and
- e. Other sex-based harassment in the member’s education program or activity.





A&M System Regulation 08.01.01

Important Definitions (proposed language)

Sex-Based Harassment – harassment on the basis of sex that is:

- (3) Specific Offenses – including:
 - a. Sexual assault (see definition);
 - b. Dating violence (see definition);
 - c. Domestic violence (see definition); and/or
 - d. Sex-based stalking (see definition for Stalking)



A&M System Regulation 08.01.01

Important Definitions (proposed language)

Sexual Assault – any sexual act directed against another person, forcibly and/or against that person’s will (without their consent); or not forcibly or against the person’s will where the victim is incapable of giving consent.





A&M System Regulation 08.01.01

Important Definitions (proposed language)

Sexual Exploitation – a situation in which an individual(s) takes non-consensual or abusive sexual advantage of another for their own advantage or benefit, or to benefit or advantage anyone other than the one being exploited. For example, sexual exploitation could include such actions as technological abuse (see definition below), voyeurism, invasion of sexual privacy, nonconsensual sexual contact, exposing one's genitals or causing another to expose one's genitals, and knowingly exposing another person to a sexually transmitted infection or disease without their consent. Aiding another in the commission of sexual exploitation is also prohibited under this regulation.



A&M System Regulation 08.01.01

Important Definitions (proposed language)

Harassment – behavior on the basis of a protected class that is: unwelcome conduct on the basis of a protected class that is sufficiently severe or pervasive that, based on the totality of the circumstances and evaluated subjectively and objectively denies or limits a person's ability to participate in or benefit from the member's education program or activity (i.e., creates a hostile environment). Whether a hostile environment has been created is a fact-specific inquiry that includes consideration of the following:





A&M System Regulation 08.01.01

Important Definitions (proposed language)

- a. The degree to which the conduct affected the complainant's ability to access the recipient's education program or activity;
- b. The type, frequency, and duration of the conduct;
- c. The parties' ages, roles within the recipient's education program or activity, previous interactions, and other factors about each party that may be relevant to evaluating the effects of the alleged unwelcome conduct;
- d. The location of the conduct, the context in which the conduct occurred, and the control the recipient has over the respondent; and
- e. Other harassment based on protected class in the member's education program or activity.



A&M System Regulation 08.01.01

Important Definitions (proposed language)

Harassment – behavior on the basis of a protected class that is:

(2) Specific Offenses, including:

- a. Assault – engaging in or attempting to engage in unwanted physical contact on the basis of a protected class; and/or
- b. Stalking (see definition for Stalking) on the basis of a protected class.





A&M System Regulation 08.01.01

Important Definitions (proposed language)

Hostile Environment – Unwelcome conduct based on a protected class that is sufficiently severe or pervasive that, based on the totality of the circumstances and evaluated subjectively and objectively denies or limits a person’s ability to participate in or benefit from the member’s education program or activity (i.e., creates a hostile environment). Whether a hostile environment has been created is a fact-specific inquiry that includes consideration of the following:



A&M System Regulation 08.01.01

Important Definitions (proposed language)

- a. The degree to which the conduct affected the complainant’s ability to access the recipient’s education program or activity;
- b. The type, frequency, and duration of the conduct;
- c. The parties’ ages, roles within the recipient’s education program or activity, previous interactions, and other factors about each party that may be relevant to evaluating the effects of the alleged unwelcome conduct;
- d. The location of the conduct, the context in which the conduct occurred, and the control the recipient has over the respondent; and
- e. Other harassment on the basis of a protected class in the member’s education program or activity.



INVESTIGATOR TRAINING (BASIC)

Prohibited Conduct



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INVESTIGATOR TRAINING (BASIC)



Prohibited Conduct

Prohibited Civil Rights Conduct – All students and employees are prohibited from engaging in the following behaviors:

- (a) discrimination based on a protected class,
- (b) harassment based on a protected class,
- (c) sex-based harassment (quid pro quo and/or hostile environment),
- (d) sexual assault,
- (e) dating violence,
- (f) domestic violence,
- (g) stalking based on a protected class,
- (h) sexual exploitation,
- (i) retaliation related to a civil rights complaint resolution process,
- (j) failing to cooperate with this regulation (See Section 4.7) and/or a civil rights complaint resolution process (See Section 2.1.2),
- (k) failing to abide by supportive and/or emergency measures placed into effect,
- (l) knowingly filing a false civil rights report and/or being complicit in the filing of a false civil rights report, and
- (m) being complicit in any violation of this regulation.

This prohibited conduct also applies to third parties who participate in programs, activities, and other official functions of a member university or agency, whether the third party is employed in the program, activity, or other function, or is serving as a volunteer, someone who resides on a member campus, or someone who engages in these behaviors on property controlled by a System member, and/or within the context of an educational program or activity.

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Supportive Measures

- Intended to preserve access to educational programs/opportunities for both parties until the matter is resolved OR serve as peace-keeping measures in the absence of a formal process
- Non-disciplinary actions, but may impose no more than de minimis (minimal) harm to one or more parties during their duration
- Subject to ongoing alteration based on circumstances
- Employee suspension with pay is not a disciplinary action (but needs to be vetted)



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Emergency Actions

- At present, emergency actions in civil rights cases require that an individual represent an immediate threat to the physical health/safety of any student/individual
- We will be adding non-physical threats (ED)
- Requires the completion of an individualized safety and risk analysis before imposition of the action
- Requires the opportunity for a “Show Cause” hearing
- Is only intended for immediate and ongoing threats – requires prioritization of the case



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Informal Resolution

- May be initiated and pursued at any time in the process prior to an adjudicatory decision
- Conditions of the Process:
 - o Voluntary (Complainant, Respondent, Member)
 - o Private (may not be provided to formal process)
 - o Can revert to the formal process at any time – decision may be made by the complainant, respondent, member, or facilitator
 - o Facilitation, Mediation, and Restorative Practices are the processes that we utilize; Mediation may not be used to resolve complaints of sexual assault and/or sex-based violence



Advisors

- Advisors of a party's choice are allowed to attend any meeting or hearing involving their advisee, but the advisor may not attend if the advisee is not present
- We do not schedule the process around the advisor
- Advisors may not actively participate in the process
 - o One exception under the current regulation is that advisors are permitted to ask questions of an opposing party and of witnesses at any formal live hearing (this will be going away)
- Members are required to appoint an advisor if a complainant or respondent needs one, or show up to a hearing without one





