Title IX Advanced Interviewing Techniques and Strategies for Higher Education

Training and Certification Course

ATIXA
Association of
Title IX Administrators

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The content and discussion in this course will necessarily engage with sexual harassment, sex discrimination, violence, and associated sensitive topics that can evoke strong emotional responses.

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Introduction

This training focuses on the best available research and field-tested practices for effective investigations.

Practitioners will learn how to conduct interviews and apply sophisticated investigation skills to an array of Title IX complaints.

Our goal is to provide you with an opportunity to practice and refine your investigative skills to increase proficiency and confidence.

Department of Education (ED) Updates

- **Significant staffing reductions** and closure of some regional offices

- **Federal funding and oversight shifts**
  - Executive Order (EO): *Improving Education Outcomes by Empowering Parents, States, and Communities* (3/20/25)
    - Directed the Secretary of Education to "facilitate closure of the Department" and "return authority to the States and local communities"
  - Civil Rights enforcement remains in OCR, but other agencies (e.g., Health and Human Services (HHS) and Department of Justice (DOJ)) appear to be ramping up enforcement in certain areas

- ED released a Title IX-focused Dear Colleague Letter (DCL) (02/04/25), reinstating 2020 Title IX Regulations enforcement

- **Increased focus on Title VI**

Significant Federal Changes Impacting Title IX Compliance

- **Executive Order: *Defending Women from Gender Ideology Extremism and restoring Biological Truth to the Federal Government*** (01/20/25)
    - Defines sex as a binary concept – man or woman
    - Limited *Bostock v. Clayton County*'s holding, says it only applies to Title VII
        - Dept of Justice issued guidance on 02/12/25 that *Bostock* does not apply to Title IX
    - Prohibits federal funds and grants from promoting gender ideology

- **Executive Order: *Keeping Men Out of Women's Sports*** (02/05/25)
    - Prohibits transgender women from playing women's sports
    - Subject of active and rapid enforcement by Federal government

- **NIBRS User Manual Update:** Replaced "fondling" with "criminal sexual contact" and provided a new definition (06/23/25)

Defining Sex

Should institutions implement the Executive Order's definition of biological sex definition?

- Likely depends on state law and court rulings in jurisdiction

- Considerations:

  - *Bostock* applies an expansive definition of sex in employment
  - Residential schools/institutions are subject to the Fair Housing Act (FHA, aka Title VIII)
    - FHA Regulations are still in effect and protect sex expansively

- According to some federal court cases, sex includes sex discrimination that implicates sex stereotypes and sex characteristics

For Reference: Rescinded Prior Guidance

ED has rescinded all guidance documents inconsistent with the EOs or subsequent guidance

- White House Toolkit on Transgender Equality
- 2024 Title IX Regulations: Pointers for Implementation
- ED Toolkit: Creating Inclusive & Nondiscriminatory School Environments for LGBTQ Students
- Supporting Intersex Students
- Supporting Transgender Youth in School
- Letter of Educators on Title IX's 49th Anniversary
- Confronting LGBTQ Harassment in Schools
- Enforcement of Title IX - Based on Sexual Orientation and Gender Identity in light of *Bostock v. Clayton County*
- AG's memorandum "Application of *Bostock v. Clayton County* to Title IX"
- EEOC's "Enforcement Guidance on Harassment in the Workplace"

Title IX Resolution Process Refresher

Formal Grievance Process Overview

1 — INCIDENT

- Complaint/ Notice to TIXC

2 — INITIAL ASSESSMENT

- Jurisdiction
- Dismissal
- Supportive Measures
- Emergency Removal
- Referral to Another Process
- Informal/Formal Resolution

3 — FORMAL INVESTIGATION

- NOIA
- Interviews
- Evidence Collection
- Draft Report
- Parties' Review/ Comment
- Final Report

4 — DECISION-MAKING

- Questioning
- Credibility Assessment
- Determination and Rationale
- Sanctions
- Remedies

5 — APPEAL

- Appeal Grounds
- Determination and Rationale

Investigation Steps

1. Receive Notice/Complaint
2. Initial Assessment and Jurisdiction Determination
3. Determine Basis for Investigation
4. Notice of Investigation and Allegations (NOIA)
5. Establish Investigation Strategy
6. Thorough, Reliable, Impartial Investigation
7. Draft Investigation Report
8. TIXC Reviews Draft Report & Evidence
9. Parties Review Draft Report & Evidence
10. Final Investigation Report

