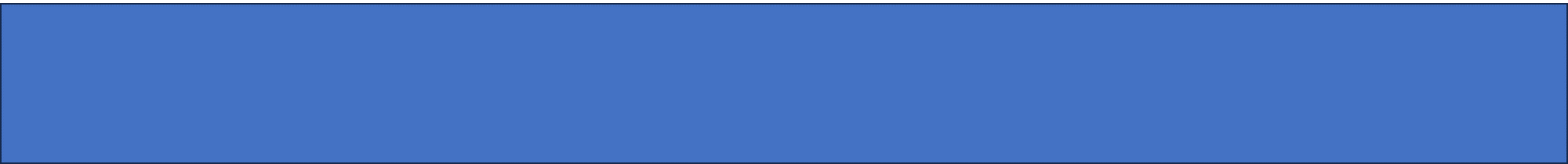


Title IX Investigator Training  
2025  
CCSNH



# Title IX Compliance Oversight

- Who is the Title IX Coordinator (TIXC)?
  - Role mandated by Title IX regulations
  - Oversees institutional Title IX compliance
  - Responsibilities fall into two categories:
    - Responding to reports or complaints of sexual harassment and sex discrimination
    - Leading efforts to ensure gender equity across the entire institution
- What's covered under Title IX?
  - Sex Discrimination, Sex-Based Harassment, Sexual Misconduct, and Retaliation Policy – online policy for your institution
- TIXC responsibilities include:
  - Appointing Investigators and ensuring training
  - Helping Investigators to strategize
  - Ensuring timeline compliance
  - Overseeing recordkeeping
  - Serving as primary point of contact for parties

# Investigators Role

- Conduct reliable, prompt, fair, and impartial investigations
- Work with TIXC to develop investigation strategy
- Identify and interview parties and witnesses
- Identify, organize, and compile relevant information
- Maintain accurate and thorough investigation records and notes
- Collect evidence that is included in report
- Provide notices to the parties in conjunction with TIXC
- Create an investigation report that fairly summarizes relevant evidence

# Investigators Role

- Prompt, Fair, Thorough, Reliable, Impartial, Equitable
- Investigators must not have a conflict of interest or bias for or against
  - Complainants - Respondents - Specific individuals involved with a complaint - Subject matter or details of the complaint itself
  - Current student in your class, co-worker/supervisor, family, direct financial interest
  - Former student or co-worker or potential future student is likely NOT a conflict of interest
- Remember, investigators have no “side” — their investment is in the integrity of the process

# Process & Procedures – basic timeline

- Incident
  - Complaint or notice to TIXC
  - Intake with Complainant
- Initial Assessment
  - Jurisdiction? Policy violation implicated? Informal or formal resolution?
    - Informal process would conclude (though could be reopened at later date) after steps taken & documented (educational conversation, NCO, supportive measures, etc.)
- Formal Investigation & Investigative Report
  - Notice to parties
  - Respondent meeting to review rights
  - Appointing investigator & scheduling interviews with parties & witnesses
  - Assisting in evidence collection
  - Report drafted & reviewed by TIXC/parties & opportunity for party comments
  - Report finalized

# Process & Procedures – basic timeline

- Hearing & Letter of Decision
  - Decision maker appointed
  - Virtual Hearing
  - Letter of Decision written by decision maker with findings of responsible/not responsible & sanctions assigned
- Appeal
  - If filed by either party, appoint appeal decision maker to review appeal request
  - Write letter of appeal decision (decision stands, vacate, remand, etc.)

# Investigation Timeline

- Appointment of Investigator – Investigator reaches out to set up virtual interviews – Investigator meets with parties & witnesses (records & transcribes) – Writes draft report including interview & all evidence gathered – TIXC sends draft report to parties – Parties have 10 days to submit comments – Investigator/TIXC review comments to see if any additional evidence/interviews are needed – Final report (including comments) completed & sent to parties
  - Investigator does not draw conclusions from report, simply lays out interviews & evidence

# Investigative Scope

- TIXC determines the scope of the investigation
- Scope refers to the allegations, timeframes, and parties subject to the investigation
- Considers allegations outside of jurisdiction, individual vs. group, multiple complainants or respondents, counter-complaints
- May need to adjust scope during process