Related Allegations

- Allegations emanating from an investigation that are related to the substantive allegations are brought into the investigation (e.g., student conduct)
- We utilize one investigations process and one adjudication process to resolve all related allegations
- As the facts are collected, the questions being addressed in the report may (and often do) change
- The investigator, in consultation with the civil rights officer (w/ OGC/SECO), determines what questions are addressed in the investigation report



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Unrelated Allegations

- Unrelated allegations discovered in an investigation must be brought to the civil rights officer
- Civil rights allegations may (but not must) be folded into the same investigation
- Other cases will be directed/referred as appropriate
- When new allegations are brought (related or unrelated) we generally do not pause the current case simply because new allegations have been made



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Reluctant Parties

- When dealing with people who are reluctant to provide information, seek to understand where this reluctance may be coming from; Is it that the process is not clear to them? Has the investigator done something to scare or confuse them? Are they worried about retaliation? Are they worried about privacy? Seek to create a safe environment where people can freely participate
- Reluctant Complainants – It is important to remind the reluctant person pursuing a complaint that this process is underway because they have initiated it; their best opportunity to achieve the resolution that they are seeking is to assist us in the investigatory process



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Reluctant Parties

- Reluctant Respondents – It is important to remind the reluctant person responding to a complaint that this process will ultimately reflect the information that has been provided to us, and that in order to be able to present a complete picture that includes their point of view, their cooperation with the process is needed.
- Reluctant Witnesses – There are numerous reasons why witnesses may not wish to be involved; it is helpful to allow these parties to ease into the process by asking global questions about the people and relationships involved (whenever possible) before mining for details



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Reluctant Parties

- Reluctant Employees – Whenever encountering employee respondents and employee witnesses who are reluctant (or even refuse) to cooperate with our investigation, we may need to remind individuals that as employees their complete and truthful cooperation with our process is required under 08.01.01; Although our first thought in dealing with reluctance should not be the threat of disciplinary action, it is ultimately a very real consideration



Recording Interviews

Whether or not to audio-record in-person interviews is an issue of personal preference; some considerations include:

- The number of people involved
- The difficulty of the subject matter
- Whether or not it causes concerns for the person being recorded

For video interviews, the issue of recording tends to be a little less threatening, but the same factors need to be considered. One reminder we give parties is that by being recorded, we are ensuring that we capture their participation in the most accurate way possible.





Recording Interviews

What happens to recordings?

Like hand-written notes, audio and video recordings of investigative interviews are a temporary record designed to help us create an interview summary (an exhibit) and ultimately help us create a final investigation report – once the report is completed, the temporary record is no longer needed.

However, out of an abundance of caution, SECO requires members to maintain both hand-written notes and audio and video recordings until the conclusion of the process; this would include a formal adjudication (after appeal), an informal resolution, a withdrawal of a complaint, or a dismissal of a complaint.



Recording Interviews

Once the process has reached its conclusion, members are to permanently destroy hand-written notes and audio and video recordings unless instructed by OGC or SECO that a preservation hold is in effect.





Report Writing and Outcomes

- Allegations focus on specific behaviors alleged to have taken place, as well as conditions surrounding the specific behaviors
 - o The conditions include:
 - o The context within which the behavior occurred,
 - o Whether or not the behavior was unwanted, or should reasonably have been understood to be unwanted,
 - o Whether or not the behavior was based on a protected class, or could have been reasonably perceived to be based on a protected class,



Report Writing and Outcomes

- o The conditions include:
 - o The context within which the behavior occurred,
 - o Whether or not the behavior was unwanted, or should reasonably have been understood to be unwanted,
 - o Whether or not the behavior was based on a protected class, or could have been reasonably perceived to be based on a protected class,
 - o Whether or not any sexual actions and/or contact were consensual, including whether or not there was the presence of force, incapacity, consent, and/or predation





Report Writing and Outcomes

- If the alleged behavior is substantiated as having taken place, it is up to the adjudicatory to decide if 1) they agree that the behavior took place, and 2) if it took place, that the behavior rises or does not rise to the level of a violation of System Regulation 08.01.01 and/or a member rule; this is why we never frame the investigatory questions around the system regulation or a member rule



Timeline and Mechanics (Investigation)

Current Regulation:

Time to Complete Initial Draft Report:	30 bus. days
OGC/SECO Review:	10 bus. days
Time to Complete Final Draft Report:	5 bus. days
Party Review:	10 bus. days
Time to Complete Final Report:	5 bus. days
OGC/SECO Review:	<u>5 bus. days</u>
	65 bus. Days

91 total calendar days (not including weekday closures)





Timeline and Mechanics (Investigation)

Because of the significant period of time that can pass during the course of an investigation, investigators must regularly check in with both the complainant(s) and respondent(s) to provide a status update on the investigation on a regular basis (every 10 bus. days).



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Extensions

- Extensions are to be given for cause and not for a lack of planning; cause includes complicating factors that arise during an investigation and emergencies that may arise for investigators
- Extensions are granted by the civil rights officer who assigned the investigation and is overseeing the process; SECO and OGC should be notified through the reporting portal
- Parties must be made aware of the extension, the reason(s) for the extension, and the new timeline



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INVESTIGATOR TRAINING (BASIC)

What would you do? (Activity)



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INVESTIGATOR TRAINING (BASIC)



What would you do? (Activity)

Please discuss the following six scenarios in small groups. Decide what you would do if you were the investigator assigned to the case.

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What would you do? (Activity)

Scenario #1

A complainant has given you a list of five witnesses, all of whom have direct knowledge of the allegations. The respondent provides you with a list of four people, none of whom can talk about the allegations but all of whom can serve as character witnesses for the respondent. Whom will you interview?



What would you do? (Activity)

Scenario #2

A respondent, upon learning in an interview that one of their friends is providing information against him, slams his hand down on the table and says angrily, "I'm going to fucking kill him." How do you respond?





What would you do? (Activity)

Scenario #3

An employee witness arrives for their interview but refuses to sign the interview form and refuses to answer any questions. How do you respond?



What would you do? (Activity)

Scenario #4

A party's advisor, who is an attorney, calls you directly at your desk and indicates that she has significant concerns about the fairness of the process. She instructs you to cease communicating directly with her client and only communicate through her and indicates that she will be providing responses on the client's behalf. How do you respond?





What would you do? (Activity)

Scenario #5

A respondent arrives for their interview and states that because of an ongoing criminal case against them, they have been advised by counsel not to answer any questions from investigators. They politely request a two-month delay in being interviewed. How do you answer?



