



Part 1 of Investigator/Investigations: Role of the Investigator

Midland College Title IX Team Training

January 22, 2021

Learning Outcomes

- Importance of the Investigator;
- Recognize personal biases and learn the importance of setting these biases aside during investigations;
- Timeline Compliance and Communication Log;
- Fundamental principles of a civil rights investigation
- Know the Process of an Investigation at Midland College;
- Recognize how bias can ruin an investigation;
- Why the TIX Team does not use criminal terminology
- The Role of the TIXC during an investigation

Topics of Role of the Investigator Training

- Role of the Investigator
- The Process of an Investigation at Midland College
- Using a Timeline to Stay in Compliance
- No Criminal Terminology within an Investigation
- Fundamental Principles of a Civil Rights Investigation
- Learn an Investigation has No Place for Personal Biases
- The 7 Deadly Sins of Title IX Investigations
- Role of the TIXC During an Investigation

As stated in the ATIXA Who's Who on the Title IX Team – Higher Ed. Edition, *“Investigators are individuals designated....to conduct reliable, prompt, fair, and impartial investigations of sex- and gender-based discrimination and misconduct reports...”*

As an investigator, you will be searching for facts, witnesses, evidence and anything relevant to the assigned case.

You will also be assigned in pairs. We no longer follow a “single” investigator model. This is a plus for us and for all parties involved because investigators are charged with compiling and organizing relevant information as well as maintaining accurate and thorough investigation records and notes; ending with a comprehensive investigation report. You are also able to discuss with each other what occurred in an interview, which is an important part of investigating.

Meaning one can ask the questions and observe, while the other takes notes and observes. Recordings by the college are permitted. Parties are not allowed to record; they will be able to obtain a transcript of the recording. The TIXC will inform the parties and their advisors prior to meeting with the Investigators.

Outline of Investigation PROCESS I (Title IX) for Midland College:

1. Report of complaint received by Title IX Coordinator.
2. Title IX Coordinator reviews report:
 - Was the Complainant participating in or attempting to participate in an educational program or activity?
 - Was/Is the conduct severe, pervasive and objectively offensive?
 - Did the incident occur on college owned property?
 - Did the incident occur within the United States?

If answers are yes, proceed with Process I; if answers are no, will have to formally dismiss as a TIX complaint and proceed with Process II.

3. Title IX Coordinator or Deputy Coordinator invites Complainant for an Intake Interview and review:

- Rights and resources of Complainant
- Option to request an investigation
- Option to request supportive measures and/or academic adjustments
- Difference between reporting to law enforcement and college administrative investigations
- Option for a TIX trained Advisor

4. No Investigation requested by Complainant

- Depending on the nature of the complaint and the safety of others, an investigation may need to be pursued
- Option for investigation remains open as long as Respondent is still at the college.
- Option to request supportive measures and/or academic adjustments
- Option for a TIX trained Advisor

5. Investigation requested by Complainant - Informal Resolution Option

- An investigation will take place
- Gathering of all evidence and interviews of Complainant, Respondent and Witness(es) completed and turned in to the Title IX Coordinator;
- The Title IX Coordinator or designee will mediate the Informal Resolution
- The matter may be resolved informally provided that all parties come to an agreement of responsibility or non-responsibility.
- If all parties come to an agreement, the case is closed.
- If parties fail to come to an agreement during the informal resolution, the Complainant has the option to move forward with the Formal Resolution process or move to Process II, or withdraw from the process or close complaint with the option to reopen as long as the college has jurisdiction over the Respondent.

6. Investigation requested by Complainant – Formal Resolution

RESPONDENT (regardless of Formal/Informal Resolution):

- Notice of Complaint sent to Respondent
- TIXC Invites Respondent for Intake Interview
- Rights, Resources and Options of Complainant
- Investigation Process
- Option to Request Supportive Measures and/or Academic Adjustments
- Difference between reporting to law enforcement and college administrative investigations
- Right to an Advisor of choice and assign TIX trained Advisor

INVESTIGATION

- TIX trained investigators assigned
- Interviews with all Parties involved, including any Witnesses
- Evidence collected
- Investigation Report created
- Report, Statements and Evidence attached as Exhibits and turned in to Title IX Coordinator for finalization

LIVE HEARING

- Hearing Panel assembled
- Live Hearing with Cross Examination by Party's Advisors
- Hearing Panel makes decision on Responsibility and Sanctions
- Appeal
- Matter is closed

Process II – Midland College Policy

This process follows Process I, except for the following:

■ INVESTIGATION

- TIXC and one other trained investigator assigned
- Interviews with all Parties involved and Witnesses
- Evidence collected
- Investigation Report created
- Complainant and Responding parties review their statements – 10 days for written response
- Report, Statements and Evidence attached as Exhibits and turned in to Title IX Coordinator for finalization
- Report and recommendation turned over to Dean of Student Life for determination of responsibility and possible sanctions
- Appeal
- All appeals options exhausted
- Matter is closed

Using a Timeline

Using a timeline will help the TIXC and Investigators stay within the required “prompt and reasonable” timeframe according to the 2020 Final Regs.

