

Second Interviews, Difficult and Non-Compliant Parties, and Credibility

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Initial Investigation-Quick Overview

- Planning (timelines, communication, etc.)
- Documentation plan
- Steps to ensure the consistency of treatment of individuals involved in the process.



Second Interviews

- Assessing the need for another interview
- Preparing for the second interview



Assessing the Need For a Second Interview

- Is there relevant information needed?
- Is there another way to get the information?
- What are the Pros/Cons of the Second Interview?



Preparing for a Second Interview

- Review materials collected to date
- Review policy definitions and how they relate to the facts that you have.
 - What is missing?
 - What is in conflict?
 - What just doesn't make sense yet?
- What information do you not have?
 - Who has that information?
- What information conflicts?
 - What clarification do you need? From who?



Preparing for a Second Interview (continued)

- Is there information that you need but do not have?
 - When you review the materials and previous interviews, were there questions that you thought you had answers to, but the answer isn't complete?
 - Was the question avoided?
 - Was the question answered with opinion and not fact?
 - Is there circumstantial evidence that you need to follow-up on?



Example for second interview

- The allegation being investigated is that Complainant experienced a sexual assault by coercion when the Respondent repeatedly requested sexual contact, but the Respondent was rebuffed by the Complainant the first twelve times that the Respondent asked to kiss them or to engage in oral sex. The thirteenth time, the Complainant consented to kissing only, but the Respondent performed oral sex on the Complainant.
- You know that:
 - The Complainant firmly said no the first twelve times, as stated by both the Complainant and Respondent.
 - Witness A saw the Complainant and Respondent and overheard the three of the statements declining a kiss twice and oral sex once.
 - Respondent stated that ultimately the Complainant consented to kissing and oral sex, and that the Complainant directed the Respondent during oral sex.
 - Complainant stated that they consented to kissing only to stop the Respondent from asking and that the oral sex was not consensual.
- What additional questions do you have for the Complainant?



Challenging Witnesses

- Don't assume that they will be difficult, but always be prepared for a difficult witness.
- Often working with a challenging witness there is a reason for the behavior. If you can address the underlying concern, the challenging witness may become a regular witness!



Challenging Witnesses: Planning for Success

- Try to start off on the right foot by:
 - Always remaining calm and professional
 - Set the structure for the interview and what they may expect.
 - Let them know that they may ask for a break at anytime and as frequently as needed, however, the expectation is that they will not discuss the matter with anyone else, except if they have an advisor or attorney with them, while on the break.
 - Review and emphasize that your role is that of the impartial investigator, and that both you and the institution are not on a "side," but are to ensure that you just have to gather the necessary information.
 - Clarify that this does not mean that you do not have to ask difficult questions.
 - Acknowledge questions when they are difficult.



Challenging Witnesses: Planning for Success

- Try to start off on the right foot by (continued):
 - Review expectations on retaliation.
 - Talk about amnesty policy if there are drug or alcohol issues.
 - Let the witness or party know how the information is going to be used, and disseminated.
 - Setting up the baseline that the investigation and you as investigators are not judging what someone tells you.
 - In sexual violence or harassment cases, being thoughtful about creating an understanding environment that is "sex positive" or not shaming for what is engaged in.
 - BDSM, kink, or alternative consent construct issues.



How to address challenges to your investigative authority

- Sometimes individuals will challenge your authority to conduct the investigation.
 - How would you address this if caught off guard?
 - What if they question the line of questioning as not relevant?



Handling High Conflict Witnesses

- What is a High Conflict Witness?
- When you can with a High Conflict Witness, your responses must be:
 - Brief
 - Informative
 - Friendly
 - Firm



Use of the word "You" as an investigator

- "You" can be perceived as judgmental or attacking.
- Being thoughtful about use of language and tone to ensure that you are not unnecessarily creating perceived conflict with the witness.



What to do if you suspect a witness is lying?

- Try the "help me understand" approach.
 - Present in an unbiased way the facts that are in conflict.
 - Ask them to reconcile the facts presented to them.
 - Return to the question and needed factual information.
- Don't pin them in, allow the opportunity for someone to change their statement.
- Can you tell why they are lying?(For example, they say they were not present, but you have video of them present) Are they afraid? Embarrassed? Something else?
- If it continues, and is evident, be prepared to discuss repercussions.



Quiet or Non-Responsive Witnesses

- Can you tell why they are hesitant?
 - Don't necessarily assume, but try to address the motivation.
- They may have questions about the process or how their information will be used. Address these!
- Use places that they are comfortable speaking about to establish rapport.
- Explain expectations for participation and requirements for testimony if necessary.
- What to do if open ended questions do not work.



Resistant to Questioning?

- Trying to get the information in other ways.
 - Rephrase questions
 - Explain why you need the information
- Acknowledge the elephant in the room
 - "I sense that there is hesitation when answering. Are you willing to talk to me about the hesitation to answer?"
 - Address any concerns disclosed.



Non-Compliant Parties

- How are they non-compliant?
- How can you help them understand the process and their role?
- Sometimes you have to work with them as a high conflict person.
- Does it help to explain the effect of non-compliance on the party?
 - If they are non-compliant in the interview process, then you will likely need to address it.
 - You may always explain the ground rules and expectations, and what occurs if they do not comply.
 - You may need to stop the interview and reconvene. This is okay!
 - If it is not in your scope, can you defer to the Title IX Coordinator or OIE Director to address later?



Credibility-defined

The quality of being trusted or believed in.

The quality of being trusted or believable.

The quality or power for inspiring belief.



Credibility-continued

- Evaluating the evidence that you have for consistency.
 - What is similar?
 - What information is an outlier?
- Reminder that credible and truthful are not synonymous.



Credibility-continued

- Look for relevant consistency.
 - If there is irrelevant consistency, it may not be useful, however, if there is a lot of irrelevant inconsistency with what others are saying, that could be useful.
- Look to corroborate evidence to evaluate credibility.
- What is the demeanor of an individual?
 - Are there non-verbal indicators?
 - Note them if they are extreme.
- Is the individual non-cooperative and unwilling to answer?
 - Address the elephant in the room, and try to understand why.
 - Don't assume!



Credibility-continued

- Are there logical or consistency issues?
 - Failure to respond to questions.
 - Answering a question not asked.
 - Ad hominem attacks.
 - Logical fallacy in the response.
- Consider inherent probability of what you are being told.
 - If it doesn't seem right, ask clarifying questions.
- What level of detail is provided?



Other Credibility Considerations

- Misinformation effect.
- Reliability of human memory.
- Impact of witnesses meeting together and discussing what occurred.
- False memory.



Questions and Discussion

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