What would you do? (Activity)

Scenario #6

In the middle of a respondent's interview for a sexual assault investigation, they declare that they want to file counter-charges for sexual assault against the complainant. How do you respond?





What would you do? (Activity)

Let's review each of the scenarios...

Scenario #1

A complainant has given you a list of five witnesses, all of whom have direct knowledge of the allegations. The respondent provides you with a list of four people, none of whom can talk about the allegations but all of whom can serve as character witnesses for the respondent. Whom will you interview?

Scenario #2

A respondent, upon learning in an interview that one of their friends is providing information against him, slams his hand down on the table and says angrily, "I'm going to fucking kill him." How do you respond?



What would you do? (Activity)

Let's review each of the scenarios...

Scenario #3

An employee witness arrives for their interview but refuses to sign the interview form and refuses to answer any questions. How do you respond?

Scenario #4

A party's advisor, who is an attorney, calls you directly at your desk and indicates that she has significant concerns about the fairness of the process. She instructs you to cease communicating directly with her client and only communicate through her and indicates that she will be providing responses on the client's behalf. How do you respond?





What would you do? (Activity)

Let's review each of the scenarios...

Scenario #5

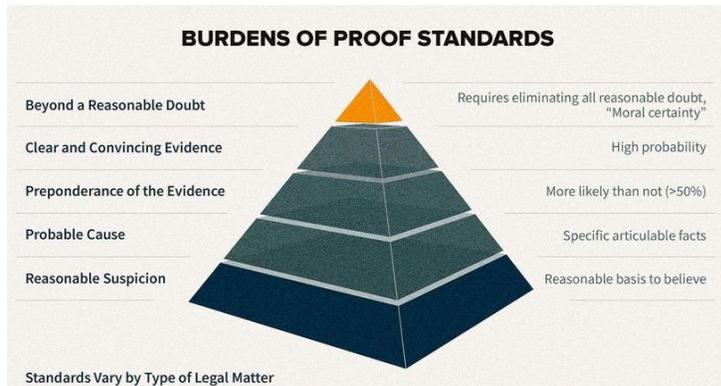
A respondent arrives for their interview and states that because of an ongoing criminal case against them, they have been advised by counsel not to answer any questions from investigators. They politely request a two-month delay in being interviewed. How do you answer?

Scenario #6

In the middle of a respondent's interview for a sexual assault investigation, they declare that they want to file counter-charges for sexual assault against the complainant. How do you respond?



Standards of Evidence



Source: Chudnovsky Law



INVESTIGATOR TRAINING (BASIC)

Standards of Evidence

EXPLAINING EVIDENTIARY STANDARDS

Source: ATIXA

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INVESTIGATOR TRAINING (BASIC)

Standards of Evidence

CHART 1: STANDARDS OF EVIDENCE

	Reasonable Suspicion (Notice)	Substantial Evidence (but insufficient to find a violation) (Probable Cause)	Preponderance of the Evidence	Clear and Convincing Evidence	Beyond a Reasonable Doubt
	0% Certainty	50 % Certainty		100% Certainty	
Beyond a Reasonable Doubt		Criminal Standard	The evidence presented can lead to no other reasonable conclusion <i>We do not employ this standard in the civil rights process.</i>		90-99%
Clear and Convincing Evidence		Limited Civil/Family Standard	The evidence presented establishes a highly probable outcome <i>We do not employ this standard in the civil rights process.</i>		67-75% +
Preponderance of the Evidence		Civil/Administrative Standard	The evidence makes a conclusion more likely than not <i>We use this standard to determine if there are violations of rules/regulations. We also use this standard to make decisions on appeals (with a presumption that the original decision is correct).</i>		50.1% +
Substantial Evidence		Police/Conduct	The evidence presented makes a compelling case that makes further review worthwhile <i>We use this standard following an investigation to determine whether or not charges are going to be filed for alleged violations of rules/regulations.</i>		30-50%
Reasonable Suspicion		Cause/Notice	The evidence (most often a statement) raises a potential concern that warrants the collection of additional information <i>We use this standard to determine if we need to conduct an inquiry or investigation.</i>		10-30%

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Source: A&M System Regulation 08.01.01

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Standards of Evidence



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Case Study –



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Case Study

- The investigators should take five minutes to prepare to interview the Complainant
- Interview the Complainant (with an Opening Statement)

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Case Study



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Types of Evidence



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Evidence

Types of Evidence:

1. Direct (Testimonial)
2. Direct (Physical/Digital)
3. Circumstantial (Indirect forms of #1 and #2)
4. Documentary Evidence
5. Hearsay Evidence
6. Expert Evidence
7. Character Evidence



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EVIDENCE

Evidence

Direct (Testimonial) Evidence

For us, this evidence includes testimony from people who were witness to the allegations under investigations, witness to the conditions surrounding allegations under investigation, and/or witness to statements made by the parties prior to or following the allegations under investigation.

- *Strengths of this type of evidence?*
- *Weaknesses of this type of evidence?*

**EVIDENCE**

Evidence

Direct (Physical/Digital) Evidence

For us, this evidence includes evidence such a video recordings, audio recordings, pictures, digital messages, DNA and other forms of forensic evidence, drug tests, seized items, and observed items that are not contested.

- *Strengths of this type of evidence?*
- *Weaknesses of this type of evidence?*

Please note the lack of inclusion of polygraph tests in this category. Polygraph tests are not considered to be reliable in determining a person's honest participation in our process (from any party or witness). While we will accept their submission as a form of character testimony, they are not included in reaching a determination of a violation.



EVIDENCE

Evidence

Circumstantial (Testimonial/Physical/Digital) Evidence

For us, this is indirect evidence that by its nature carries an inference of being either inculpatory or exculpatory. This includes physical or digital items that suggest something about culpability, as well as the timing, location, and/or manner of actions taken by individuals.

- *Strengths of this type of evidence?*
- *Weaknesses of this type of evidence?*



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EVIDENCE

Evidence

IMPORTANT NOTE:

There is no substantive difference between direct testimonial evidence and circumstantial evidence in terms of weight of importance. The United States Supreme Court has held that they are essentially of equal value.



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EVIDENCE

Evidence

Documentary Evidence

For us, this evidence includes reports and other logs that have been filed in direct relation to the incident(s) under investigation. The primary value of this evidence is be able to see how a matter under investigation may have been reported and described to others.

