



Association of
Title IX Administrators

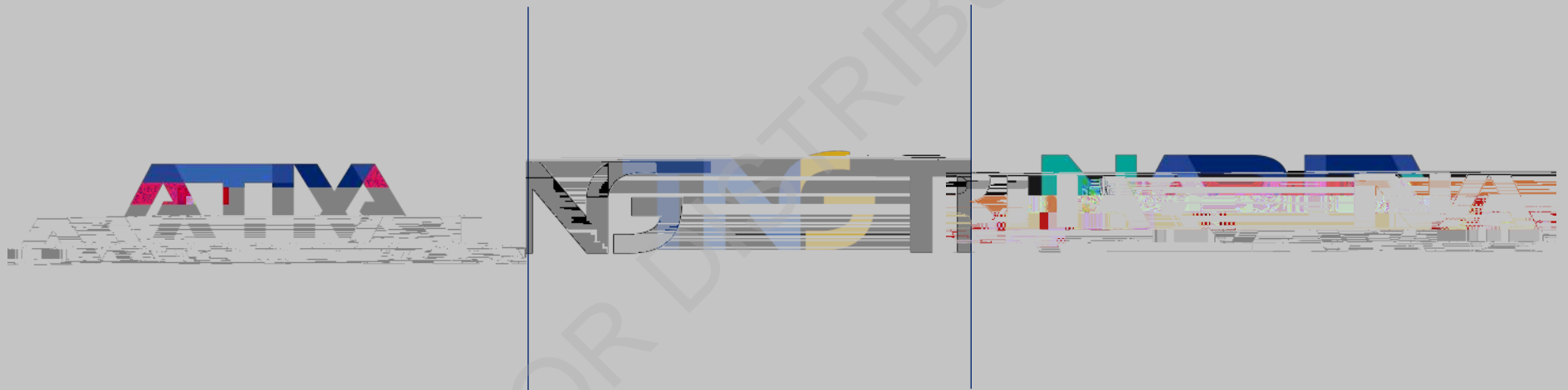
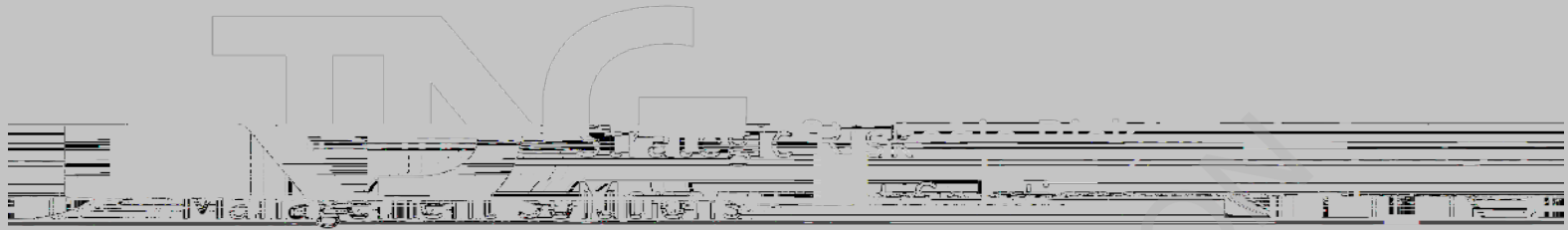
Investigation Report Writing for Higher Education

Training & Certification Course

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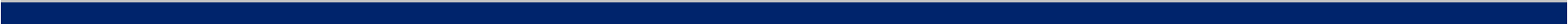
Any advice or opinion provided during this training, either privately or to the entire group, is never to be construed as legal advice. Always consult with your legal counsel to ensure you are receiving advice that considers existing case law, any applicable state or local laws, and evolving federal guidance.



CONTENT ACKNOWLEDGEMENT

TNG Consulting would like to thank April Paul Baer, Ed.D., Regina Curran, J.D., and Mandy Hambleton, M.S. for creating the foundational content for this training and granting TNG permission to use it for purposes of this course.





AGENDA

- 1 Overview of the Investigation Process
- 2 Purpose of the Investigation Report
- 3 Writing Mechanics
- 4 Writing Clarity
- 5 Absent Information
- 6 Investigation Report Sections



INVESTIGATION PROCESS

- ! IX Commandments
- ! 10 Steps of an Investigation
- ! Investigation Records



10 STEPS OF AN INVESTIGATION

1. Receive Notice/Complaint
- 2.

10 STEPS OF AN INVESTIGATION

7. Draft report
8. Meet with Title IX Coordinator (or legal counsel) to review draft report and evidence
9. Provide draft report and all evidence directly related to the allegations to parties and their Advisors for inspection and review with 10 days for response
10. Complete final report
 - ! Synthesize and analyze relevant evidence
 - ! Send final report to parties and Advisors for review and written response at least 10 days prior to



INVESTIGATION FILE (CONT.)

- ! Background information (education, employment, etc.)
- ! Witness flowcharts
- ! Issue tracking list
- ! Investigator notes
- !

