

CHAT QUESTION

What are your biggest challenges/concerns with regard to writing a Title IX investigative report?



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Writing an Investigative Report

Bev Baligad, J.D.
Director of Compliance/Title IX
Coordinator
University of Hawaii- West Oahu
bevbaligad@gmail.com



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WEBINAR OBJECTIVES

- Understand new regulation requirements relating to investigative reports
- Understand the basics of writing a Title IX investigative report
- Identify sections and formats used in creating an investigative report
- Discuss language that should or should not be used in the report
- Provide examples of verbiage institutions may want to include in an investigative report

Disclaimer: The information presented in this webcast is for informational purposes only, and is not to be construed as legal advice. Institutions should check with legal counsel before making any changes to existing policies or processes.

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AUDIENCE POLL

Please tell us how many Title IX investigative reports you've written so far.

- A. None
- B. 1-5
- C. 6-10
- D. 11+
- E. Too many to remember

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AGENDA

- I. Background. Report Requirements: Then and Now.
- II. Report Writing Basics: Putting the Information Together
- III. Suggested Report Sections
 - A. Case Background
 - B. Alleged Prohibited Conduct
 - C. Parties/Witnesses
 - D. Supportive Measures
 - E. Potential Policy Violations
 - F. Jurisdiction
 - G. Standard of Proof
 - H. Party/Witness Summaries
 - I. General Analysis
 - J. Exhibit List
 - K. Investigator Attestation

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I. BACKGROUND. REPORT REQUIREMENTS:

“THEN” (pre-final regs)

- No report format requirements (federal regs)
- No timeframe requirements
- Many wrote in letter/narrative format (led to inconsistencies between reports)
- “We found you responsible because we say you are responsible”
- Overly comprehensive factual analysis
- Usually included a credibility assessment analysis

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I. BACKGROUND. REPORT REQUIREMENTS:

“Create an investigative report that fairly summarizes relevant evidence and, at least 10 days prior to a hearing (if a hearing is required under this section or other wise provided) or other time of determination regarding responsibility, send to each party and the party’s advisor, if any, the investigative report in an electronic format or a hard copy for their review and written response.”

[§ 106.45(b)(5)(vii)]

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I. BACKGROUND. REPORT REQUIREMENTS:

“NOW” (post-final regs)

- No report format requirements
- 2 Report timeframe requirements
- New regs added expectations regarding investigative reports
- Reports must be written in an equitable unbiased manner

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II. REPORT WRITING BASICS: PUTTING THE INFORMATION TOGETHER

- Template format for consistency
- Logical flow to the information presented in the report
- Cite institutional policies as the basis for the investigation
- No personal or biased opinions
- Fact-based report; no opinions or conclusions
- Written in first person?

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II. REPORT WRITING BASICS: PUTTING THE INFORMATION TOGETHER (CONT'D)

- Summary vs. direct quotes?
- Include case identification
- Page identification
- Exhibits: mark last & make them distinguishable
- Report reflects confidence and professionalism?
- No typos or grammatical errors
- Eclectic appeal? Looks official?

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III. SUGGESTED REPORT SECTIONS

- No universal report template/report sections
- Sections make reports easy to read & reference
- Many sections can be pre-written to save time
- Builds consistency and professionalism between different report writers
- Each section has a specific piece of important information it addresses
- Following sections are not presented in any order
- Each institution should create its own “investigative report”

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A. CASE BACKGROUND

- Focus: Institutional response (not background of the alleged sexual harassment)
- Background includes information on how, when and who the reporter was when the institution received the report
- Background covers the institution’s response and actions- receipt of report all the way through the assignment of the investigator; decision-maker and appeals officers for the case.
- Usually written by Title IX Coordinator; assigned investigator edits (to align with writing style of the rest of the report)

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B. ALLEGED PROHIBITED CONDUCT

- This section should contain the narrative submitted by the Complainant that would be considered a policy violation
- Should be taken directly from the actual formal complaint submitted by the complainant
- Some institutions use the complaint language in its entirety; some edit and use direct quotes that only includes the “relevant facts” related only to the alleged policy violation

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C. PARTIES/WITNESSES

- Sections is a list of the parties and all the witnesses who are involved and who were interviewed (Complainant an Respondent should be referenced first)
- Each party/witness should have a brief description of who they are
- References to a party/witness should remain consistent throughout the report
- Report may substitute identification of a party or witness in the remaining sections of the report (optional)
- **EXAMPLE A:** Bev Baligad, the Complainant, is a sophomore in the Cybersecurity program at Oahu State University.
- **EXAMPLE B:** Bev Baligad (C), the Complainant, is a sophomore in the Cybersecurity Program at Oahu State University.