- *Strengths of this type of evidence?*
- *Weaknesses of this type of evidence?*



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EVIDENCE

A Note on Medical Documentation

Parties may choose to provide medical documentation as a means for seeking to support their perspective on what took place. However, they may not be compelled to do so.

While written medical documentation may have some value in the investigation process, it is typically incomplete and/or subject to interpretation. As a general rule, it is of more value when accompanied by testimony from the medical professional who conducted any documented exam or procedure.



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EVIDENCE

Evidence

Hearsay Evidence

For us, this evidence includes actions or observations attributed to other people. Hearsay evidence is useful to an investigator in determining whom might need to be interviewed but is without substantive value to a decision-maker.

- *Strengths of this type of evidence?*
- *Weaknesses of this type of evidence?*



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EVIDENCE

Evidence

Expert Evidence

For us, this evidence includes interpretations of actions and or evidence that are subject to review, analysis, and the interpretation of someone that has sufficient formal education, practical knowledge, skill, and training to allow a reasonable person to regard that person as an expert in that subject matter. When expertise is needed, Investigators should seek this type of evidence prior to analyzing data in the investigative report through an appropriately trained/certified/licensed expert that has no other active role in the investigation process.

- *Strengths of this type of evidence?*
- *Weaknesses of this type of evidence?*



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Evidence

Character Evidence

For us, this evidence includes all personal and professional assessments of an individual's character. Character evidence is of virtually no value in the determination of whether or not allegations are true but may be useful in the event of the sanctioning of a respondent after the finding of a violation.

- *Strengths of this type of evidence?*
- *Weaknesses of this type of evidence?*



Types of Evidence



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Case Study –



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INVESTIGATOR TRAINING (BASIC) 

Case Study

- Interview Witness 1 (with abbreviated Opening Statement)

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INVESTIGATOR TRAINING (BASIC)



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Trauma



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Trauma

What is trauma?

Trauma is exposure to an event or events that creates a real or perceived threat to life, safety, or sense of well being and bodily integrity.

Trauma results from war, natural disasters, physical violence (non-sexual and sexual), relationship violence, stalking, and child abuse. Trauma is different than stress in how it activates certain parts of the brain and shuts down others.



Trauma

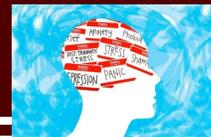
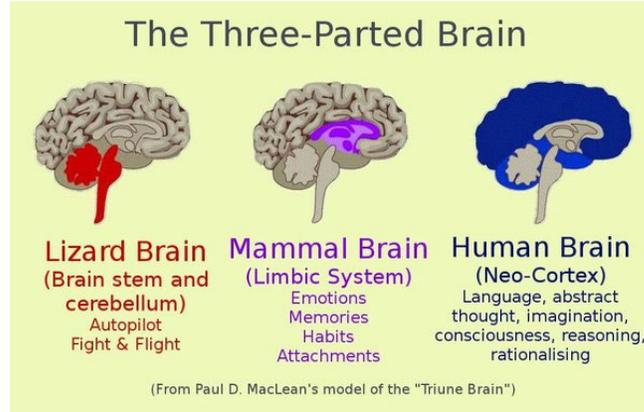
What is trauma?

Trauma is physiologically different from stress, in that the perception of the event being life-threatening causes the brain stem (which controls survival reactions) to become activated, while the pre-frontal cortex (which controls critical thinking skills) is suppressed through the release of a hormonal flood, which can last for up to 4 days.





Trauma



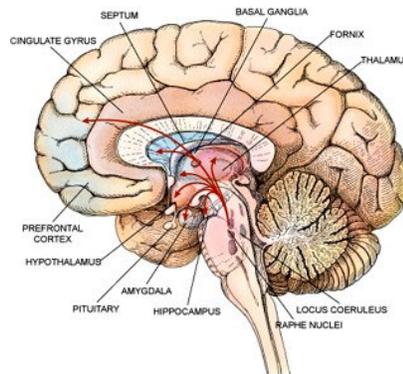
Trauma

The Brain:

- Cortex (thinking)
- Limbic (emotions)
- Brain Stem (survival)

The Brain and Trauma (activated):

- Hypothalamus
- Pituitary
- Hippocampus
- Amygdala



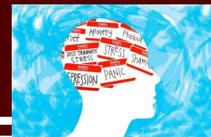


Trauma

- “Lizard Brain” controls:
- Fight (approach)
 - Flight (avoidance)
 - Freeze (submission/“Tonic Immobility”)

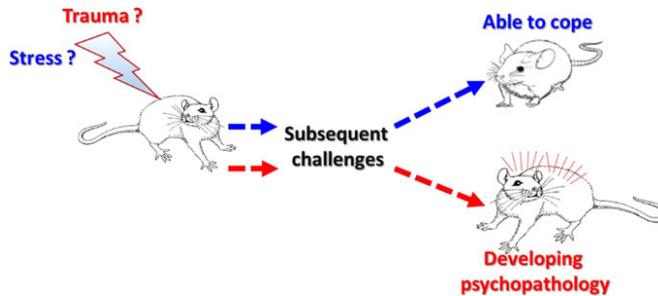


Whether someone fights, flees, freezes, is a response to the hormonal flood; it is a neuro-biological response, and not a reasoned choice.



Trauma

What is trauma?



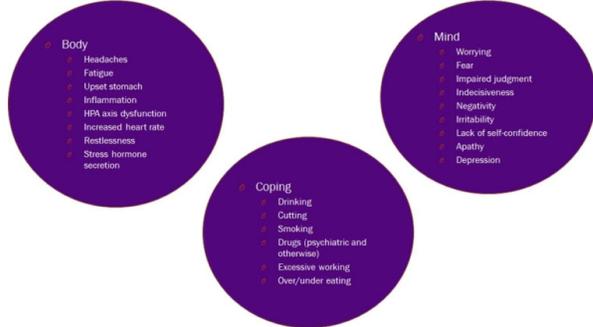
Not all people who experience trauma-inducing events will experience trauma.
 Many individual factors are involved.





