SELF CARE
“Hear the case before you decide it.”

-Alfred P. Murrah, Chief Judge of the U.S. Court of Appeals for the Tenth Circuit and Director of the Federal Judicial Center
My Lenses

• Expertise
• Institutional types
• Roles
• Research
• Life experience
• Language
EXPECTATIONS
Learning Outcomes

As a result of completing the two-part educational session, participants will be able to:

- identify characteristics of an effective panel member
- demonstrate appropriate questioning techniques
- demonstrate effective decision-making techniques
- use institutional policy to evaluate reported conduct
- write an investigative report
PEOPLE IN THE PROCESS
People in the Process

- Title IX Coordinator
- Investigators
- Decisionmakers
  - Administrators
  - Panel Members
- Process facilitator
- Appellate officer
- Complainant
- Respondent
- Witnesses
- Advisor
List five (5) traits of an ideal investigator
List five (5) traits of an ideal decisionmaker
Regulatory Considerations

• Force of law
• Jurisdiction
  • “Education program or activity”
• Sexual harassment

• Procedural Elements
  • Access to information
  • Ability to ask questions at hearing
  • Access to advisor
  • Detailed outcome letters
  • Less restrictive
COMPETENCY-BASED MODEL
Investigator Competency-Based Model

- Philosophy/History of conduct
- The Resolution Process
- Procedural Expertise
- Critical Thinking Skills
- Analyzing Policy
- Cultural/Community Competency
- Note Taking
- Report Writing
- Questioning/Listening Skills
- Processing Information
- Standard of Proof
- Title IX Response Elements
- Statement Analysis
- Responsiveness
- Relevance

- Expert Sources
- Gender-based Misconduct
  - Sexual Misconduct
  - Relationship/Domestic Violence
  - Stalking
- Psychology/Sociology of:
  - Respondent
  - Complainant
- Credibility Determination
- Sanctioning
- The Appeal Process
- Role Play
- Reasoning
- Non-Heteronormative Education
- Rapport Building
Decisionmaker Competency-Based Model

- Philosophy/History of conduct
- The Resolution Process
- Critical Thinking Skills
- Analyzing Policy
- Cultural/Community Competency
- Note Taking
- Report Reading
- Questioning/Listening Skills
- Processing Information
- Standard of Proof
- Title IX Response Elements
- Statement Analysis
- Deliberation Skills
- Hearing Decorum
- Relevance

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- Role Play
- Reasoning
- Non-Heteronormative Education
- Rapport Building
THE RESOLUTION PROCESS
Addressing reported behavior
sea turtle
Elements of the Process

- Gather
- Explore
- Evaluate
Experience in the Process

- Consistent
- Planned
- Documented
Consistent

- Information
- Evaluation
- Opportunity

- Dependability of undeviating processes and procedures for all participants in a resolution process, regardless of any defining or identifying characteristics.
- Consistency should not determine the outcome of a situation, rather it should be the foundation for processing information.
Consistent

• Initial meeting

• Choices/Where exist?
  • Not everyone will make the same choices, but everyone should have the same opportunity to make a choice
  • Information for the choices should be consistent
  • Avoid giving advice
Planned

• Work with the Title IX Coordinator
• Be aware of other entities
• Establish a timeline
Documented

- Case file
- Documents
- Interactions
- Communication
- Results
- Participant informed
- Standard Report
- Formal
- Informal
Procedural Elements in Investigation

- Notice to both parties
- Equal opportunity to present evidence
- Written notification of meetings and sufficient time to prepare
- Ability to see and respond to all information prior to final report
- Access to report (advisor)
It’s Useful To Have A Duck

Isol
I found a duck and I picked him up.
Now I ride him like a rocking horse.
I use him for a hat.
He can be a whistle or a straw.
I use him for a nose
and to dry off.
Then I leave him in the tub
and when the water
is gone,

I use him for a plug.
It's useful to have a boy

isol
I found a boy and he picked me up.
Now he rubs my back.
I use his head
to see the view
and he gives me
Kisses.
I pretend to be a gargoyle.
I wax my bill.
Then I swim awhile
until I find

my little sleeping hole.
What’s the point?
A Report

• Comprehensive view of the information
• Consistent
• Clear language
• Thorough
• Accessible
A Report

• Neutral in gathering information
• Looks at all sides
• Burden is on the institution
• Approaches every possibility
• The information drives the outcome
• Avoid judgement
Elements of a Report