We will try to maintain a 60–70-day timeline that includes hearings and appeals. It may go over depending on the incident, availability of individuals, or if there is a criminal investigation that put our investigation on hold. ATIXA suggests a goal of 60-90 days start to finish.

TIMELINE COMPLIANCE EXAMPLE

	TIMELINE	DATE	DATE SATISFIED	DELAY?	REASON DELAYED	NOTICE TO PARTIES?	NOTES
Formal Complaint received by Title IX Coordinator		April 1					
Initial Assessment and Jurisdiction Determination	Within 2 bus. days	April 3	April 3	N/A	N/A	N/A	
Assignment to Investigation Team	Within 4 bus. days	April 9	April 10	Yes	Investigator out sick on the 9th	Not needed	
Notice of Investigation and Allegations to Parties	Varies		April 11	No		Yes	
Investigation	Typically 10-14 business days	April 11-25	April 25	No			
Directly related evidence provided to parties with 10 days for response			April 25				
Investigation report and relevant evidence provided to parties 10 days prior to hearing			May 7				
Notice of Hearing (and or Pre-Hearing)	Varies	May 7	May 7	No		Yes	
Pre-Hearing Meeting(s)							
Hearing	Within 7 bus. days	May 10	May 10	No		Yes	
Notice of Finding/Outcome/Remedies and Sanctions & Information on Appeal Process	Varies	May 12	May 12	No		Yes	
Request for Appeal Deadline	N/A	May 15	May 15			Yes	
Deadline for Opposing Parties Response to Appeal		May 18	May 18				
Notice of Appeal Determination	N/A	May 21	May 21			Yes	

Why No Criminal Terminology #1

Mallory v. Ohio – In 1996 at Ohio University, two students Mallory (responding party) and Delong (reporting party) were at a local bar and both were drinking to celebrate Delong's 21st birthday. According to Mallory, they were both intoxicated when they left the bar and he walked her to her sorority house.

Delong and the “housemother” of the sorority house had a brief argument about the house policy of no overnight male guests. Mallory and Delong left and walked across campus to his dorm room and began to engage in sexual activity. During this time Delong vomited and they both went to the dormitory showers to clean up.

While in the showers, they engaged in further sexual conduct and other residents observed the two in the shower area. A resident advisor asked them to leave and Delong was still visibly intoxicated when leaving the shower area.

The next morning campus police questioned Delong regarding the events as well as counseled by the assistant director of OU Department of Health, Education and Wellness. Delong could not remember any of the events of the previous evening.

Mallory was subsequently charged with sexual assault under the university's code of student conduct and appeared at a "Judiciaries Hearing". He was found "responsible" on the sexual assault charge and expelled from the university. He was also indicted by an Athens County Grand Jury for the crime of sexual battery. The case came before a jury in 1998 and ended with a hung jury. He was not retried.

The criminal trial was the subject of extensive coverage by the local newspapers. It included reporting the facts about the case, published editorials, press releases, and letters expressing viewpoints about the case. One of those publications was from Mallory's parents characterizing the actions taken by OU in his case calling them "appalling" and specifically criticized HEW for providing counseling and support to Delong while denying such assistance to Mallory.

The newspaper contacted Woodruff (assistant director of HEW who counseled Delong), she orally answered questions and then provided a written statement in response to the parents' letter.

The section of the article containing Woodruff's statements included this paragraph:

“The information generated by the [university] police definitely met the definition of sexual battery, and certainly was a violation of the student code of conduct. It’s not like some people want to make out, that this was two drunk people having a good time, and one of them felt bad about it the next day. For them to say [Mallory] was treated unfairly just seems kind of ridiculous, from my perspective. He definitely committed a sexual battery, from the information that was gathered.”

In Feb 1999 Mallory filed a complaint alleging in part that Woodruff had uttered defamatory statements against him in the article.