Trauma

EFFECTS OF TRAUMA



Trauma

Trauma and Memory:

Hippocampus (Memory Maker) can still accept sensory data and encode it, but cannot consolidate memories and store (think of a card catalog); memory recall tends to be fragmented and recall can be slow and difficult



Rape Trauma

Stages of Rape Trauma Syndrome

Acute

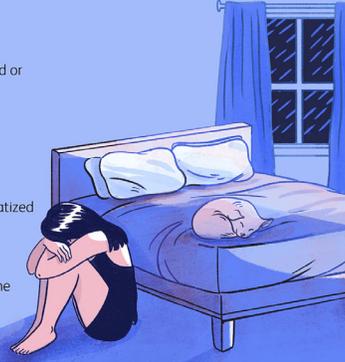
- Occurs soon after a sexual assault
- Categorized as expressed, controlled or shocked disbelief

Outward Adjustment

- Occurs after the acute phase
- Can last weeks to months or longer
- Victim doesn't appear to be traumatized anymore, but definitely still is

Resolution or Integration

- Final stage of rape trauma syndrome
- Victim comes to terms with assault and works to move on



Stages of Rape Trauma Syndrome

Acute

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Rape Trauma

Acute Phase – 3 Categories of Reactions:

1. Expressed (openly emotional, agitated, anxious)
2. Controlled (without emotion, flat affect, “everything is fine”)
3. Shocked Disbelief (strong sense of disorientation, difficulty concentrating or handling everyday tasks, poor recall of the assault)



INVESTIGATOR TRAINING (BASIC)

Stages of Rape Trauma Syndrome

Acute

- Victim reacts after a sexual assault
- Characterized by symptoms such as shock, disbelief, denial, and numbness

Outward Adjustment

- Occurs after the acute phase
- Victim begins to attempt to regain control of her life
- Victim doesn't appear to be traumatized anymore, but still feels pain

Resolution or Reintegration

- Final stage of rape trauma syndrome
- Victim comes to terms with assault and begins to move on



Rape Trauma

Outward Adjustment Phase – 5 Primary Coping Techniques:

1. Minimization (“could have been worse”)
2. Dramatization (highly focused on assault and very verbal, dominates life and identity)
3. Suppression (refuse to discuss)
4. Explanation (analyzes what happened)
5. Flight (seeks to escape pain by moving, changing jobs, leaving school, changing appearance, etc.)

Source: RAINN (via Department of Justice)

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INVESTIGATOR TRAINING (BASIC)

Stages of Rape Trauma Syndrome

Acute

- Victim reacts after a sexual assault
- Characterized by symptoms such as shock, disbelief, denial, and numbness

Outward Adjustment

- Occurs after the acute phase
- Victim begins to attempt to regain control of her life
- Victim doesn't appear to be traumatized anymore, but still feels pain

Resolution or Reintegration

- Final stage of rape trauma syndrome
- Victim comes to terms with assault and begins to move on



Rape Trauma

Resolution Phase:

1. Assault is no longer a central focus of their life
2. Recognition that they will never forget the assault or its affects, but that the pain and negative consequences lessen over time
3. Begins to accept the rape as a part of their life and is able to move on

Source: RAINN (via Department of Justice)

The Texas A&M University System


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Trauma, Rape Trauma, and Investigations

Critical Takeaways:

1. Do not diagnose whether someone has been subjected to a traumatic event or is experiencing trauma or rape trauma. Simply be open to the possibility that it may be the case.
2. Do not project what you think someone's reaction to a traumatic event should be. There is no one or right way to respond.
3. Emphasize transparency and predictability in the process.
4. Use non-judgmental and non-blaming language; don't ask the person to evaluate their reaction to being assaulted.
5. Allow someone plenty of time to respond to questions; be patient.



Trauma and Rape Trauma



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Case Study –



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Case Study

- Interview Witness 2 (with abbreviated Opening Statement)

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Case Study



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Day Three Agenda

1. Alcohol and Other Drugs
2. The Consent Construct
3. Report Writing
4. Case Student Interviews and Presentations



Alcohol and Other Drugs





Alcohol and Other Drugs

Activity #5

Group Activity

Describe the person's likely mental state for each example.

Choices: Impaired, Incapacitated, Inebriated, Influenced, Intoxicated.

Example #1:

A person comes home after work and consumes a six-ounce glass of red wine. Consuming the wine, the person experiences a small degree of warmth and relaxation.



Alcohol and Other Drugs

Activity #5

Group Activity

Describe the person's likely mental state for each example.

Choices: Impaired, Incapacitated, Inebriated, Influenced, Intoxicated.

Example #2:

A person is at a party and consumes three shots of tequila and six twelve-ounce beers over a four-hour period. They are boisterous and friendly during the party. The person wakes up the next day remembering everything that took place but has a splitting headache.





Alcohol and Other Drugs

Activity #5

Group Activity

Describe the person's likely mental state for each example.

Choices: Impaired, Incapacitated, Inebriated, Influenced, Intoxicated.

Example #3:

A person stays in to drink alone rather than going to a party they were invited to. They consume two shots of vodka and a twelve-ounce beer within two hours and stumble on their way to the bathroom.



Alcohol and Other Drugs

Activity #5

Group Activity

Describe the person's likely mental state for each example.

Choices: Impaired, Incapacitated, Inebriated, Influenced, Intoxicated.

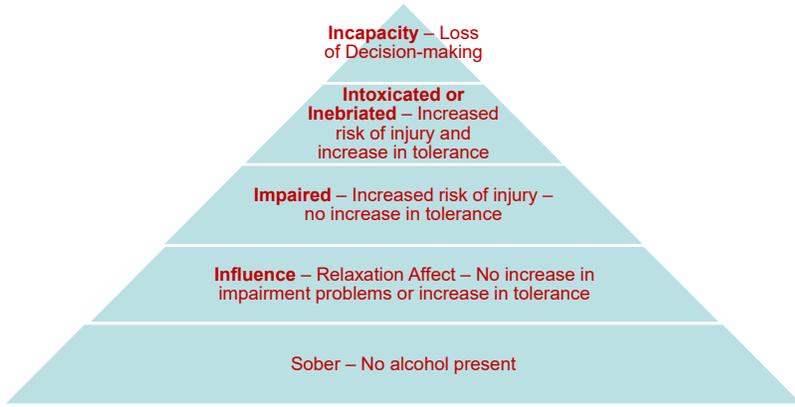
Example #4:

A person is hosting several friends who are all drinking. This person consumes three shots of liquor, seven twelve-ounce beers, and an unspecified amount of beer while playing beer pong over a three-hour period. The person needs to be assisted to the bathroom to vomit and wakes up the next day with only a spotty recollection of events from the night before.