• Introduction
• Involved parties
• Date(s) of reported incident
• History of the case
• Allegations
• Jurisdiction
• Standard of Proof
• Complainant information
• Respondent information
• Witness summaries
• Additional information
• Negative inquiries
Standard of Proof

• Standard slide

• Determination of violation
  • Character role
Experience in the Process

• An individual’s experience in the process may impact your reporting numbers (Katel, 2011)

• It is likely that most individuals that file a complaint are not given information on what to expect (Sabina, 2014)
Cultural Competency

- Cultural competence is a set of congruent behaviors, attitudes, and policies that come together in a system, agency, or among professionals and enables that system, agency, or those professionals to work effectively in cross-cultural situations.

Gender-based Misconduct

• Unique social environments
  • small community
  • shared friends
  • teams
  • clubs

• Peer pressure

• Closed social networks

• Student development
  • identities still in flux
  • fear of backlash for “siding with” an individual
Responses

• Avoid prejudgment
• Be warm and compassionate with all parties
• Likeability should not influence objectives
• Information drives the process

video
Bias

- Implicit
- Explicit
- Anchoring
- Observer Expectancy
- Confirmation

Once people form an impression they unwittingly seek, interpret, and create behavioral data that verify it.

(McNatte, 2000)
Conflict of Interest

- Actual
- Perceived
- Requests
- Reasonable person
- Recusal
- Assess ahead of time
Opening information

• Prepared
• Consistent
• Personable
• Humanize
QUESTIONING SKILLS
Questioning Skills

Ground Rules

Lens of gathering more information

General Questioning Skills
Questioning Skills

Context of asking questions based on

• Role
• System
• Previous Training
Questioning Skills

Why do we ask questions?

• To gather information to assist in
  • Determining responsibility
  • Determining credibility
  • Determining sanctions
  • Assessing the information
  • To come to conclusions
  • Educating
  • Assessing awareness and understanding
  • To ask more questions
Questioning Skills

• Types of questions
  • Open
  • Closed
Questioning Skills

• WHAT questions
  • Detail
  • Specifics
  • Clarifying
  • “What happened next?”
  • “What were you drinking that night?”

• HOW questions
  • Elicit emotional understanding
  • Clarify sequence of events
  • “How did that make you feel?”
  • “How did you two meet?”
Questioning Skills

• *non* questions
  • “Tell me about...”
  • “Help me understand...”

• *could* questions

• *why* questions

• *Didn’t you and what were*

• *You don’t*

• Language continuum
  • Connotative
  • Denotative
Questioning Skills

• What are the goals of questioning?
  • Understand each individual’s experience
  • Gather information
  • Identify facts
  • Establish what is more likely than not what happened
  • Be appropriately curious
The Role of the Investigator

• Neutral
• Work through the process
• Open
• Thorough
• Understand the person’s experience
• Investigative
• Determine relevance
The Role of the Decisionmaker

- Neutral
- Work within the scope
- Open
- Deliberative
- Weigh information
- Determine credibility
Questioning Skills

• Investigative report:
  • Information about what happened during the incident
  • Any related events
  • Information necessary to understand the timeline
  • A compilation of all information presented
  • Background information about the situation, the parties, the witnesses
  • Additional documentation

• Use your questions to:
  • elicit details
  • eliminate vagueness
  • fill in the gaps where information seems to be missing
Questioning Skills

• What do I need to know?
• Why do I need to know it?
  • Is the answer relevant to the allegation or just because I want to know?
  • Will this information affect the outcome or substantially affect the witness’s credibility?
• What is the best way to ask or word the question?
• When is the best time to ask this question?
• Am I the best person to ask this question?*
Questioning Skills

- Use a process of broad to narrow questions
- Pre plan, but be flexible
- Engage in a matching process
  - Ask questions about the allegations, the evidence, and the policy elements
  - Focus on areas of conflicting evidence or gaps of information
- Have a purpose for asking every question
- Be appropriately curious
- Work to establish a baseline of relaxed conversation
- Maintain good eye contact
- Listen carefully to the answers to your question
- Be in the moment
- Attentive behavior
- Be aware of body language
- How we set up our questions (witnesses)
Questioning Guidelines

Areas of Caution

• Asking compound questions (always listen for the conjunction)
• Being accusatory or argumentative
• Making questions too long or confusing
• Suggesting an answer in your question
• Grandstanding
• Getting the answer to your question
• Shiny nickels
• “Cued” responses or rehearsed/memorized answers
• Emotion may appear (anger, fear, sadness...)
• Leading with “what were....” and “didn’t you...”
• Being questioned
Questioning Skills