# Establishing an Investigative Strategy

- Investigator(s) consult with TIXC to strategize and plan the investigation & look at:
  - Elements of the specific policy provision(s) alleged to have been violated
  - Challenges with the type of complaint and the parties involved
  - Preliminary undisputed and disputed facts and their significance
  - Initial witnesses and interview order
  - Other types of possible evidence and the plan to acquire such evidence
  - Anticipated obstacles and obstructions
  - A working timeline for the investigation

# Establishing an Investigative Strategy

- Planning considerations:
  - Process delays
  - Coordination with law enforcement
  - Interview sequencing
  - Evidence collection
  - Anticipate obstacles/obstructions
  - Counter-complaints
  - Sharing information with parties and witnesses during the investigation

# Process Delays

- Investigations must be completed within a reasonably prompt timeframe; avoiding undue delays
- Investigations must proceed during academic breaks
- Investigators should consult with TIXC if circumstances cause more than a short process delay
- Provide parties with written notice and rationale for any delays
- Parties may request reasonable extensions on a case-by-case basis
- Grant or deny extensions equitably
- Extensions must be documented

# Coordinating with Law Enforcement

- Law enforcement may also be investigating one or more of the allegations in the Title IX investigation
- Law enforcement may request that the institution pause or stop its investigation; however, the Title IX investigation cannot be unreasonably delayed
- Pausing for a reasonable time to permit law enforcement to gather evidence is permissible
- Criminal investigation cannot substitute for the Title IX investigation

# Interview Sequencing

- Conduct interviews as promptly as possible to capture fresh recollections (but not before NOIA)
- Identify an initial witness list and solicit additional witness suggestions from parties and other witnesses
- Investigator retains discretion to determine whether a suggested witness has relevant information
- When unsure, err on the side of conducting the interview
- **Suggested Sequence:**
  - **Complainant – Respondent – Witnesses identified by parties - Neutral Witnesses – Follow-up interviews if needed**

# Evidence Collection

- Identify potential sources of information
  - Snapchat (ask them to screenshot as these disappear), pictures, texts, voice notes, emails
  - Security footage from campus, outside campus
  - Medical records/police reports if offered
- Documentary (writing/documents) – electronic – real (physical object) – direct or testimonial (personal observation) – circumstantial (not eyewitness, but compelling) – hearsay (statement from outside of the interview) - character
- Document efforts to gather, even when not successful

# Evidence Authentication

- Not all evidence has the same degree of credibility
- Less credible evidence may be less reliable evidence
- Investigator should seek the highest quality evidence available
- Investigators should try to authenticate all evidence provided
  - Check for possible fabrication of evidence
  - Corroborate information between witnesses
  - Try to obtain complete, rather than partial, records when possible

# Relevant Evidence vs. Impermissible Evidence

- Investigators will only consider **relevant evidence**:
  - evidence which may aid in determining whether an allegation occurred or whether the behavior constitutes a violation of policy.
- Investigators will not consider **impermissible evidence**, including:
  - Questions and evidence about the complainant's sexual predisposition or prior sexual behavior (unless such questions and evidence are offered to prove that someone other than the respondent committed the conduct alleged or if questions/evidence concern specific incidents of the complainant's prior sexual behavior with respect to the respondent and are offered to prove consent)
  - Information protected under a legally recognized privilege (such as privileged communications between parties and their physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in a treatment capacity or privileged communications between a party and their attorney) unless the person holding such privilege waives the privilege.
  - Previous disciplinary action of any kind involving the respondent may not be considered unless there is an allegation of a pattern of related misconduct. This information of pattern can also be considered when determining an appropriate sanction. Investigations and determinations can consider character evidence, if offered, but that type of evidence is unlikely to be relevant unless it is fact evidence or related to a pattern of conduct.