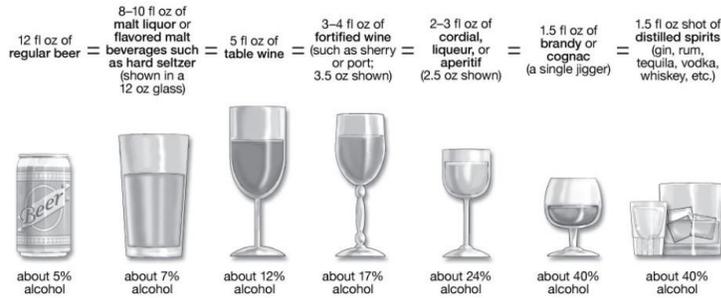
The Alcohol "I Words"



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What is a "Drink"?



In general, the average person metabolizes one drink per hour

Source: NIH

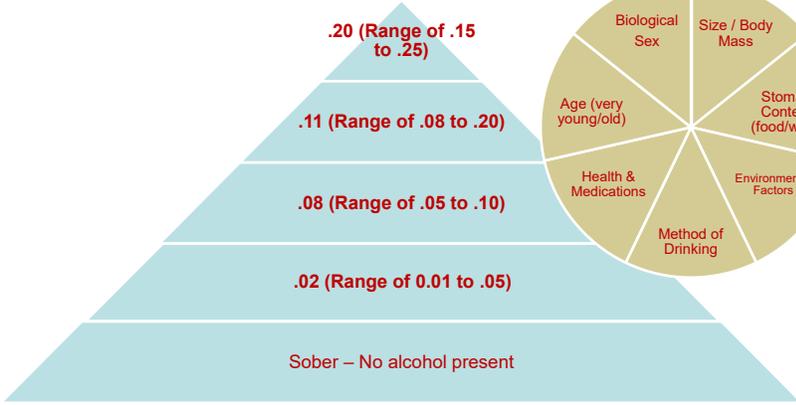


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Approximated BALs



*In addition to **tolerance**, consider:*



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Approximated BALs

Blood alcohol content	Predictable effects
.02% to .04%	<ul style="list-style-type: none"> Light-headed Relaxation Sensation of warmth Altered mood ("high") Minor impairment of judgment
.05% to .07%	<ul style="list-style-type: none"> Buzzed Relaxation Euphoria Lower inhibitions Minor impairment of reasoning and memory Exaggerated emotions (both good and bad)
.08% to .10%	<ul style="list-style-type: none"> Legally impaired Euphoria Fatigue Impairment in: <ul style="list-style-type: none"> Balance Speech Vision Reaction time and hearing Judgment and self-control are impaired

Source: <https://publicwebuploads.uwec.edu/documents/BAC-chart-in-table-format.pdf> The Texas A&M University System  240

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Approximated BALs

.11% to .15%	<ul style="list-style-type: none"> • Drunk • "High" reduced • Depressive effect more pronounced (anxiety, depression or unease) • Gross motor impairment • Judgment and perception severely impaired
.16% to .19%	<ul style="list-style-type: none"> • Very drunk • Strong state of depression • Nausea • Disorientation • Dizzy • Increased motor impairment • Blurred vision • Judgment further impaired
.20% to .24%	<ul style="list-style-type: none"> • Dazed and confused • Gross disorientation to time and place • Increased nausea and vomiting • May need assistance to stand/walk • Impervious to pain • Blackout likely

Source: <https://publicwebuploads.uwec.edu/documents/BAC-chart-in-table-format.pdf> The Texas A&M University System  241

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INVESTIGATOR TRAINING (BASIC) 

Approximated BALs

.25% to .30%	<ul style="list-style-type: none"> • Stupor • All mental, physical and sensory functions are severely impaired • Accidents very likely • Little comprehension • May pass out suddenly
.31% and up	<ul style="list-style-type: none"> • Coma • Level of surgical amnesia • Onset of coma • Possibility of acute alcohol poisoning • Death due to respiratory arrest is likely in 50% of drinkers

Source: <https://publicwebuploads.uwec.edu/documents/BAC-chart-in-table-format.pdf> The Texas A&M University System  242

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Alcohol and Other Drugs

Blackouts

- The body's natural reaction to too much alcohol is to pass out and/or vomit
- Blackouts are periods of amnesia during which a person actively engages in behaviors like walking and talking but does not create memories for these events as they transpire



Alcohol and Other Drugs

Blackouts

- Blackouts can happen when a person overloads their system by drinking a much higher amount than normal and/or when a person has a dangerously high tolerance level
- Blackouts tend to begin at blood alcohol concentrations (BACs) of about 0.16 percent (nearly twice the legal driving limit) and higher (source: NIH); blackouts are indicative, but not explicit proof of incapacitation





Alcohol and Other Drugs

Determining a level of intoxication

- How do we make a determination if someone's consumption makes them influenced, impaired, intoxicated (or inebriated), or incapacitated?
 1. Collect all evidence about the person's consumption. Make a best estimate of what BAC range the person may be in, based on all of the data collected (this may mean multiple estimates)
 2. Compare the estimates to the behaviors attributed to the person during this time. Which estimate appears to be more likely linked to the BAC noted?



Alcohol and Other Drugs

BAC Calculators

- Recommended:
 - <https://alcohol.org/bac-calculator/>
 - <https://www.calculator.net/bac-calculator.html>
 - <https://www.drinkfox.com/tools/bac-calculator>
 - <https://casaa.unm.edu/BACcalc.html>

We do not recommend the use of the Celtic Kane instrument, given its use of the term "frat boy" as a category for the frequency of drinking





Other Drugs

- By design, other drugs (illicit, non-prescription) are designed to impair normal bodily functions
- Marijuana affects psychomotor skills and cognitive functions critical to driving including vigilance, drowsiness, time and distance perception, reaction time, divided attention, lane tracking, coordination, and balance.
- Opioids can cause drowsiness and can impair cognitive function.



Other Drugs

- Unless purchased through a regulated supplier (which cannot currently be done in Texas) the quality control of drugs is difficult to account for; illicit drugs can be tainted with other drugs that significantly affect the experience of being “high” (note that “high” does not automatically indicate incapacity)
- When used with alcohol, the effects of drugs are cumulative to the effects of alcohol
- There are no counterparts to BAC calculators for marijuana and other drugs



INVESTIGATOR TRAINING (BASIC)

Case Study –



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Case Study

- Interview Respondent (with Opening Statement)

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Case Study



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INVESTIGATOR TRAINING (BASIC)

The Consent Construct



Adapted from ATIXA The Texas A&M University System  252

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INVESTIGATOR TRAINING (BASIC)




The Consent Construct

Three types of sexual interactions:

1. Wanted, Consensual Sex
2. Unwanted, Consensual Sex
3. Unwanted, Nonconsensual Sex

Adapted from ATIXA

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INVESTIGATOR TRAINING (BASIC)




The Consent Construct

Three types of sexual interactions:

1. Wanted, Consensual Sex
2. Unwanted, Consensual Sex
3. **Unwanted, Nonconsensual Sex**

Only the **last** category represents a violation of System Regulation 08.01.01 or member rules.