• Silence speaks volumes (5 to 7 seconds)
• Watch and listen (what is not being said)
• Be clear on the information
• Stay in line
• Note taking
• Asking the question in the best way to get the information you know exists
• Poisonous pronouns
• Check for understanding (Be cautious of naming emotion)
• Follow up “Doesn’t sound like something I would do…”
• Let the information drive the process
Questioning

- Make the strange seem familiar
- Location
  - $B = f(p, e)$
- Preparation
- Environment
  - Waiting, location, hospitality, where, seat of people
- Previous messages (AV, reports, amnesty, legal)
- Role
- Process
- Timelines (when to interview)
- Gender lenses
- Snowball technique
Interview/Questioning Skills

I didn’t say you were stupid.
Questioning Skills

• Reasons for asking questions:
  • Understanding
  • Clarification
  • Fill in a gap
  • Potential questions from the other party
Goals in the process

• Gather
• Explore
• Evaluate
• Communicate
• Create a timeline
• Establish facts
• Fill in picture
WORKING WITH DIFFERENT PARTIES
Witness-Centered Approach

• Complainant
• Respondent
• Witnesses
Witnesses

- Flowcharts
  - Relationships
  - How identified
- Text messages and other documents
  - Look with
  - Ask for copies (know how to screenshot)
- Initial outreach to witness
- Try not to label the incident
- Not looking for anything in particular
- No right/wrong answers, be honest
- Conversations with the complainant/respondent
- Open invitation
- Anticipate questions
Other Items

- Pictures
- Diagrams
- Physical location
Hearing Decorum

- $B = f(p,e)$
- Handling disruption
  - Acknowledge
  - Warn
  - Follow through
- Who is in Charge
- Relevance
- Attire
Hearing Decorum

• Work to establish a baseline of relaxed conversation
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  • Try not to think about your next question while they are talking
• Nod affirmatively to keep individual talking
• Try not to fidget, roll your eyes or shake your head “no”
• Do not look shocked, smug, stunned or accusing
  • Hearing language
  • Unfiltered
• Watch all individuals
• Be aware of how you talk to all individuals in the process
Questioning by Advisor

• Relevance
• Decorum
• Guidelines
QUESTIONS
SELF CARE
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• Relevance
• Decorum
• Guidelines
ANALYSIS AND THE INVESTIGATION

Incapacitation, credibility, consent, IPV, and stalking
Processing Information

• Look at the totality of the information
  • Possible
  • Plausible
  • Credible
  • Supporting information
  • Behavior and information
  • Corroboration
  • Strikingly similar information
  • Fact, opinion, circumstance
Consent at Your Institution

Example:

Consent is a verbal agreement or action that must be active, voluntary, informed, and mutual.

- All sexual activities
- Withdrawal
- Previous consent
Consent

• But, consent is not where we start, because

• Consent cannot be given when it is the result of any coercion, intimidation, force or threat of harm.

• When consent is withdrawn or can no longer be given, sexual activity must stop.
Consent

- Force
- Incapacity
Force

- Physical
  - Choking, pinning down, slapping, punching, etc.
- Intimidation
- Threats
  - Outing, spreading rumors
- Coercion
  - Unreasonable pressure, occurs when advances not welcome

- The presence of force, nullifies any consent
Incapacity

• Occurs when and individual lacks the ability to knowingly choose to participate in sexual activity.
Incapacity

- Gather information during the investigation to make a reasoned conclusion based on the same standard of proof
- Applies regardless if the incapacitation is a result of voluntary or involuntary action
Incacity

- Cause of the incapacitation
  - Alcohol
  - Drugs
  - Mental
  - Injury
  - Sleep
  - Unconscious
  - Involuntarily restrained
Incapacity

• Listen and look for clues for possible incapacitation
  • “The next thing I remember was...”
  • “I remember bits and pieces...”
  • “I can’t remember what happened next...”
  • “Things start to become cloudy...”
  • “I was more drunk than I have ever been...”

