



THE INVESTIGATION

TITLE IX INVESTIGATION

The Title IX Coordinator has asked you to be the lead investigator of a Title IX complaint. Now what?

- ☐ Timing
- ☐ What information do you already have?
- ☐ Identify the key players
- ☐ Develop a plan



TITLE IX INVESTIGATION

What should an investigation consist of?

- ❑ A review of the policy alleged to be violated
- ❑ Separate interviews of the Complainant, the Respondent, and other witnesses (if applicable).
- ❑ A review of any relevant documents, photographs, or other materials.



TITLE IX INVESTIGATION

Rights of Complainants and Respondents:

- ☐ Both parties have the right to participate in the investigative process or elect not to participate.
- ☐ Both parties may present evidence.
- ☐ Both parties are entitled to have an advisor of their choice present for all investigative and disciplinary proceedings. The advisor may be an attorney.



TITLE IX INVESTIGATION

General Tips for Investigators:

- Maintain an appropriate relationship with the Complainant and Respondent throughout the investigation process.
- Remember that your job is to fact-find in an impartial manner.
- Investigators should conduct themselves in a professional manner during the investigation.
- Avoid making any assumptions or conclusions during the interview process.



TITLE IX INVESTIGATION INTERVIEWS

- Investigators should conduct thorough interviews so as to limit, as much as possible, the amount of times that a Complainant is questioned about the incident.



TITLE IX INVESTIGATION INTERVIEWS



Before the interview:

- The key to conducting a meaningful interview is to prepare.
- Review all documents/materials received prior to the interview.
- Review the definitions contained within the College's Sexual Misconduct Policy and other potentially relevant policies to determine what information you need to obtain.
- Prepare an outline.

TITLE IX INVESTIGATION INTERVIEWS

At the beginning of the interview:

- Make it known that the College takes allegations of sexual misconduct very seriously.
- Acknowledge that you will be asking some difficult questions and explain your intent.
- Stress the importance of honesty during the interview.



TITLE IX INVESTIGATION INTERVIEWS

During the interview:

- Have the interviewee tell their story first.
- When you start questioning, begin with general questions, but get more specific as the interview progresses.
- Get the details – the “who, what, where, when, why.”
- Identify all potential witnesses and relevant records.