INVESTIGATION OUTPUTS

Investigator will produce:

- ! Investigation Report
 - ! Relevant evidence
 - ! Investigation timeline
 - ! Appendices including review and comment by parties and any response from Investigator(s)
- ! Evidence File
 - ! Includes relevant and directly related evidence
 - ! Index or other organizational structure for file



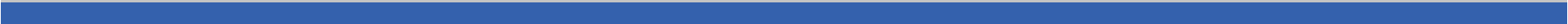
PURPOSE OF THE INVESTIGATION REPORT

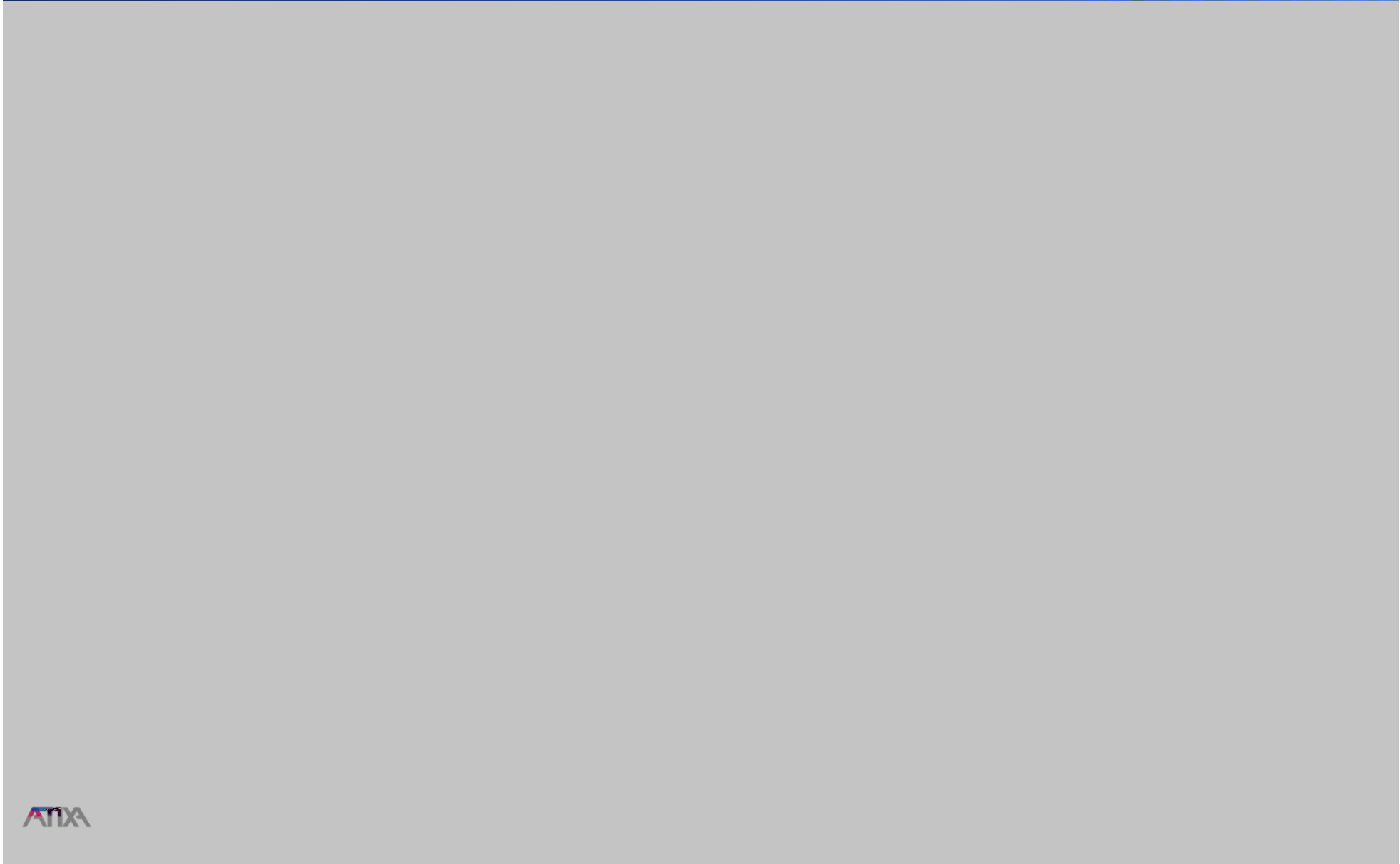
- ! Title IX Regulations Requirements
- ! Relevant and Directly Related Evidence
- ! Information for Decision-makers

TITLE IX REGULATION REQUIREMENTS

- ! Federal regulations require an investigation report that fairly summarizes relevant evidence (34 C.F.R. 106.45(b)(5)(vii))
 - ! While the regulations use the term “summary,” the preamble specifies the report will summarize all relevant evidence, meaning the report is comprehensive, not skeletal
- ! Any individual designated as an Investigator may not have a conflict of interest or bias for or against complainants or respondents generally or an individual complainant or respondent (34 C.F.R. 106.45(b)(1)(iii))
- ! A recipient also must ensure that Investigators receive training on issues of relevance to create an investigative report that fairly summarizes relevant evidence (34 C.F.R. 106.45(b)(1)(iii))