# Standard of Evidence

- **Standard of Proof:** The College operates with the presumption that the respondent is not responsible for the reported misconduct unless and until through the applicable resolution process the respondent is determined to be responsible for a policy violation by a preponderance of the evidence (whether it is more likely than not that the respondent is in violation of the alleged policy violation).
- Insufficient information can also cause a case not to reach preponderance of evidence

# Counter-Complaints

- Respondents may file a counter-complaint of sexual harassment or sex discrimination against the Complainant if there is conduct that they wish to report
- Reporting other alleged misconduct (e.g., drug dealing, academic misconduct) is not considered a counter complaint
- May occur prior to, during, or after the investigation of the original complaint

# Information Sharing

- Information sharing practices must balance transparency, privacy, and strategy, as well as the parties' rights
- Witnesses may have limited or no knowledge about the complaint itself & may or may not know the parties or other witnesses
- Some information sharing will be necessary
- The parties will have access to all relevant and directly related information at the conclusion of the investigation

# Investigation Record Keeping

- Investigators begin documenting an investigation timeline upon assignment of the formal complaint
- The comprehensive timeline should include:
  - Dates of all significant investigation steps
  - Dates of all meetings and interviews
  - Evidence collection and review periods
  - Report writing and review periods

# Investigation Record Keeping

- Investigator is responsible for developing and maintaining an investigation file through the duration of the investigation
- Copies of the policies and procedures in place at the time of the incident(s) and at the time of the investigation
- Original NOIA and any subsequent NOIA updates
- File for each party and witness– Approved interview transcripts– Associated evidence (e.g., screenshots, written statements)– Correspondence with the Investigator(s)
- Collected evidence and evidence log
- Background information (education, employment, etc.)
- Witness flowcharts
- Contact Log
- Investigator notes
- Timelines for incident and investigation
- Investigation Report

# Party Rights

- Present witnesses, including expert witnesses
- Present evidence
- Discuss the allegations
  - **Unauthorized Disclosure** is distributing or otherwise publicizing materials created or produced during an investigation or resolution process except as required by law or as expressly permitted by the College or publicly disclosing a party's personally identifiable information without authorization or consent.
  - This does not restrict either party from obtaining and presenting evidence or restrict them from speaking to witnesses (as long as it does not constitute retaliation under this policy), consult with their family members, confidential resources or advisors, or otherwise prepare for or participate in the resolution process.
- Gather and present relevant evidence without restriction
- Be accompanied by Advisor of their choice
- Written notice of the date, time, location, participants, and purpose of investigation interviews or other meetings, with sufficient time to prepare
- Inspect and review directly related evidence and investigation report

# Promptness

- Reasonably prompt timeframes for the conclusion of the process
- Temporary delays for “good cause” and with written notice of the delay to parties
  - Complexity of the investigation
  - Concurrent law enforcement investigation with time-dependent release of evidence (1-to-2-week delay at most)
  - Delays for administrative needs are insufficient
- Institutions are required to make a “good faith effort” to resolve allegations promptly
- Some recommend a 60-day aim, have found it often takes months to fully resolve
  - Will update policy to ensure school breaks are not counted in a timeframe
- The grievance process must be conducted according to the timelines in the institutions policy – specific dates that are required listed in policy
  - Document all delays/extension and rationale(unresponsive parties, holidays, etc)
  - Periodically update the parties throughout the process

# Working with Advisors

- Parties have the right to be accompanied by an Advisor of their choice
  - “Of choice” truly means anyone
- Advisor will help their advisee prep for your interview
- Advisor generally does not speak unless clarification is needed in investigative interviews, there for support & if their advisee has any questions
- Parties may request that the institution provide an Advisor for hearing
- Advisors aid their advisee in writing questions of other party and any witnesses, but in the hearing the decision maker asks the questions



# Pre-Interview Planning

- Before scheduling interviews, consider:
  - Interview location
    - Mostly done virtually
  - Interview scheduling constraints
  - Interview participants
- Must provide written notification to parties with sufficient time to prepare
  - Date, time, location, participants, and purpose
- Cannot mandate participation in interviews
- Investigator should always prepare initial questions in advance, but remain flexible
- **Virtual interviews recorded & transcribed via Zoom**
  - **Save transcript to computer for inclusion into investigative report**

# Building Rapport

- Goal is the interviewee trusts that you are neutral and impartial
- Investigators can help set the tone for a productive interview
- Maintain professionalism & provide transparency about expectations and the process
- Balance neutrality with compassionate approach
- Ask questions in a straightforward, non-judgmental manner
- Follow up in a timely manner, if necessary
- Use a trauma-informed approach to working with all parties and witnesses