The court found in favor of OU, concluding that the ordinary reader would view Woodruff’s statements as opinion and not fact.

Mallory appealed and the Tenth District Court of Appeals reversed, finding that Woodruff’s statement “implied that her assertion had a factual basis, and the average reader or listener could have concluded that Woodruff was in a position to have been privy to the information gathered by the university police, thereby viewing her statement as fact rather than opinion.”

The court held that “the statement involves a direct accusation of criminal activity involving moral turpitude on the part of the plaintiff, and we therefore conclude, as a matter of law, that the statement constituted slander *per se*.”

OU ended up repaying Mallory for his medical expenses for therapy, plus additional damages for mental and physical pain and suffering as a result of Woodruff’s comments.

Mallory was also entitled to more than the nominal damages that this type of case would allow.

Why no Criminal Terminology #2

As administrators of Title IX, we are considered **civil** (as opposed to criminal) type of investigators, hearing panel and decision makers.

Therefore, we do not use the criminal type of words to individuals involved with or within our note taking or report writing of an incident. This is regardless if it is a Process I (TIX) investigation or a Process II (MC Policy) investigation.

We will address those individuals as Reporting Party, Responding Party and Witnesses.

While we do have access to the MC police report (if it was reported to them), we will not let that persuade our investigation. However, it may give us some good information to ask questions during the investigation.

Fundamental Principles of Civil Rights Investigations

- Thorough
- Reliable
- Prompt
- Impartial
 - Fair
- Training-Based

An Investigation Has NO Room for Personal Biases

As with criminal terminology, investigators must check personal bias at the door when asked to cover an investigation.

A main objective of an investigator's role is to remain impartial and unbiased. Doing so will help the process of bringing together the information necessary to be fair and reliable. Not to mention transparent.

During an investigation, transparency is vital, specifically for due process.

However, a bias can creep up on you during the investigation process or when typing a report. That's okay because you can either talk it over with the TIXC or the TIXC will ask you to reword the report because a bias is showing.

Investigators:

- Seek to obtain equity, not equality
- Are aware of potential bias (hidden and visible)
- Have adequate training
- Are aware of conflict of interest
- Investigator partners can help keep each other aware of a potential bias during an investigation
- Ensures that their investigation is thorough, reliable, impartial, prompt, and fair
- Keeps the best interest of the individuals involved during the investigation process (meaning - no preconceived notions of those involved)

Let's Talk Equity

Equity is defined as what is fair under the circumstances. It does not mean identical. Instead, equity accounts for what is fair given the nature of the situation. For example:

- Throughout the investigation, the parties must have an equal opportunity to present relevant witnesses and other evidence.
- All parties must have the same opportunity to review the evidence, including the investigation report, prior to a final decision being made
- Any recipient-imposed restrictions on the ability of lawyers or other advisors to speak or otherwise participate in proceedings must apply equally to all parties.

The 7 Deadly Sins of Title IX Investigations

- Failure to understand and use trauma-informed investigations and questioning
- Assessing credibility ineffectively or improperly - "Don't lie to me"
- Allowing ambiguity and assumptions to rule the day rather than telling a cogent story of what happened
- Interpreting the evidence to match a desired conclusion rather than letting the evidence lead you to a conclusion
- Failing to "show your work" or gathering facts without analysis of evidence and credibility
- Being blind to personal biases
- Failing to treat the investigation as a hearing

Role of the TIXC During an Investigation

- Reviews report and determines whether to investigate under Process I, Process II or if an Informal Resolution process can take place.
- Invites Reporting Party for an Intake Interview.
- If investigation is requested, will send a notice of complaint to Responding Party and invite in for an Intake Interview.
- TIXC will begin vetting for two investigators.
- TIXC will contact those 2 investigators for availability and assign the case.
- TIXC will assign two Advisors for each party, contact for availability and assign to their respective parties.
- Sends notices to Reporting Party and Responding Party of the assigned Investigators and Advisors

- Request separate briefing meetings with Investigators and Advisors.
- All paperwork (i.e. sample questions, timeline, copy of details of intake interviews, etc.)
- Will keep in close contact with Investigators and Advisors for questions, concerns and to help stay on track of a prompt time frame.

Resources

All information used in this slide presentation/training was acquired from ATIXA materials.

ATIXA – Association of Title IX Administrators - www.atixa.org



QUESTIONS?

Next Training Session Date and Info

- 9:00 a.m., January 29 - TEAMS
- Part 2 of Investigator/Investigations:
Evidence