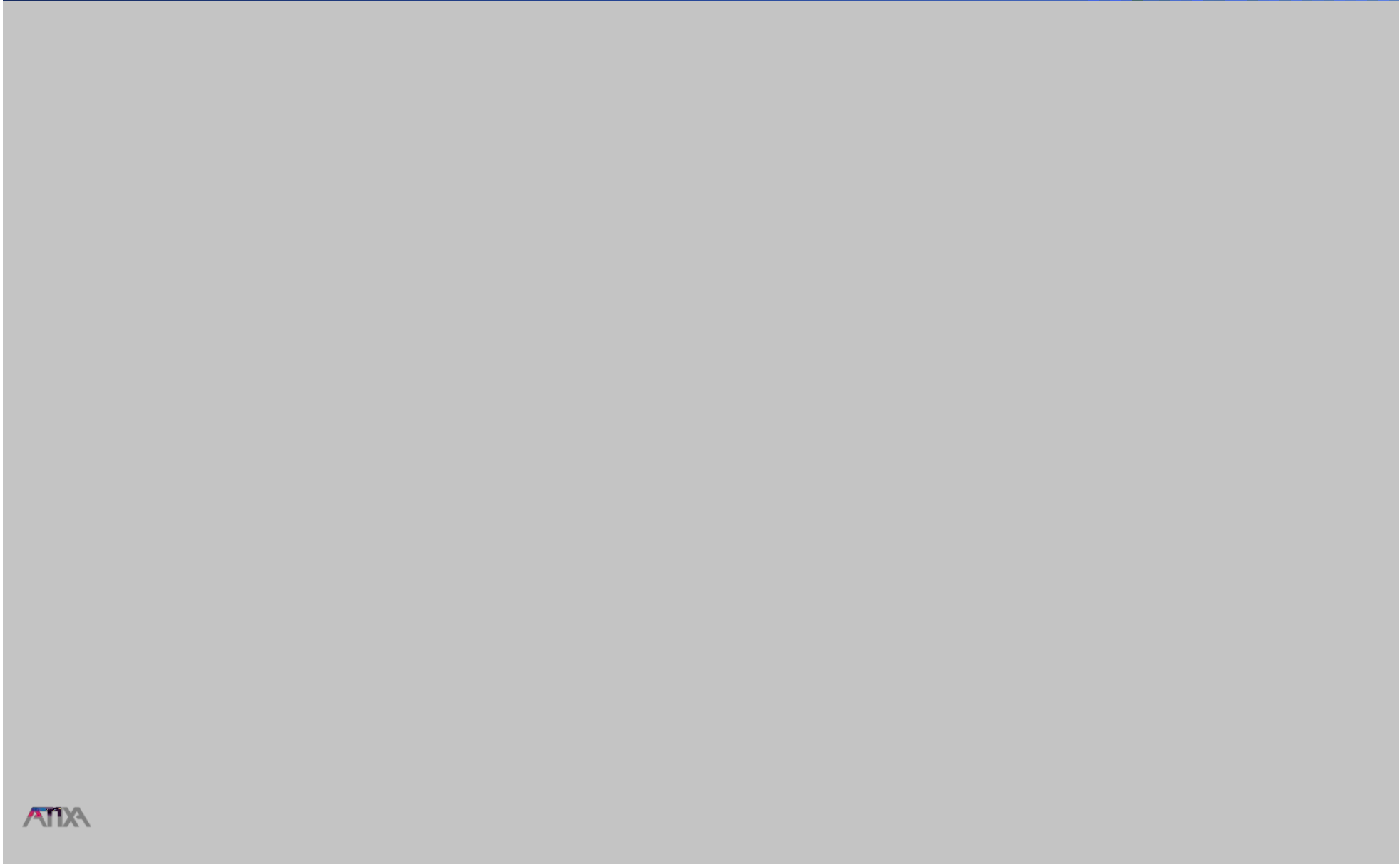
RELEVANT VS. DIRECTLY RELATED EVIDENCE EXAMPLE 2

- Witness 2 is the roommate of the Respondent. Witness 2 shares membership in several student organizations. Witness 2 follows the Respondent through social media connections. Witness 2 reports that the Respondent was present at a social event on the campus of the Respondent's institution during the time period of the alleged incident. Witness 2 reports that the Respondent was present at the event with a female student who was also present at the event. Witness 2 reports that the Respondent was present at the event with a female student who was also present at the event. Witness 2 reports that the Respondent was present at the event with a female student who was also present at the event.

SEPARATING EVIDENCE

- ! Investigation Report = only relevant evidence
- ! Evidence File = all relevant evidence and DRE
- ! The report is the narrower document, and the evidence file is a broader file
- ! When a portion of an interview/document/etc. is relevant, and another portion is DRE, the content needs to be separated
- ! ATIXA recommends an approach that separates the evidence so that all participants know what is what but all evidence can still be seen in the DRE file in a complete form





SEPARATING EVIDENCE EXAMPLE

- ! The parties exchanged 36 text messages, each writing 18. This text thread between the parties is provided to the Investigator, who determines that 20 messages are relevant and 16 are DRE
- ! The Investigator includes the 20 in the report, noting that a section of the texts is redacted and referencing where in the evidence file the removed sections of the thread can be found
- ! In the evidence file, the Investigator provides the entire text thread, but uses color-coding to show the section(s) that is relevant (and thus found in the report) and the section that is

SEPARATING EVIDENCE EXAMPLE (CONT.)