# Trauma-Informed Practices

- Trauma is exposure to an event or events that create a real or perceived threat to life, safety, sense of well-being and bodily integrity
  - Acute, chronic, or complex
  - Neurological, biological, psychological, social, and emotional impacts
  - Developmental, intergenerational, historical, secondary, vicarious, or collective
- Responses to trauma can vary, depending on a variety of factors
- Provide all persons with support that makes TIX services and processes accessible, including those who may have experienced trauma

# Trauma-Informed Practices

- Key principles of trauma-informed practice:
  - Safety
  - Trustworthiness and transparency
  - Collaboration and mutuality
  - Empowerment, voice, and choice
  - Cultural, historical, and gender issues
- Incorporate trauma-informed investigation and interviewing methods without compromising gathering credible, relevant evidence
- Trauma-informed practices should not significantly influence evidence evaluation

# Interview Introduction

- Open with a brief explanation of what is to come:
  - Investigator introduction & role explanation
  - Purpose of investigation
  - Role of advisor
  - Notetaking practices
  - Commitment to privacy
  - Acknowledging difficulty/emotional toll
  - Retaliation reminder
  - Post-interview steps

# Interviewing Tips

- Appropriate questions/wording
- Body language & non-verbal communication
- Active listening
- Seeking clarification/follow-up questions
- Identifying gaps

# Creating Your Questions

- An interview is a conversation designed to elicit information in a non-accusatory manner
- Start with broad questions, but focus on timelines and details as well
- Explore all gaps in information; answer all questions
- Ask purposeful questions: What do I need to know? Why do I need to know it?
- Use policy definitions to inform questions
- Avoid unnecessary repetition or traumatic re-triggering
- Clarify meanings (we hooked up, she was acting weird)

# Challenges: Resistance, Reluctance, Lying

- Offer a reminder of Investigator's role as a neutral fact-gatherer
- Maintain rapport and avoid accusation
  - "Help me understand..."
  - "I think I'm missing something..."
  - "Can you tell me more about that?"
- Use language mirroring (repeating back key phrases)
- Allow opportunity for interviewee to restate



# Final Questions

- “Is there anyone else that you think we should talk to?”
- “Are there any questions you expected that we didn’t ask?”
- “Is there anything else you think we need to know?”
- “Are there any questions that you would like us to ask any other witness or the other party?”
- Note rationale for not asking any question(s) based on irrelevance or impermissible evidence

# Consent

- Requires clear indication, either through verbal or physical actions
- Must be made free of force, threat, intimidation or coercion and must be given actively and knowingly in a state of mind that is conscious, rational, and not compromised by alcohol or drug incapacitation.
- Only a person of legal age can consent.
- Consent to one form of sexual contact does not constitute consent to all forms of sexual contact, nor does consent to sexual activity with one person constitute consent to sexual activity with any other person. Each participant in a sexual encounter must consent to each form of sexual contact with each participant.
- Engaging in activities such as slapping, hitting, hair pulling, strangulations, or other physical roughness without obtaining consent may constitute dating violence or sexual assault.
  - Consent in the context of the relationship is considered. When parties consent to certain forms of kink, non-consent may be shown using a safe word. Resistance, force, violence, or even saying “no” may be part of the kink and may be consensual. The totality of the circumstances will be evaluated.

# Consent: Incapacitation & Coercion

- Incapacitation due to alcohol or drugs - cannot make an informed and rational decision to engage in sexual activity because they lack conscious knowledge
  - the who, what, when, where, why, or how of the sexual interaction and/or are physically helpless.
  - No consent when asleep, unconscious, or otherwise unaware that sexual activity is occurring.
- Beyond drunkenness or intoxication – 1 sip of alcohol does not negate consent
  - Everyone handles their alcohol differently
  - slurred speech, vomiting, unsteady gait, odor of alcohol, combativeness, or emotional volatility.
- Coercion is unreasonable pressure for sexual activity when someone makes it clear they do not want to engage or that they do not want to go past a certain point of sexual interaction and the continued pressure is sufficiently severe.
  - Frequency, intensity, isolation, and duration of the pressure involved.
- Consent in the context of the relationship is considered. When parties consent to certain forms of kink, non-consent may be shown using a safe word. Resistance, force, violence, or even saying “no” may be part of the kink and may be consensual. The totality of the circumstances will be evaluated.