Building Rapport

Building Rapport

- Rapport is meant to create a level of transparency and trust
  - Establish expectations
  - Reinforce neutrality and impartiality with authenticity
  - Set the tone for the interview
- Rapport building occurs throughout the interview, not just in the first five minutes
  - Ongoing effort to build and maintain rapport
- Do not sacrifice professionalism or neutrality to build rapport

Ethical Considerations

Professional vs. Buddy-Buddy

Understanding vs. Agreeing

Neutrality vs. Sympathy

Fairness vs. Advocacy

Practical Considerations

Attire	Location	Notetaking	Recording
Response to Emotions	Duration	Breaks	Entry/Exit

The Introduction

Explain:

- Process and interview flow

- Investigator role

- Expectations

- Retaliation and amnesty

- Interviewee rights

- Advisor role

- Privacy/confidentiality and their limits

- Need for truthfulness

The Introduction, Cont.

- Answer questions
  - About the interview or process
  - Anticipate reluctance or fear
- Avoid playing "cat and mouse" with the complaint contents or allegation details
- Encourage interviewee to refrain from filtering language
- Provide option to take breaks

Non-Cognitive vs. Cognitive Interviews

Anatomy of a Bad Interview

Source: https://www.youtube.com/watch?v=8_HdaCYZQRA

Non-Cognitive Interviews

- Briefly establish rapport

- Limited effort to promote memory recall

- Linear questions tracking anticipated timeline of events

- Occasionally solicit a written narrative before the interview

- Neutral delivery

- Use open-ended questions to elicit narrative answers

- Use direct questions focusing on details

Drawbacks to Non-Cognitive Interviews

Non-cognitive interviews tend to disrupt the natural process of memory searching, leading interviewees to:

- Abbreviate answers
- Fail to volunteer unsolicited information
- Provide inaccurate answers
- Withhold information

Navigating Memory & Trauma

Memory Basics

Sensory
- Lasts a few seconds
- If brain does not attach meaning, information is lost

Short-Term
- Lasts up to 30 seconds
- Example: Phone number

Long-Term
- Stored away
- Meaningful connection to information

Memory, Perception, and Accuracy

- Long-term storage is strengthened through association
    - Accessing memory means traversing association pathways
- Memory is not like a carbon copy of a file or a video
    - Memory is filtered through:
        - Beliefs
        - Education
        - Perspective
        - Prior experiences
    - The result is a mix of factual recollection and filtered perception
        - May alter facts; memory can vary with each retrieval

Memory and Trauma

- Traumatic memories are highly filtered
  - Denial
  - Lack of recall
  - Normalization
  - Self-blaming
- Trauma can impact Complainants, Respondents, and witnesses
  - Different forms and manifestations
- Being trauma-informed as an interviewer can help to draw greater detail from an interviewee
- Not an excuse for absence of evidence

Memory and Trauma

- Trauma may cause the brain to block access to memory
  - Traumatic memories are stored, but access may be hindered
- Trauma-informed interviewing techniques lower the brain's defensive measures
  - In a safe environment, the brain is more willing to access and experience traumatic memories

The Cognitive Interview

The Cognitive Interview

- Based on principles of memory and communication
  - Increases the quality and amount of relevant information an interviewer can gather
  - Decreases the likelihood of an interviewee recalling an event incorrectly
- Rapport is highly valued
  - Increases willingness of interviewee to share
  - Reduces:
    - Anxiety about discussing sensitive subjects
    - Defense mechanisms
    - Sense of feeling judged