36 Text Messages
Evidence File



20 Relevant Text Messages
Investigation Report

16 Directly Related Text
Messages
Evidence File



AUDIENCE

External Agency

Title IX
Coordinator

Media

Legal Counsel

Appeal Decision-
maker(s)

Parties

Civil Court

Mediator or
Arbitrator

Decision-
maker(s)

Advisors

Criminal Court

Law
Enforcement



WRITING MECHANICS

- ! Tone
- ! Voice
- ! Tense

- ! Point of View
- ! Formal vs. Informal Language
- ! Active vs. Passive Voice

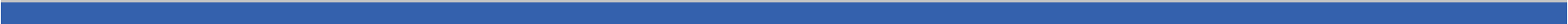
tone, voice, tense, & point of view

- ! Tone: an attitude of the writer toward the subject or audience; typically conveyed through word choice, syntax, and punctuation
- ! Voice: form or format through which a narrator communicates a story
- ! Tense: when events or actions occurred in time—in the past, present, or future. Verb choices can also indicate aspect, which expresses the completeness or effects of an action.
- ! Point of View:









FIVE POINTS OF VIEW

First Person

The author is involved in the story and recounts their own feelings, impressions, and experiences

Second Person

The author is speaking directly to the reader

Third Person Objective

The author is outside the story and remains a neutral, detached observer that is not privy to individuals' thoughts and feelings

Third Person Limited

The author is outside the story and has limited knowledge of individuals' thoughts and feelings

The author is outside the story and has



WRITING CLARITY

- ! Format & Structure
- ! Quotations
- ! Sensitive Information
- ! Redaction
- ! Word Choice
- ! Bias-Free Writing
- ! Footnotes
- ! Attachments, Appendices, Exhibits, etc.

“Your ethical duty to the person being interviewed is to present [their] position accurately...but after that your duty is to the reader. [They] deserve[] the tightest package.”
- William Zinsser

FORMAT AND STRUCTURE

- ! Verbatim transcripts vs. summarized interviews
- ! Narrative vs. bulleted format
 - ! Headnotes are a great summary device for a long narrative that follows
- ! Parties' comments on the draft report
- ! Report or Appendix?
 - ! Transcribe texts/social media/audio recordings
 - ! Description of video content
 - ! E-mail or other writing description or transcript/excerpt
 - ! Expert statements

DIRECT QUOTATIONS

- ! The inclusion of direct quotations and commentary from parties and witnesses can help to more accurately convey their experiences and perceptions
 - ! What are ways that these narratives are supported in investigation work?
 - ! How do Investigators account for quotations that are unclear, wordy, or otherwise strange?
 - ! What quotations or phrases should otherwise be omitted?
Example: "You feel me?"
- ! Statements by Advisors should not be attributed to a party as their own words
- ! Care must be taken to indicate whether a quote is something a witness told Investigator(s) or something another person said to a witness

FOUR WAYS TO INTEGRATE QUOTATIONS

Introduce the quotation with a complete sentence

Cole described how his relationship with Devyn evolved over time: "We were friends, and then we became friends with benefits."

Use an introductory or explanatory phrase

When asked to describe his relationship with Devyn, Cole responded, "We are friends with benefits."

Cole described his relationship with Devyn as 54790 I-.427

PUNCTUATION FOR QUOTATIONS

- ! If words are omitted from a quotation, use an ellipsis
 - ! Use three dots (...) to indicate an omission of words in a sentence or sentences in a paragraph unless the ellipsis is at the end of one sentence and the quote continues to the next sentence, then use four dots (....)
 - ! An ellipsis is not needed at the beginning or end of a quotation unless it provides clarity
 - ! Examples:
 - “Where sentence one ends....Sentence two begins.”
 - “You’ve heard it before...there’s only one reason someone comes back to your place.”
- ! Make sure when you omit text you do not change the meaning of the sentence

PUNCTUATION FOR QUOTATIONS (CONT.)