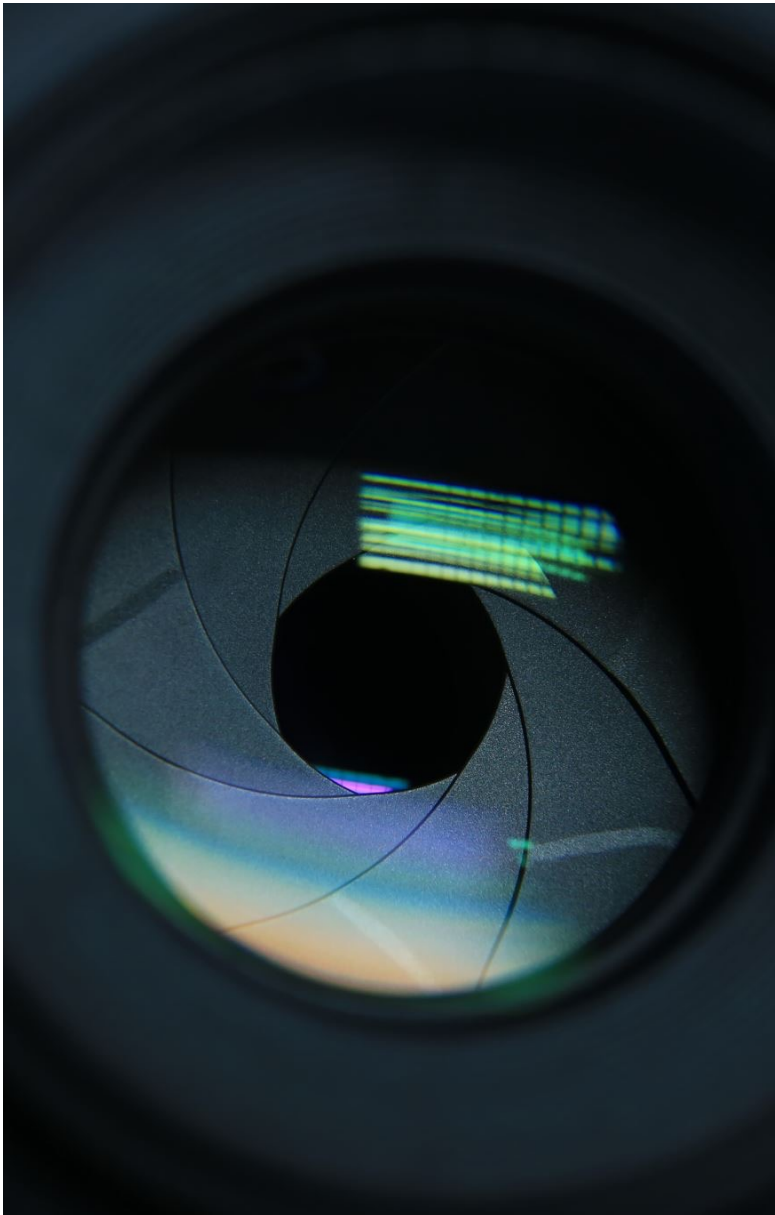
TITLE IX INVESTIGATION INTERVIEWS

During the interview:

- Make sure the interviewee answered the question you asked. Repeat questions if necessary.
- Listen to the answer and explore the unanticipated.
- Recognize that there will always be one or more competing interests.

TITLE IX INVESTIGATION INTERVIEWS

- **During the interview:**
 - Question about any documents that might relate to the complaint (e.g., texts, photos, videos).
 - Take notes throughout the interview detailing specific statements made.
 - Be objective and free from bias.



TITLE IX INVESTIGATION INTERVIEWS

At the end of the interview:

- Feel free to repeat significant facts to ensure that there are no miscommunications. If facts are specifically reconfirmed, be sure to indicate that in your notes.
- Also ask the individual being interviewed whether they have any questions or anything to add.
- Be as honest and upfront as you can about the situation but maintain confidences as much as possible.

CONSENT- INCAPACITY ANALYSIS



Create a timeline of

- Drug and alcohol use by the reporting party;
- Use of medication by reporting party that couldn't interact with drug or alcohol use that could affect consciousness;
- Physical and cognitive behaviors demonstrated and who observed it;
- Text messages, paragraphs, or videos of the reporting party;
- Card swipes or security footage; and
- Any information with a timestamp.

CONSENT FACT PATTERNS

- Fact Pattern #1: David and Victoria are kissing. David asks Victoria if it is okay to have sex, and Victoria agrees. They have sex. Victoria does not realize that David has hidden a friend in the closet to watch. Did Victoria consent to sexual intercourse with David?
- Fact Pattern #2: Darcy and Veronica are roommates. Darcy spends the evening drinking alone to the point of incapacitation. Veronica returns to the room and finds Darcy in her bed sleeping. Veronica gets into bed with Darcy. Darcy wakes up, kisses Veronica, and asks Veronica for to have sex. Veronica agrees. Darcy and Veronica have sex. Was the conduct consensual on Darcy's part?
- Fact Pattern #3: Kelly takes sleeping medication and drinks a glass full of vodka, intending to sleep for twelve hours or more. Kelly's friend, Pat, stops by to see Kelly and convinces Kelly to go to a party across campus. While at the party, they dance and talk. They kiss at the party, and then walk back together. The next morning Kelly does not remember anything about being with Pat. Was the conduct consensual on Kelly's part?