Cognitive Interview Structure

1 INTRODUCTION
- Rapport development
- Information-sharing
- Communication expectations
- Context

2 TRANSFER CONTROL
- Interviewee chooses the direction and flow of the interview
- Active participant
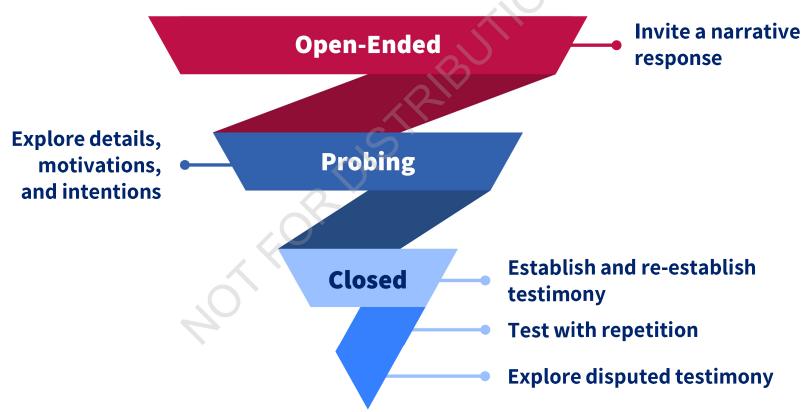
3 PROBE
- Identify central issues
- Investigator explores details
- Funnel
- Corroborate

4 RECALL
- Facilitate recall
- Verbal and non-verbal expressions
- Sensory exploration
- Extensive detail

Funnel Technique

Open-Ended — Invite a narrative response

Probing — Explore details, motivations, and intentions

Closed — Establish and re-establish testimony; Test with repetition; Explore disputed testimony

Memory and Recall

- Repeated recollection attempts can strengthen recall and improve accuracy
  - Neural access pathways can literally thicken
  - Strategies encouraging holistic memory retrieval yields more accurate information
    - Questions focused on episodic memory or isolated critical moments are less reliable
- Focus on broader recall, even innocuous details
  - Repetition can help
- Use open-ended questions, delay funnel questioning if needed
- Tie critical details to nonessential details for continuity
- Provide adequate space and time for recall to occur
- Silence can be useful; don't rush to fill it

Cognitive Interview Considerations

- Cognitive interviewing requires the interviewer to bring the interviewee back to the scene
  - Raises concerns of re-traumatization
  - Interviewers should prepare the interviewee for the possibility of re-traumatization and outline options for breaks, managing trauma, etc.
- Interviews will likely take more time
- Investigators may want to explain the interview approach
  - Transparency is a rapport-building tactic
- If using co-Investigators, do not switch questioners during the recall process
  - Switching could break focus and disrupt recall

Cognitive Interviewing Strategies

Sensory Recall

Prompt recall through sensory experience, rather than event narrative

- "Are there specific scents or smells you remember?"

- "Are there specific sounds that you recall?"

- "How did the drink taste to you?"

- "How did it feel as you sat down on the couch?"

- "What else do you remember seeing from your spot on the couch?"

Memory Jogging Techniques

Prompt recall through accessing memories with divergent, rather than direct, retrieval methods

- Recount the events from the perspective of an imaginary third-party viewing the scene
- Take the witness to the scene to jog recall, but beware of trauma triggers
- Have the witness give a factual account without editorializing, then transcribe the account and ask the witness to go back and add their opinions and perceptions

Additional Tactics and Tools

Reverse Chronological Order

Model Statements

Unexpected Questions

Written Narrative

Draw/ Use a Picture

Focus on Specifics

Review details to:

- Check for accuracy and consistency
- Clarify contradictions or ambiguities
  - Terms
  - Phrases
- Correct errors or omissions
- Rephrase confusing questions
- Spur additional recall

Challenging Interviewees

- Accept any information they will share

- Ask logical follow-up questions

- Clarify vague, nonsensical, or non-responsive answers

- Emphasize contradictory

- Highlight conflicts

- Interview in Investigator pairs

- Mirror responses

- Review facts

Interview Closure

Ask the interviewee to :

- Contact the investigator with any new information
  - Extends the interview
  - May result in more or better detail
- Suggest other individuals for the Investigator to interview, **or**
- Suggest questions to ask others

Activity: Cognitive Interviewing

Cognitive Interviewing Activity

In groups of two, each person chooses a role: Interviewee or Interviewee

Step 1	Step 2	Step 3:
▪ **Interviewee:** Review your prompt in the lobby ▪ **Interviewer:** Review your prompt in the lobby	▪ **Both:** Do not share details from your respective prompts ▪ **Interviewer:** Conduct interview and take notes	▪ **Interviewee:** What did the interviewer do that helped, hindered, or distracted you? ▪ **Interviewer:** What approaches did you use? Were they effective?

Cognitive Interviewing Activity, Part 2

- Using the statement from below, what kinds of questions would you use to solicit more information from the Complainant during their interview?