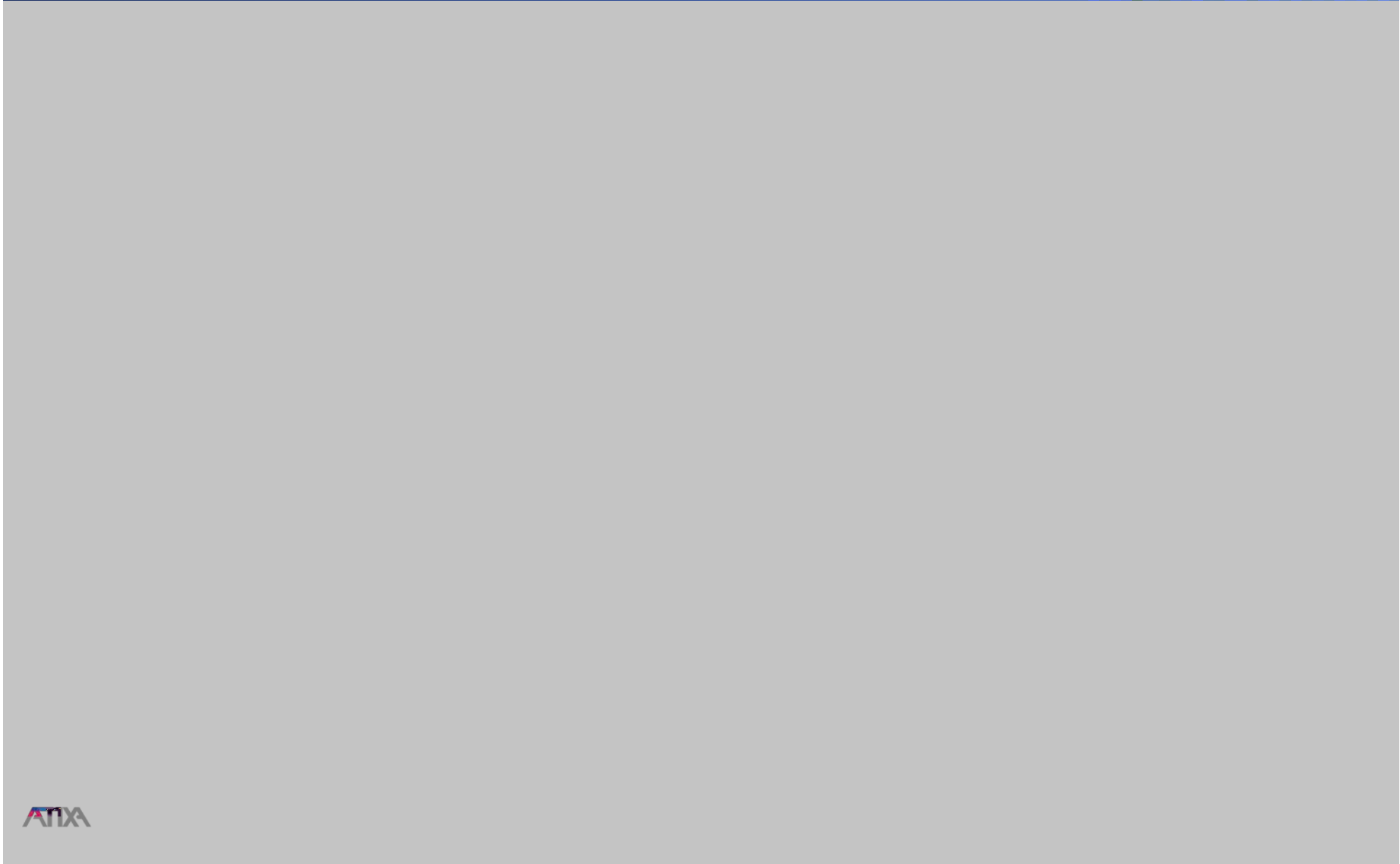
- ! If words are inserted or altered in a quotation, use square brackets [] to indicate the change
 - ! May include:
 - Letter case or verb tense
 - Replacing a word to clarify meaning
 - ! Example:
 - Original: “He made me question if I was imagining everything that happened.”
 - Revised: “[The Respondent] made me question if I was imagining everything that happened.”

PUNCTUATION FOR QUOTATIONS (CONT.)

- ! Enclose “sic” in square brackets to indicate that the quote is verbatim, even if there are spelling or other syntax errors
 - ! Example:
 - “I notified [sic] that she was starting to feel the effects of alcohol.”
- ! When a quote includes an error in word choice or grammar, there is no need to identify the error or include [sic] unless the meaning is unclear as a result, in which case, the Investigator should clarify as in the example above, or check with the interviewee to ensure they correctly captured the meaning.
 - ! This will occur most often in transcription of recorded interviews, but if Investigator notes are unclear, clarify

SENSITIVE INFORMATION

- ! Title IX investigations are inherently sensitive and personal
- ! Accounting for the fact that investigation reports will include details of private exchanges between others, what considerations should be made in report writing?
 - ! Use of offensive, triggering, or explicit language (i.e., slurs)
 - ! Graphic images*
 - Forensic photographs
 - Nude images
 - ! Medical information, including test results
 - ! Sex assigned at birth vs. gender identity
 - ! Chosen name vs. legal name





WORD CHOICE

- ! Conclusory words
- ! Unnecessary adverbs and adjectives
- ! Bias language
- ! Common Pitfalls
 - ! Repetition
 - ! Absolutes
 - ! Generalizations
 - ! Value-laden terms & phrases
 - ! Cliches
 - ! Exaggerations
 - ! Jargon
 - ! Abbreviations, initialisms, and acronyms