# 3 Pronged Approach for Evaluating Consent

1. Was force used by the Respondent to obtain intimate access?
2. Was the Complainant incapacitated? If so, did the Respondent know or should have known?
  - Respondent didn't see Complainant drinking but Complainant is displaying clear signs of having consumed alcohol - stumbling, mumbling, vomiting, slipping in & out of consciousness etc.
  - Intoxication of the Respondent cannot be used as a reason they did not know the Complainant was incapacitated or defend unwelcome behavior/force
3. What clear words or actions by the Complainant gave the Respondent permission for each specific sexual/imitate action that took place?
  - Appropriate "level ups"
  - Clear non-verbal signals that show lack of consent
    - What a "reasonable person" could have interpreted
  - Unenthusiastic vs. non-consensual

# Credibility

- Credibility is largely a function of corroboration and consistency
- Credibility Assessment involves evaluating the extent to which evidence is believable and reliable (accurate or truthful)
- Refrain from focusing on irrelevant inaccuracies and inconsistencies
- Memory errors alone do not necessarily diminish witness credibility, nor does some evasion

# Credibility

- Consider the following elements to establish credibility:
  - Corroborating Evidence: evidence that can be verified by an independent and objective individual
  - Inherent Plausibility: information that is believable on its face
  - Motive to Falsify
  - Additional elements that investigators should consider, but are commonly less probative are:
    - Past Record
    - Demeanor

# Report Review

- The investigator will provide the draft investigative report to the Title IX Coordinator for their review/feedback
- Prior to the conclusion of the investigation, the Title IX Coordinator will provide the parties and their advisors (if so desired by parties) an electronic copy of the draft investigative report as well as an opportunity to inspect and review all relevant evidence obtained as part of the investigation, including evidence the College does not intend to rely on in reaching a determination. The parties will have ten (10) business days to review and comment so that each party may meaningfully respond to the evidence. The parties may elect to waive all or part of the review period. Any responses should be submitted to the Title IX coordinator within this 10-day period. The Title IX Coordinator will make any party's response available for any other party to review.
- The investigator will consider the parties comments, if any, and incorporate relevant elements of the parties written responses into the final investigative report as deemed appropriate at the investigators discretion. This includes adding any additional relevant evidence, making necessary revisions, asking any additional questions of witnesses and/or parties, and finalizing the report.
- At the conclusion of the investigation, the investigator will send the final investigative report to the Title IX Coordinator.
- The final investigative report created by the investigator will fairly summarize relevant evidence and include as exhibits evidentiary materials as deemed appropriate by the investigator. The investigator will not offer recommendations regarding whether the policy was violated. At least ten (10) calendar days prior to the hearing referenced below, the College will send to each party and applicable advisors the final investigative report and exhibits in an electronic format for their review.

# Drafting the Investigative Report

- A comprehensive report includes:
  - Original complaint & party information
  - Jurisdiction
  - Scope
  - Applicable policies
  - Investigative Timeline
  - Summary of evidence
  - Analysis (credibility assessment, disputed vs. non-disputed facts)
  - Conclusion



# Drafting the Investigative Report

- Order of report:
  1. Open with allegations & all party info
  2. Dated timeline of all significant case steps from formal complaint on
  3. Summary of each individual interview
  4. Disputed & Undisputed facts breakdown
  5. Include party comments from draft period
  6. Include transcripts in report
  7. Include all RELEVANT evidence (electronic copies)
- Do not include sensitive evidence, such as nude photos
  - Can reference their existence in the TIX file on secured server
- Reports will be shared through Maxient

# Drafting the Investigative Report

- Formal Language, written in past tense
- Investigator is writing in 3<sup>rd</sup> person (author remains outside of the report & is a neutral, detached observe)
- Use direct quotes with transcript page #s as often as possible
  - Can add brackets to give context
    - He said.... He [respondent] said
- Can redact slurs or offensive language if needed
- Can use chosen name/pronouns of parties/witnesses
- Bias-free writing: avoid repetition, absolutes, cliches, generalizations, exaggerations, jargon, abbreviations