COERCION IS NOT CONSENT

- Is it coercion?
 - David reported that Tom has naked pictures of David and threatened to post them online if David refuses to engage in sexual intercourse with Tom.
 - Mary and Henry have been in a relationship for a year. Henry tells Mary that if Mary loves Henry, Mary would have sex with Henry. Mary worries if she says no, Henry will leave her. Mary reluctantly decides to have sex with Tom.
 - Nancy and Peter had been in a relationship for a year. Nancy ended their relationship. Thereafter, Peter attempted suicide and is suffering mental health issues. Nancy and Peter reconciled after. Nancy reported that Peter threatened to commit suicide again if she does not have sex with him.

TITLE IX INVESTIGATION

REFUSAL TO PARTICIPATE

The Complainant, Respondent, or any witness may leave the interview or choose to not participate in the investigation at any point in time.

If the Complainant chooses not to participate, the College must respect this decision, but then must decide whether the investigation should go forward without the Complainant.

If the Respondent or a witness leaves the interview or refuses to participate, advise the Respondent that the administration will be forced to base its determination on all other evidence gathered.

SENSITIVE SUBJECT MATTER

- Investigators should acknowledge the sensitive nature of what will be asked during the interview.
- Explain, however, that the College will be able to come to the most accurate determination after reviewing all of the evidence.
- Be aware that sexual violence may impact students differently depending on the cultural background of the student.
- Never assume that an individual is not telling the truth simply because he or she is not responding to the situation in the same manner as you would respond to the situation.



SENSITIVE SUBJECT MATTER

- Throughout the interview and Title IX investigation, avoid re-victimization.
- Preface the interview or particular questions with statements such as, “I am not implying that you should have taken this action nor am I passing any judgment, but I am collecting all the facts and need to determine exactly what happened.”
- Be sensitive to the fact that the Complainant could be suffering from emotional distress as a result of the incident.

SENSITIVE SUBJECT MATTER

- **Preparation in advance is imperative.**
 - Review your questions out loud so you are comfortable asking the questions.
 - Phrasing of questions is very important. Ensure that your wording or phrasing of questions is not thoughtless or inconsiderate.

SENSITIVE SUBJECT MATTER



Tips for interviews with sensitive subject matter:

- Start with the easier questions, such as the facts leading up to the incident.
- Take breaks as needed.
- Go with your gut – if you feel that the interviewee is getting worked up, take a step back, ask if they need water or a break, to prevent the interviewee from completely shutting down.
- Never say, “I know what you mean/you’re feeling.”
- Never make assumptions – always ask follow-up questions and have the interviewee explain the situation in detail.

TITLE IX INVESTIGATION NOTES TAKEN DURING AN INTERVIEW

Notes taken during the interview should be:

- Objective and free from bias.
- Factual notes with no conclusions.
- Reviewed and finalized immediately after the interview.
- Dated and signed.