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D. SUPPORTIVE MEASURES

- New federal regs allows for institutions to provide supportive measures for both parties when appropriate
- Supportive measures should be written by a Title IX Coordinator (or authorized individual who provided the supportive measures); investigator edits to incorporate into report
- Should state what supportive measures were provided, the party and the reason the institution felt it was appropriate.
- If none were provided, the section should state reasons why.
- **EXAMPLE:** On December 3rd, 2020, (C) requested and was granted reasonable supportive measures which included..... The supportive measures as requested addressed immediate issues including....

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E. POTENTIAL POLICY VIOLATIONS

- Investigative report focuses on the alleged policy violations
- Report must include direct citations to the potential policy violation provisions that the decision makers will use to analyze when determining if the policy has or has not been violated
- A copy of the policy cited should be linked to the report as an exhibit

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F. JURISDICTION

- Jurisdictional statements are not always used
- Jurisdictional statements explain to the reader how or why the institution had the authority to investigate the issue
- Portions can (and should) be templated using the actual jurisdictional language included in the policy

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G. STANDARD OF PROOF

- The new regs requires institutions to use either a “preponderance of the evidence” or “clear and convincing” standard; same standard regardless of status
- Policy should state which standard of proof the institution uses; language should be cited directly from the policy/process
- Section can be templated
- **EXAMPLE:** Per Article II(A)(2) of the Sexual Harassment Policy, in order to determine if a Respondent has violated the policy, the standard of proof required is the “preponderance of evidence.” (i.e., the information received demonstrates that it is “more likely than not” that the conduct occurred.) This standard is often referred to as “50% plus a feather.”

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H. PARTY/WITNESS SUMMARIES

- The summary section should follow the order used in the Party/Witness Section
- The first sentence for each party/witness should “mirror” the Party/Witness section (even if it appears redundant)
- Information provided must be relevant to the issue surrounding the policy violation (these will be used by the Decision Makers, for the most part)
- Use as much direct quotes as possible so the summary is kept as the witness’ statements; not the investigators.
- Remember: written in 3rd person.
- *Refer to the sample language used on the Sample Language Resource that was provided

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I. GENERAL ANALYSIS

- Some institutions use this section; some do not (no express requirement for or against using it)
- General analysis is like the “roadmap” for the policy violation
- Decision makers are required to know how to analyze general facts
- Only information provided in the written report from parties and witnesses can be used.
- For an example, see the Section Resource provided with the webcast materials

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J. EXHIBIT LIST

- Exhibit lists are important
- Always list exhibits in the order they appear within the actual report
- Save marking exhibits for last
- Consider making the exhibits distinguishable from the rest of the text used report, so they are easily recognizable
- **EXAMPLE: EXHIBIT A: State University Sexual Harassment Policy**

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K. INVESTIGATOR ATTESTATION

- Not all institutions use an investigator attestation
- Provides a clean and clear signal the report is complete
- Incorporates language that mirrors the final regs requiring an “investigative report that fairly summarizes relevant evidence” [*§106.45(b)(5)(vii)*]
- **EXAMPLE:** “The undersigned investigator(s) in this matter, attests that this investigative report fairly and accurately presents all relevant and available evidence and information obtained during the course of this investigation.”
- Don’t forget investigator signatures and completion dates

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FINAL WORDS

- Investigators should be well trained in investigations before writing a report
- The report will be viewed by others outside the institution
- Templates and language used should be approved by the Title IX Coordinator
- Keep bias out; write in a “just the facts” as they have been presented manner

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