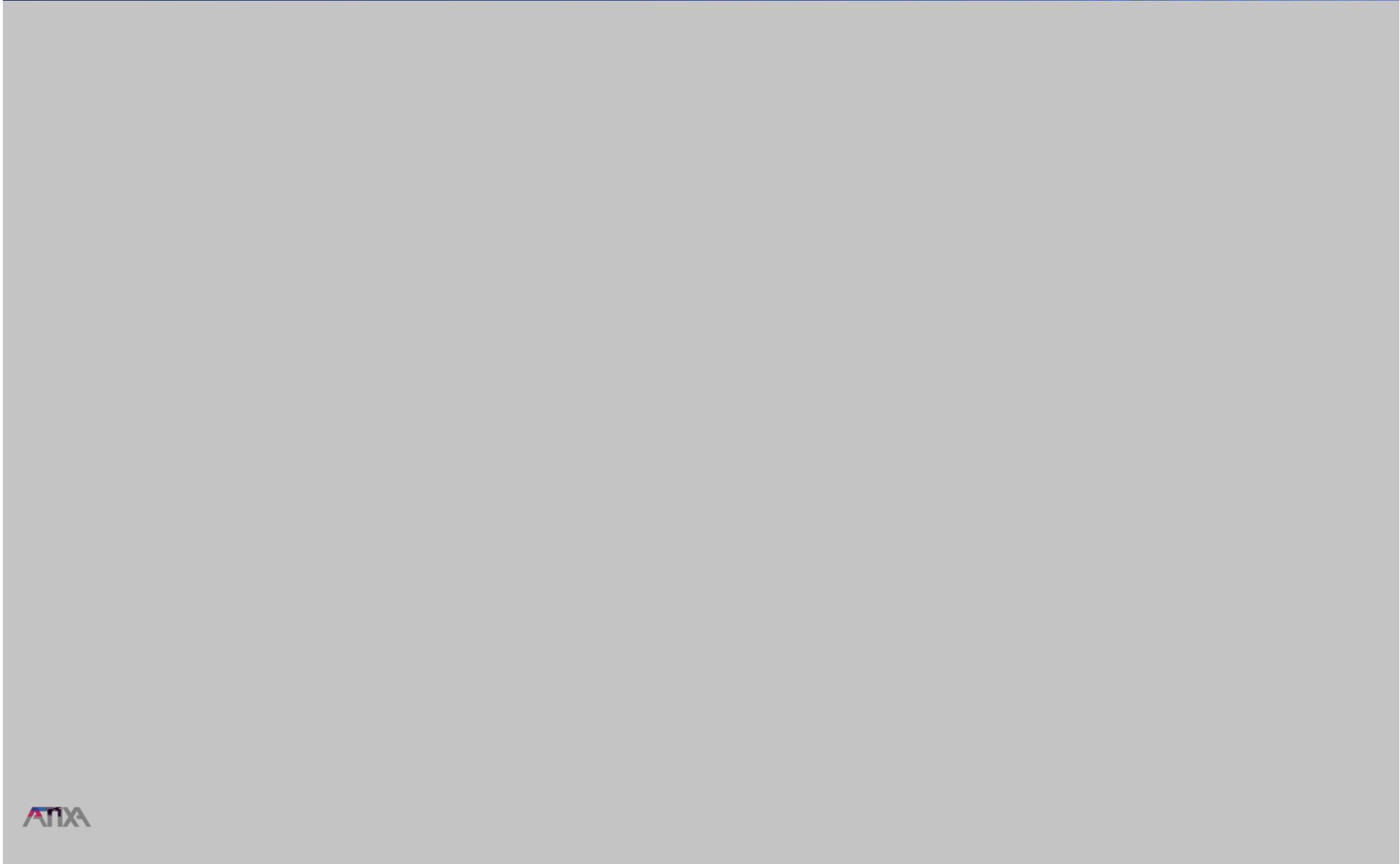


WORD CHOICE (CONT.)

- ! Investigation report construction is largely built with the first-person accounts of the parties and witnesses
 - ! What are ways in which these voices are included that

BIAS-FREE WRITING

- ! Words communicate ideas, but also reflect power, status, and privilege
- ! Language can reflect social capital
- !



TIPS FOR BIAS-FREE WRITING (CONT.)

- ! Avoid Labels
 - ! Describe identities and group connections as the individuals have described them
- ! When in doubt, ask
 - ! Do your research
 - ! Get a second opinion
- ! Use nouns, objectives, and adjectives properly
 - ! Avoid using language that refers to people in objectifying ways



FOOTNOTES

- ! Footnotes provide definitions, context, or source information that would otherwise disrupt the flow of the investigation report
 - ! Slang terms, regionalisms, campus-specific language
 - Ex. Talking (v): when two people have established that they are mutually interested in each other and are getting to know each other better, but are both still considered to be single and not a couple
- ! Description of electronic applications
- ! References to appendices
- ! Background information
 - May also be its own separate section depending upon length and complexity

FOOTNOTES (CONT.)

- ! Be mindful of assuming “common knowledge,” and if the Investigator is offering context from their own knowledge,

FOOTNOTES (CONT.)

- ! In text, the footnote follows punctuation except for the m-dash (—)
 - ! Example: The parties agreed that the sexual activity on the couch was consensual.¹
- ! ATIXA recommends using footnotes to indicate the source

FOOTNOTES FOR RELEVANT INFORMATION EXAMPLE

SUMMARY OF EVIDENCE







APPENDIX "C" (CONT.)

- ! Section 3: Questions the party wanted asked specifically that were asked but not in the manner the party wanted
 - Document: The question they wanted, the one that was asked, the answer, and the rationale for changing





ABSENT INFORMATION

- ! Information Unable to be Obtained
- ! Questions Asked Yet Unanswered

INFORMATION UNABLE TO BE OBTAINED

- ! Seeking information that was not successfully secured for an investigation report should be equally documented to demonstrate the lengths through which details and data were sought, even if not obtained:
 - ! Did not exist at the time of the reported incident
 - ! Does not exist at the time of the investigation
 - ! Cannot be located at the time of the investigation
 - ! Party/witness not available to be interviewed or declines to respond to question(s)
 - ! Request for submission declined
 - ! Was otherwise deleted, destroyed, damaged
 - ! Unable to access without a court order
 - ! Information that cannot be released due to an ongoing criminal and/or agency investigation





INVESTIGATION REPORT SECTIONS

- ! Complaint Information
- ! Executive Summary
- ! Relevant Background
- ! Jurisdiction & Scope of the
- !