- I cannot remember much from the party. I remember walking into the duplex with a couple friends. It smelled weird when we walked in the door, and it was dark.

- I think I stayed with one of my friends that I met at the party, and we got a drink and hung out in a corner of the room. I do not recall who was present.

- At some point, Respondent came over to talk and my friend left me alone. I had been sitting for a while and when Respondent took my hand and helped me stand up, I felt dizzy. I couldn't really say anything else.

Credibility Evidence & Assessment

Credibility Evidence

- Credibility assessments weigh the accuracy and reliability of relevant information
    - Not synonymous with "truthful"
    - Evasion, misleading testimony, or memory errors may impact credibility
- Primary consideration is **corroboration**
    - Source + content + plausibility
- Avoid too much focus on **irrelevant** inconsistencies
    - However, consistency of testimony can enhance credibility, especially when other sources of evidence corroborate that consistency

Consistency

- Consistent accounts may bolster believability
  - Parties or witnesses may be consistent **but not truthful**, which is why credibility is more about assessing believability than a way to find truth
  - In practice, inconsistency may be a better tool to assess credibility than consistency
- Carefully parse words or language to assess how (in)consistent a detail may be
  - Note when accounts are similar but **not** exact
- Consistency is often a basis to probe more deeply
  - When someone gives inconsistent testimony, it presents an opportunity to clarify, recognize deviations, and explore what their basis may be

Credibility Factors

Corroboration
- Aligned testimony and/or physical evidence

Inherent Plausibility
- Does the explanation 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?

Credibility Technique: Triangulating

Triangulating Credibility
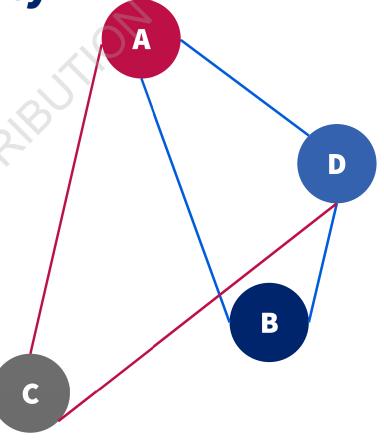
- Abductive reasoning
    - Forming the hypothesis that best explains the facts
    - Likeliest possible explanation based on incomplete facts
    - Less compelling than corroboration, but sufficient in some circumstances
- Investigator is faced with two different but equally plausible explanations
    - Need to determine which may be more likely, more logical
    - Use other evidence to drive the analysis
    - "In light of evidence provided by Witness C and Witness D, Respondent's account appears more likely than Complainant's account"

Triangulating Credibility

- **Circumstantial analysis**
  - More helpful when standard of proof is the preponderance of the evidence
  - A formal way to process inherent plausibility
- If A and D are true, is B or C more likely to be true?
  - C is a bigger stretch to get to than B, so B is more plausible
- Using known data points to extrapolate the likeliness of unknown facts

Trauma & Credibility

Trauma and Credibility

- Investigators can only collect available relevant evidence

- Trauma is neutral; it neither enhances nor detracts from proof

- Lack of evidence from an individual often negatively impacts their credibility

- Never substitute trauma indicators for evidence

Trauma and Credibility

- If an individual's account changes, differentiate between **more** information, **different** information, and/or **contradictory** information

  - Minor or insignificant variations should not significantly impact credibility

- One's affect is **not** evidence

  - A change in affect may signal a need to probe more deeply into a specific topic, though

Responses to Trauma

- Individuals may have different trauma manifestations, impacted by:
    - Availability or knowledge of coping strategies
    - Capacity for resilience
    - Cultural differences
    - Past history of trauma
    - Personality
    - Support systems or lack thereof

- Avoid biased thinking about what a person "should" or "would" have done, as this may invoke sexist tropes, rape myths, or other "victim-blaming" notions

Cognitive Interviewing, Trauma, and Credibility

- Deception requires greater cognitive load

- Deceptive individuals:
  - Prepare responses to anticipated questions
  - Develop a consistent, fixed narrative

- Honest individuals generally provide more detail or information

- Cognitive interviewing leverages differences in cognitive processing and strategy
  - Reveals inconsistencies in fixed narratives
  - Elicits verifiable details in credible accounts

- The motive for deception may also be of interest

Source: Vrij, A. (2019). Deception and Truth Detection When Analyzing Nonverbal and Verbal Cues. Applied Cognitive Psychology, 33, 160–167.