Adapted from ATIXA

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The Consent Construct

The (adapted) Consent Construct for evaluating the consensuality of sexual interactions:

1. Force
2. Capacity
3. Consent
4. Predation

Adapted from ATIXA

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The Consent Construct

Force

1. Was force used to obtain sexual access?
2. Because consent must be voluntary, any use of unwanted force invalidates any argument that the sexual access was consensual.
3. Types of Force:

Physical violence (hitting, restraining, pushing, kicking, etc.).

Threats (Coercive acts designed to make another person provide sexual access based on a reasonable fear of physical or serious non-physical harm); consider frequency, intensity, duration, and/or isolation.

Adapted from ATIXA

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The Consent Construct

Capacity

1. Forms of Incapacity:

- Alcohol or Other Dugs (see previous section)
- Mental/Cognitive Impairment
- Injury
- Asleep or Unconscious
- Age (under 17)

Adapted from ATIXA

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The Consent Construct

Capacity

2. Determining Incapacity:

“Part A”

Was the Complainant incapacitated at the time of sexual access?

Could the Complainant comprehend and articulate Who, What, When, Where, and Why?

Could the Complainant make a rational decision and appreciate the potential consequences of their choices?

“Part B”

Did the Respondent know of the incapacity, OR

Should the Respondent have known of the incapacity given the information available to them?

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The Consent Construct

Capacity

3. Evidence of Incapacity:

- Witnesses who may know the type and amount of substances used by the Complainant
- Witnesses who can attest to the state of body/mind of the Complainant
- Physical cues, such as:

Slurred Speech	Shaky Equilibrium
Bloodshot Eyes	Smell of Alcohol, Marijuana
Unconscious	Outrageous/Unusual Behavior
Vomiting, Urinating, Defecating	

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The Consent Construct

Consent

3. Consent - clear, voluntary, and ongoing agreement to engage in a specific sexual act. Persons need not verbalize their consent to engage in a sexual act for there to be permission. Permission to engage in a sexual act may be indicated through physical actions rather than words. A person who is asleep or mentally or physically incapacitated, either through the effect of drugs or alcohol or for any other reason, or whose agreement was made by threat, coercion, or force, cannot give consent. Consent may be revoked by any party at any time.

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The Consent Construct

Predation

1. Was the behavior predatory?
 - demonstrated premeditation, planning, forethought, and/or the use of force
 - generally applied to physical or attempted physical acts; do not confuse with pervasiveness as it relates to harassment and/or stalking
 - predation is an aggravating factor for sanctioning if a violation is found, so it is important for the investigator to meticulously detail any predatory behaviors discovered during the course of an investigation

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The Consent Construct

Understanding Consent

- Silence and/or a lack of protest or resistance \neq Consent
- Consent cannot be assumed
- Someone claiming to have received consent must be able to articulate the factors that led them to this conclusion
- Consent can be influenced by previous sexual interactions between the same parties
- Consent is complicated by use of alcohol and/or other drugs, lack of understood norms and expectations between the parties, past interactions with other partners, “kink” encounters/relationships

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INVESTIGATOR TRAINING (BASIC)

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INVESTIGATOR TRAINING (BASIC) 

Case Study

- Re-Interview Complainant (with abbreviated Opening Statement)

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Case Study



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INVESTIGATOR TRAINING (BASIC)

Report Writing



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Report Writing

Where do I start on an Initial Draft Report?

- Interview summaries and evidence collected; **highlight** all pieces of information that are **inculpatory** or **exculpatory** by nature – these items must be included in the report
- Develop a timeline of the event(s) – where does all of the relevant evidence fit into the timeline to help you determine “what happened”
- Is there anything still missing that necessitates additional follow-up with parties or witnesses?



Report Writing

Where do I start on an Initial Draft Report?

- Compare the initial complaint and all of the evidence collected during the investigation process; what are the relevant questions to frame as allegations?
- Following the question, write a narrative that only includes all the relevant evidence related to this allegation; if it factors into your analysis of the evidence, it must be included in this section
- Do not cite exhibits unless absolutely necessary





Report Writing

Where do I start on an Initial Draft Report?

- Next, write your analysis of the evidence section to reach a conclusion as to where or not the allegation is substantiated; you may only use evidence introduced in the previous section, and should not copy and paste this language, but should use it only to support your conclusion
- Credibility is analyzed in this section



Report Writing

Where do I start on an Initial Draft Report?

- Finally, write your Conclusion to the question; you have three options:
 - o The allegation of (cite behavior) is supported by a preponderance of the evidence
 - o The allegation of (cite behavior) is unsupported by a preponderance of the evidence
 - o The allegation of (cite behavior) lacks sufficient evidence to justify additional review



INVESTIGATOR TRAINING (BASIC)

Investigators determine (based **solely** on the available evidence)...

- If the alleged behavior took place
- Credibility of the parties who provided testimony and/or evidence
- Force, Capacity, Consent, Predation

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INVESTIGATOR TRAINING (BASIC) 

Standards of Evidence

CHART 1: STANDARDS OF EVIDENCE

	Reasonable Suspicion (Notice)	Substantial Evidence (but insufficient to find a violation) (Probable Cause)	Preponderance of the Evidence	Clear and Convincing Evidence	Beyond a Reasonable Doubt
	0% Certainty		50 % Certainty		100% Certainty
Beyond a Reasonable Doubt		Criminal Standard	The evidence presented can lead to no other reasonable conclusion <i>We do not employ this standard in the civil rights process.</i>		90-99%
Clear and Convincing Evidence		Limited Civil/Family Standard	The evidence presented establishes a highly probable outcome <i>We do not employ this standard in the civil rights process.</i>		67-75% +
Preponderance of the Evidence		Civil/Administrative Standard	The evidence makes a conclusion more likely than not <i>We use this standard to determine if there are violations of rules/regulations. We also use this standard to make decisions on appeals (with a presumption that the original decision is correct).</i>		50.1% +
Substantial Evidence		Police/Conduct	The evidence presented makes a compelling case that makes further review worthwhile <i>We use this standard following an investigation to determine whether or not charges are going to be filed for alleged violations of rules/regulations.</i>		30-50%
Reasonable Suspicion		Cause/Notice	The evidence (most often a statement) raises a potential concern that warrants the collection of additional information <i>We use this standard to determine if we need to conduct an inquiry or investigation.</i>		10-30%