COMPLAINT INFORMATION

- ! Complaint date
- ! Complainant's name and recipient ID
- ! Initial notice date
- ! Initial notice received from
- ! Respondent name and recipient ID
- ! Date assigned to Investigator(s)
- ! Assigned Investigator(s)
- ! NOIA date
- ! Final investigation report date

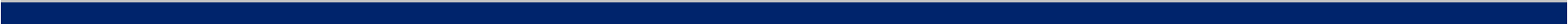
COMPLAINT INFORMATION EXAMPLE

RECIPIENT INVESTIGATION

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EXECUTIVE SUMMARY

- ! Date, time, and manner of formal complaint
- ! Complainant's identity
- ! Description of alleged misconduct
- ! Request for a formal investigation or TIX Coordinator's decision to sign a formal complaint
- ! Who investigated the complaint and in accordance with which law



RELEVANT BACKGROUND

- ! Summarize when and how the report/formal complaint was made and received
- ! Summarize the allegations, including applicable policies
- ! Include additional background information as necessary to understand relationship history, context, etc.
 - ! Separate by topic

JURISDICTION

- ! Provide a statement of jurisdiction including:
 - ! Incident date, time, and location
 - ! Individuals involved
 - ! Relevant policies and procedures related to jurisdiction
 - Information and analysis for subject matter jurisdiction
 - Institutional control of the context of the alleged misconduct
 - Indicate whether Title IX requires the institution to investigate, or whether jurisdiction is discretionary and Title IX does not apply

JURISDICTION EXAMPLE

According to available information, the Respondent is currently a full-time administrative employee in the College of Human Performance, and the Complainant is currently a third-year doctoral student in the physical therapy program. Both parties maintained the same institutional affiliations at the time of the reported incident.

The reported incident occurred in Parking Garage Six on the University of the Northwest campus in Mulkey, Washington, United States. If proven, the allegations would constitute sexual assault under University policy and Title IX.

The University controls the location of the reported incident. The Respondent is an employee, and the Complainant is participating in the institution's educational program as a student; therefore, the University has jurisdiction over this complaint pursuant to Grievance Policy Section 2(b).

SCOPE OF THE INVESTIGATION

- ! Scope: the purpose of and parameters around the investigation
 - ! Allegations it will explore
 - ! Timeframe being considered
 - ! Who will be involved
 - ! Outcome
- ! The Title IX Coordinator or designee will determine the scope of the investigation
- ! Most investigations will originate from a formal complaint, but the content of the complaint is not the sole determiner of the scope of the investigation



SCOPE OF THE INVESTIGATION EXAMPLE

The Office of Institutional Equity, which oversees Title IX and VAWA compliance, commenced an investigation to determine:

1. If the Respondent engaged in behavior which constitutes sexual assault under University policy in an on-campus apartment on April 7, 2021
2. If the Respondent engaged in behavior which constitutes sexual exploitation under University policy in an on-campus apartment on April 7, 2021

Investigator(s) Felicia Morris conducted an investigation in accordance with guidelines and requirements set forth by the U.S. Department of Education Office for Civil Rights for Title IX investigations, the Violence Against Women Act Section 304, and University policy. Her efforts were overseen by Melanie Wallace, Title IX Coordinator. Witnesses interviewed include current students and non-students.

This investigation was designed to collect all available information and to determine if the complaint should be dismissed or referred to a decision-maker for a formal hearing.

SCOPE OF THE INVESTIGATION EXAMPLE (CONT.)

EXAMPLE

Complainant is (e.g., *first-year undergraduate male residing in the residence halls*).

Respondent is (e.g., *a female graduate student and a resident*).

Completion

DISCUSSION:
Does including demographic information potentially bias the Decision-maker(s)?

APPLICABLE POLICIES AND RELEVANT DEFINITIONS

! Include the full text of ALL applicable policy sections
!

INVESTIGATION TIMELINE

- ! The Decision-maker or TIXC will need to include “a description of the procedural steps taken from the receipt of the formal complaint through the determination” in the written outcome letter provided to the parties following a hearing; this information is usually drawn from this section of the investigation report
 - ! Notifications to the parties
 - ! Interviews with parties and witnesses
 - ! Site visits
 - ! Methods used to gather other evidence
 - ! Hearings held
- ! Note any process delays, including rationale

INVESTIGATION TIMELINE EXAMPLE

Date	

REPORTED INCIDENT(S) TIMELINE(S)

- ! Timelines are a visual representation or list that shows events in chronological order
- ! Investigators should develop one timeline for the reported incident(s) based on all information collected during interviews and submitted as evidence
- ! Reference evidence which substantiates with the timeline (e.g., timestamped text messages, receipts, call logs)
- ! Timelines are especially helpful in cases where incapacitation may be involved

September 5-6, 2020

~10:00 PM





SUMMARY OF RELEVANT STATEMENTS & EVIDENCE

- ! The content of the investigation may dictate the most logical organization structure for this section
 - ! Chronological by interview
 - ! Chronological by incident timeline
 - ! Parties first, then witnesses

CREDIBILITY ASSESSMENT

- ! Specific and detailed analysis of credibility of:
 - ! Each party
 - ! Each witness
 - ! Any other relevant evidence
- ! Point to specific details that you have considered that have aided in your assessments
- ! May or may not include conclusions about credibility, depending on institutional policy
- ! ATIXA does not recommend making conclusions

CREDIBILITY OVERVIEW

Corroboration

- ! Aligned testimony and/or physical evidence.