TITLE IX INVESTIGATION - AFTER THE INTERVIEW

01

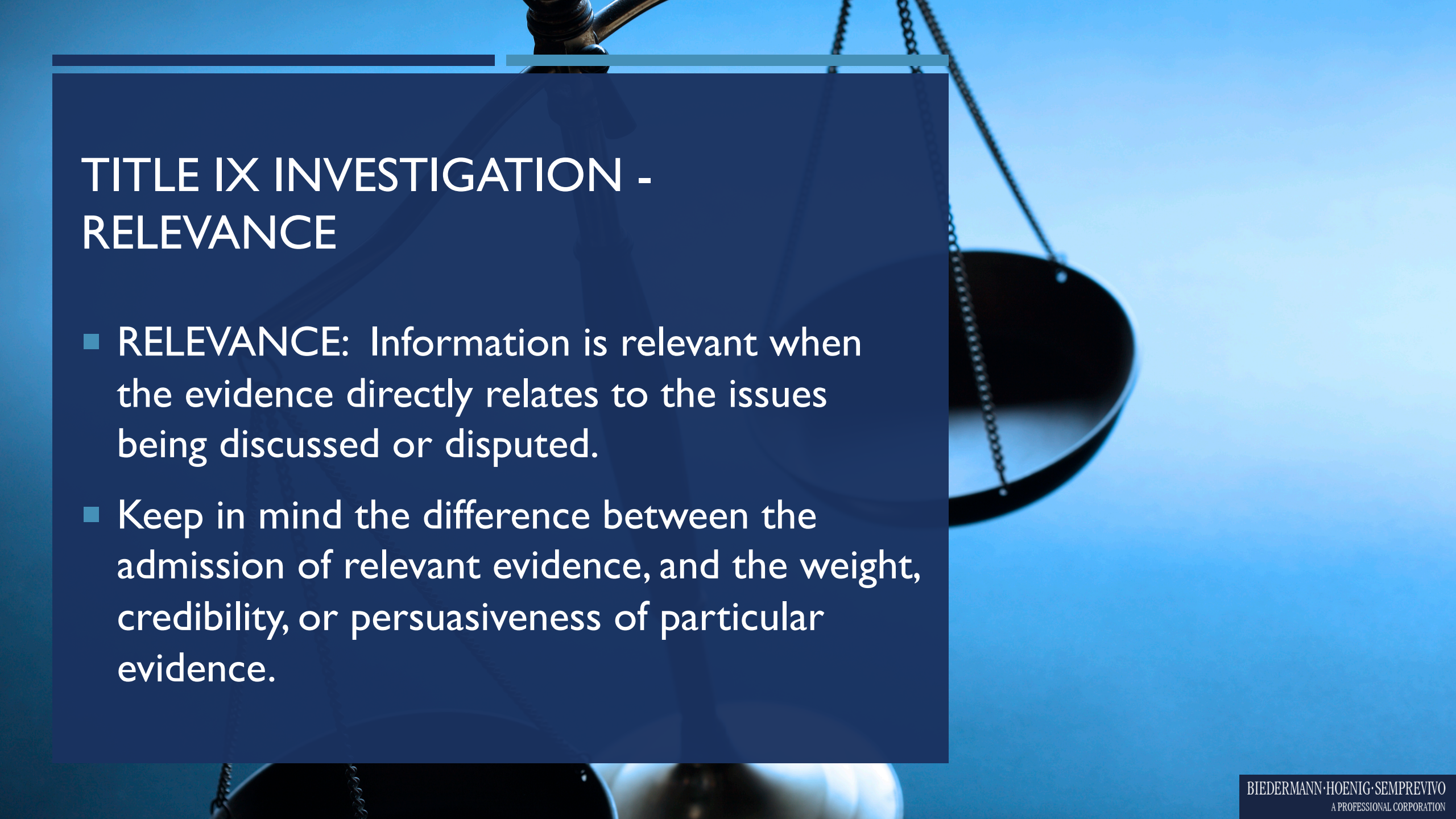
Review notes taken during the interview to determine if any additional information is needed.

02

Assess the need to re-interview someone if cause arises.

03

Maintain confidentiality and respect the rights of all involved. Only share your interview findings and notes with specified College faculty and staff.



TITLE IX INVESTIGATION - RELEVANCE

- **RELEVANCE:** Information is relevant when the evidence directly relates to the issues being discussed or disputed.
- Keep in mind the difference between the admission of relevant evidence, and the weight, credibility, or persuasiveness of particular evidence.

INVESTIGATION REPORT - RELEVANCE



To determine if a piece of information is relevant, ask yourself the following questions:



Is this information related to the applicable policy definitions?



Would the omission of this information detract from someone's understanding of the allegations?



Does this information provide context that is helpful for determining what occurred?

TITLE IX INVESTIGATION STANDARD OF PROOF

- The investigator's fact findings will be made using the "preponderance of the evidence standard."
- This standard requires that the information supporting a finding that the policy was violated be more convincing than the information in opposition to it.
- Under this standard, individuals are presumed not to have engaged in behavior that violates the policy.