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Case Study

- Re-Interview Respondent (with abbreviated Opening Statement)

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Case Study



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INVESTIGATOR TRAINING (BASIC) 

Investigation Report Template (draft)

CIVIL RIGHTS INVESTIGATION REPORT TEMPLATE
FOR SYSTEM REGULATION 08.01.01

TITLE OF REPORT
ATTORNEY-CLIENT PRIVILEGED COMMUNICATION

To: [Designated Administrator/Office/Hearing Officer/Hearing Panel]
 From: [Investigator(s) Name]
 Date: [Date]
 MEMBER NAME:
 Case #

Source: A&M System Regulation 08.01.01 The Texas A&M University System  276

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INVESTIGATOR TRAINING (BASIC) 

Investigation Report Template (draft)

On (Date), (name and title) assigned me/us to investigate a complaint by (Complainant).

Complainant(s):
Respondent(s):

Summary of Complaint
On (date of complaint filing) (Complainant) files a complaint of (protected class discrimination/harassment/retaliation) against (Respondent). Specifically, (Complainant) alleges that (Respondent) engaged in the following behaviors: (1-3 paragraph summary here)

Source: A&M System Regulation 08.01.01 The Texas A&M University System  277

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INVESTIGATOR TRAINING (BASIC) 

Investigation Report Template (draft)

Based on the allegations made, the following System Regulations and Member Rules may be implicated:

1. System Regulation Citation and add link
2. System Regulation Citation and add link
3. Member Rule Citation and add link

Source: A&M System Regulation 08.01.01 The Texas A&M University System  278

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INVESTIGATOR TRAINING (BASIC) 

Investigation Report Template (draft)

Investigation Process

As a part of this investigation, the following individuals were interviewed regarding this complaint:

Date	Interview
-----	Name and Status

Source: A&M System Regulation 08.01.01 The Texas A&M University System  279

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Investigation Report Template (draft)

As a part of this investigation, the following documents were reviewed and considered, and are included for the adjudicatory authority as exhibits.

- Exhibit #1: System Policy 08.01, Civil Rights Protections and Compliance
- Exhibit #2: System Regulation 08.01.01, Civil Rights Compliance
- Exhibit #3: Applicable Member Rule
- Exhibit #4: [Complaint]
- Exhibit #3: [Interview Summary]
- Etc.

Source: A&M System Regulation 08.01.01 The Texas A&M University System  280

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Investigation Report Template (draft)

Questions for Investigation

Based on the initial complaint and the evidence collected, this investigation focused on questions surrounding the following allegations:

A. Did Respondent (cite behavior)?

Summarize the inculpatory (argues in favor of involvement/violation) and exculpatory (argues in favor of no violation) evidence. Generally, this begins with a review of the allegations made by the complainant, what evidence supports those allegations, and what evidence does not support those allegations). This section should only include information directly relevant to the allegations.

Source: A&M System Regulation 08.01.01

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Investigation Report Template (draft)

Examination of Evidence

This section should now assess the material from the previous section in order to determine whether or not the alleged behavior took place (not whether or not it constitutes a violation). No evidence should be cited here that has not already been introduced in the previous section. A part of this analysis should include an analysis of the credibility of the party's providing information. Credibility assesses the plausibility, consistency, relevance, and bias of both the information being provided and the people providing it.

Source: A&M System Regulation 08.01.01

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INVESTIGATOR TRAINING (BASIC) 

Investigation Report Template (draft)

Conclusion

Based on the information above, it is the conclusion of this investigation that the allegation of (cite behavior)...

... is supported by a preponderance of the evidence.

... is unsupported by a preponderance of the evidence.

... lacks sufficient evidence to justify additional review.

THIS PROCESS IS REPEATED FOR EACH ALLEGATION

(Allegations B, C, D, etc.)

Source: A&M System Regulation 08.01.01 The Texas A&M University System  283

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INVESTIGATOR TRAINING (BASIC) 

Investigation Report Template (draft)

Final Comments

As needed – no introduction of new information related to the current investigation; this section is to highlight additional areas of concern that are separate and apart from the current complaint (cite relevant facts only and do not include personal observations).

Source: A&M System Regulation 08.01.01 The Texas A&M University System  284

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Report Writing

Tips

1. All inculpatory and exculpatory evidence used to reach a conclusion is to be included in the narrative following the allegation question; do not refer to exhibits.

“No student ever got a good grade on a book report by saying, ‘read the book.’”



Report Writing

Tips

2. You are ultimately answering the question of “what happened” so remember that you are writing a narrative. This is not a set of bullet points, replanting of party and witness interviews into the body of the report, or a transcript. Direct quotes should be the exception and should be meaningful.



Report Writing

Tips

3. For each conclusion, you must “show your work” and the work must be included in the narrative. Don’t “hide” information in the exhibits.



Report Writing

Tips

4. Remember that writing an investigation report requires writing. It is better to initially include too much material and edit it down than it is to under-include evidence and lead the reader to feel that something is missing. Don’t write cliff-hangers.



Case Study –



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Case Study

- The investigators (with parties and witnesses observing only) shall now determine answers to the investigatory questions and prepare an evidence-supported rationale. Each group will then be asked to share their results with the large group.



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INVESTIGATOR TRAINING (BASIC)



Case Study



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INVESTIGATOR TRAINING (BASIC)

Post-Test –



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Post Test –

Investigators must pass the post-test (minimum score of **80%**) in order to be eligible to conduct civil rights investigations.

The post-test must be completed by June 30, 2023.

Post-test link:

https://tamusofficeofit.iad1.qualtrics.com/jfe/form/SV_e wICxP0oEzxtjls



Evaluation –

Please provide feedback on this training program

The survey will remain open through June 30, 2023.

Survey:

https://tamusofficeofit.iad1.qualtrics.com/jfe/form/SV_8 pq94rrUIHgw1GS



INVESTIGATOR TRAINING (BASIC)

Final Q&A –



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