Inherent plausibility

- ! "Does this make sense?"
- ! Be careful of bias influencing sense of "logical."

Motive to falsify

- ! Do they have a reason to lie?

Past record

- ! Is there a history of similar behavior?

Demeanor

- ! Do they seem to be lying or telling the truth?

*Enforcement Guidance
on Vicarious Employer
Liability for Unlawful
Harassment by
Supervisors*

EEOC (1999)

CREDIBILITY ASSESSMENT EXAMPLE 1

Respondent

Respondent



CREDIBILITY ASSESSMENT EXAMPLE 2

!

CREDIBILITY ASSESSMENT EXAMPLE 3

Complainant stated that she felt confused and dizzy upon awaking in Respondent's room around 4:00 a.m. Witness 1

DISCUSSION & SYNTHESIS

- ! Discuss and synthesize the relevant information
 - ! Consider the elements of each policy at issue
 - ! Refer back to relevant evidence cited
 - ! Refer to the credibility assessment(s)
- ! Summarize all areas of contested and uncontested facts/evidence
- ! Institutional procedure may allow the Investigator(s) to conduct analysis and make recommended findings or may limit the Investigator(s) to synthesis
- ! ATIXA does not recommend making recommendations for findings or final determination

DISCUSSION AND SYNTHESIS EXAMPLE

The parties agree on the order of events on the night of the reported incident including communicating via text message, meeting at an off-campus convenience store, walking to the Respondent's on-campus apartment, consuming alcohol, and engaging in sexual activity.

The parties disagree about the following:

! The amount of alcohol the Complainant consumed and

DISCUSSION AND SYNTHESIS EXAMPLE (CONT.)

During her interview, the Complainant alleged that the Respondent may have either videorecorded or taken photos of her without her consent while engaged in intimate activity on the couch in the Respondent's residence. The Respondent denies these allegations and no evidence was provided or available to corroborate or refute this allegation.

The Complainant also alleged that the Respondent may have caused her to unknowingly ingest an unknown substance that affected her capacity on the night of the reported incident. The Respondent denies these allegations. The Investigators were unable to obtain a copy of the SANE report; however, a verbal conversation with the SANE provider indicated that drug and alcohol screening at the time of the exam did not indicate the presence of any substance other than alcohol; however, the screen does not test for all substances that could impact capacity.

RECOMMENDED FINDINGS

- ! This section is only applicable if permitted by institutional policy
- ! Did the conduct occur as alleged?
 - ! List recommended findings by the standard of evidence for each alleged policy violation
- ! Include a statement that the recommended findings are not binding on the Decision-maker(s)

RECOMMENDED FINAL DETERMINATION

- ! This section is only applicable if permitted by institutional policy
- ! Did the conduct violate policy?
 - ! List recommended final determination by the standard of evidence for each alleged policy violation
- ! Include a statement that the recommended determination

CONCLUSION

- ! Guide for the Decision-maker(s) determination
- ! Akin to jury instructions

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CONCLUSION EXAMPLE PART 1

Complainant's allegations describe misconduct that implicates [Institution]'s prohibition of sexual harassment as well as several provisions of prohibited conduct outlined in [Institution]'s Student Conduct Code. Some provisions of the policies, like the prohibition of sexual harassment, require a threshold determination regarding the severity and pervasiveness of the alleged behavior in order to support a determination of a policy violation. Other provisions, such as the prohibition against providing alcohol to minors, may be determined by the decision-maker to be satisfied by a single occurrence.

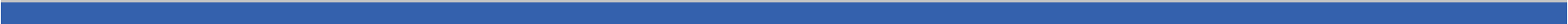
CONCLUSION EXAMPLE PART 2

Analysis of the allegations for the purpose of determining whether a preponderance of the evidence supports a determination that one or more of [Institution]'s policies were violated should proceed by first determining whether each allegation is supported by a preponderance of the evidence. In this particular situation, an analysis of whether consent was given, as well as whether it was withdrawn, is appropriate.

Allegations are presented separately and relevant evidence supporting and refuting each allegation is outlined within each respective section of the report. Because most, if not all, of the allegations are supported and refuted solely by the testimony of the parties and witnesses, the decision-

CONCLUSION EXAMPLE PART 3

This report is intended to provide an exhaustive summary of the relevant evidence related to the allegations made by the Complainant. It is not intended to draw any conclusions regarding the accuracy of the allegations or the credibility of the parties and witnesses. The investigators submit this report for consideration by a decision-maker appointed by [Institution] and remain available to answer any questions regarding the investigation or information contained in this report.





SECTION/APPENDIX COVER PAGE EXAMPLE

APPENDIX A

Description:

Formal Complaint Sub



Questions?



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