Credibility Assessments

Making Credibility Assessments

- Examine consistency of the story
  - Analyze statement substance and chronology
  - Inherent plausibility of all relevant evidence taken together
- Compare degrees of credibility within evidence
  - Is a piece of evidence consistent with other evidence known to be credible?
- Consider the amount of detail provided
- Non-verbal behaviors may be important to note
  - Do **not** let this drive the analysis

Credibility Assessments

- Investigator should use credibility assessments to direct the Decision-maker(DM) to areas needing closer examination
    - Focus the DM on alignment or discrepancies that may be significant for their analysis
    - Summarize the evidence to provide a snapshot
    - Use citations to help DM find the evidence within the report

Decision-Making and Credibility

- The live hearing is the last chance for the DM and parties to probe credibility
  - Live hearings are required for sexual harassment complaints in higher education
  - Cross-examination though Advisors
  - Institutions may permit direct examination by Advisors

- Some courts have endorsed a hearing for credibility assessment purposes

Common Credibility Errors

- Misplaced emphasis on:
  - Inconsistent information
  - Nonverbal indicators (e.g., nervousness, anxiety)
- Confusion about memory
  - Stress and emotion can complicate memory
- Parties' status
- Investigator bias

Activity: Credibility Assessment

Credibility Assessment Activity

Step 1	Step 2	Step 3
▪ Read the fact pattern and statements from Omar and Devya ▪ Highlight elements that factor into credibility assessment	▪ What information boosts Omar's or Devya's credibility? ▪ What evidence could potentially bolster or detract from Omar's or Devya's credibility?	▪ Outline the evidence that impacts each Party's credibility ▪ Itemize evidence you would like to collect related to credibility

Looking Ahead

Day Two Activity

- Opportunity to practice skills from today
  - From the initial investigation strategy through interviews and credibility assessments
- Intentionally small and sparse case file
- Mix of small group role-playing and large group discussion
  - Faculty modeling some skills

Investigation Simulation Exercise

Introduction

Participants will have an opportunity to practice skills from Day One:

- Investigation Strategy

- Rapport Building

- Cognitive Interviewing

- Funnel Technique

- Trauma-Informed Questioning

- Credibility Assessments

Activity

- Participants will review file documents in phases; **do not read ahead**
  - Each document will provide information or evidence
  - Each phase will have specific tasks
- Participants will work in pairs to practice different skills

Phase 1

Materials for Review

- Complaint

- RA Report

- NOIA Excerpt

Tasks to Complete

- Discuss the file as you would in a strategy meeting; sketch out a strategy

- Outline the introductory spiel, given the information in the file

- Prepare initial questions for the Complainant using cognitive interviewing strategies and techniques

- Discuss pre-interview rapport building strategies

Phase 1 Debrief

Phase 2

Materials to Review

- Materials from Phase 1

- Complainant Interview Transcript Excerpts

Tasks to Complete

- Review the transcript excerpts

- Identify areas needing:
  - Further development through more questioning or evidence gathering
  - Improved trauma-informed questioning

Phase 2 Debrief

Faculty Modeling

Phase 3

Materials to Review

- Materials from Phases 1 and 2
- Interviewees Only: Additional Facts - Complainant

Tasks to Complete

- One person in each pair will act as interviewer, the other as interviewee
- Interviewees should use the additional facts page to guide their answers

Phase 3 Debrief

Phase 4

Materials to Review

- Materials from Phases 1-3
- Respondent interview transcript excerpts
- Interviewees Only: Additional Facts - Respondent

Tasks to Complete

- Review the transcript excerpts
- Identify areas needing:
  - Further development through more questioning or evidence gathering
  - Different questioning structure
  - Improved trauma-informed questioning
- Switch roles from previous phase and practice cognitive interviewing
- Interviewees use the additional facts page
  - The topics are similar to the Complainant additional facts document

Phase 4 Debrief

Phase 5

Materials to Review

- Materials from Phases 1-4
- Additional evidence file

Tasks to Complete

- Assess Parties' credibility using strategies outlined in Day One slides
- Draft key points for credibility analysis, as you would for the investigation report
- Note: Use only the facts in the file
  - If anyone created any facts during an interview, exclude those facts

Simulation Debrief

Questions?