• Work backwards from the point of concern
Incapacity

• Take note of and get clarification on
  • Alcohol consumption
    • What
    • How much
    • Size of drinks
    • Source
    • Timeline
  • Other drugs
    • Medication
    • Recreational
    • Unknowing
• Build a timeline
Incapacity

• Alcohol
  • What is alcohol
  • Standard drinks
  • How alcohol gets in the system
  • Rate of absorption
  • How it leaves the system
  • BAC/BAL
  • Influences on BAC
  • Myopia
  • Difference between men and women
Incapacity

• Observed behavior
  • Speech
  • Movement
  • Actions
  • Consciousness
  • Clarify ambiguous statements

• Observer of behavior
  • Ability to observe
  • Reliability of information
  • Potential bias
Incapacity

• Incapacitation due to alcohol or drug use is a state beyond “mere” intoxication or even being drunk.

• It exists when a person lacks the ability to make or act on a considered decision to engage in sexual activity.

• Indicators of incapacitation may include inability to communicate, lack of control over physical movements, and/or lack of awareness of circumstances.

• An incapacitated person can also experience a blackout state during which the person appears to give consent but does not have conscious awareness or the capacity to consent.
Incapacity

• Blackout
  • Incapacitated
  • Effect is on short term memory
  • Muscle memory can continue
Incapacity

- If it is concluded (more likely than not) the complainant was incapacitated, determine
  - At what point in time (as it relates to sexual activity)
  - Did the respondent know, or
  - Should the respondent have known (reasonable person standard)

- Knew or should have known
  - Amount of interaction (cross reference with your notes)
  - Supplier of anything
  - Past experience with complainant
  - Respondent’s own level of capacity
Incapacity

• The policy has been violated if the complainant was incapacitated and:
  • The respondent knew; or
  • The respondent caused; or
  • The respondent should have known.

• Proceed to analyze consent if:
  • The complainant was not incapacitated; or
  • The complainant was incapacitated, the respondent did not know, and a reasonable person would not have known.
Consent

• Look for the presence of clear words or mutually understandable actions that signaled consent
  • They must be present for each level of sexual activity
• No means no (but does not need to be present)
• Consent can be withdrawn, but must be communicated clearly by the person withdrawing consent
• Ask the respondent:
  • How did you know what you were doing was consensual?
Circle of Violence

• Honeymoon phase
• Build up phase
• Episode
• Repeat
Controlling Tactics

- Emotional abuse
- Economic abuse
- Isolation
- Privilege of status
- Using children
- Minimizing, denying, blaming
- Intimidation and threats
- Violence
IPV

• Predominate aggressor (struck more, most injures, reasonable)
• Who reported?
• Is there fear?
• How do they talk about each other?
• Does someone wrongly accept the blame?
• Written demands/expectations?
• Damaged property?
• Substance abuse?
• Other issues (vandalism, pets, other)?
IPV

Listen to language does the person:
• Refer to the partner in critical/demeaning terms
• Seem overly calm
• Covey any of the following:
  • Entitlement
  • Ownership
  • Privilege
• Sound authentic
• Make excuses for the abuser (drinking, stress)
• Describe avoidance tactics
STALKING
Stalking

- Course of conduct
- Escalates
- Lethality
- Stalking Resource Center
- Technology
Stages of Stalking

• Rejection
  • The trigger (real or perceived)
  • Insecure individuals seeking control

• Pursuit
  • Attempt to (re)claim object of obsession
    • Calls, email, text, gifts, notes
  • Win back (with the belief it will happen)

• Revenge
  • After continued rejection
  • Blames victim for ruining their life
Stalking Manifested

- Emotional Violence
  - Destroy reputation
  - Reveal personal information
  - Sabotage job/school

- Property Damage
  - Vandalism
  - Harm to pets

- Physical Violence
  - Threats
  - Articulation of plans
Processing Information

- No formal rules of evidence
- Relevant information able to help clarify what happened
Processing Information

• Policy
• Standard of proof
• Go from broad to narrow
• Add up the information
• Deliberative discussions
• Using information available to everyone
• Come to a conclusion
• Responsibility
• Sanction, if applicable
Credibility

- Reliability of information
- Ability to have information
- Not the same as truthful
- Motivation of person
- Interest in outcome
- Contested and uncontested information
- Corroboration
Standard of Proof

• Standard slide
• Determination of violation
  • Character role
Resolutions

- Match the sanction with the seriousness of the violation
- Impact Statements
- Prevent reoccurrence
- Rationale (Clear decision)
Resolution

- Elements to consider, by weight
  - Nature of Violation
  - Campus Safety
  - Complainant
  - Community
  - Respondent
- Precedent
- Previous conduct
Resolution
QUESTIONS