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Slide 1

NACUA Online Course
Title IX Coordinator Training

Module 5: Investigative Skills

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Investigation Mission

- Neutral/Impartial
- Free From Bias or Prejudgment
- Thorough
- Do No Harm
- Trauma Informed
- Accurately Documented

Slide 3

How can I make interviewees more comfortable?

Agency

"The capacity, condition, or state of acting or of exerting power"

Slide 4

Checking In

- Be genuine
- Acknowledge Stress
- Warm up

Slide 5

Provide Information

- Explain your role as a neutral
- Explain their role (puzzle piece)
- Note taking/recording
- Anticipated length of interview
- Rest of process
- Right to representation
- Advise about retaliation

- Do they have questions

Slide 6

Active Listening

- 100% of your attention
- Eliminate distractions
- Ask for clarifications
- Ask for details

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Professionally Empathetic

- Moderate Pace/Breaks
- Limit Comments
  - Don't share
  - Don't judge
  - Acknowledge difficulty
- Set tone

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Get All of the Information to Complete the Puzzle

- Physical Evidence
- Documentary Evidence
  - Social media
  - Police reports
  - Diary entry
- Demonstrative Evidence
  - Photos
  - Videos
  - Maps
  - Security footage
- Verbal Evidence
  - Witness Statements

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Thorough Preparation

- Chronology
- Outline
- Checklist
- Documents
- Structure

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Investigation Checklist

- Survivor's name or anonymity requested
- Place of occurrence
- Nature of occurrence
- Time of occurrence
- Time of reporting
- Alcohol involved: Drugs involved
- Physical Injury
- Name of accused; known or unknown
- Other crimes evidence/priors
- Complainant's description of event
- Names of witnesses
- Interviews of all parties
- Prior contacts between complainant and accused
- School records
- Intimidation attempts
- Court / Cease & Desist Orders
- Physical Evidence:
    - Injury / Medical Evidence - records
    - Security Monitoring Records / Visitor Logs / Audio-Video recordings
    - Telephone records
    - Voicemail
    - Text / E-mail / Social Media
    - Clothing / Tangible Objects
    - Any other physical / forensic evidence
- 911 Tape
- Photographs of the scene
- Photographs of injuries
- Advised re: law enforcement report
- Advised re: preservation and medical treatment
- Advised re: counseling
- Concerns regarding safety of community
- Discharge Title IX responsibilities
- Discharge Clery responsibilities

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The Basics

- Presumption that respondent is not responsible for alleged sex discrimination until a determination is made at conclusion of grievance procedures

- Burden on the school, not the parties
- Equal opportunity for parties to present witnesses and evidence
- Equal opportunities for parties to review evidence
- Equal opportunities for parties to be accompanied by an advisor
- Objective evaluation of all relevant evidence
- Apply standard of evidence to evaluation facts

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Impermissible Evidence

2020 Regs

- Party's records made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional… made or maintained in connection with treatment to a party without party's written consent

2024 Regs

- Protected by a legal privilege
- Provided to a confidential employee
- Records maintained by a recognized medical professional
- Relating to complainant's sexual interests or prior sexual conduct (limited exception)

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Details are Important

- What, When, Where?
- How did it make you feel?
- Who was there? What did they see?
- Any recordings? Contemporaneous texts, social media?
- What words were exchanged?
- Nature of relationship between parties?

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Establish Rapport/Rhythm

- Prompt with questions; Follow their train
- Ask clarifying questions
- Probe for details
- Worry about relevancy later
- Balance tracking and being open to new leads
- Be comfortable with silence

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Credibility Assessments

- Is the witness's narrative logical?
- Is there a motive to falsify? (bias, interest, other motive)

- Is there a witness or other evidence to corroborate?
- Is there evidence that is inconsistent with the interview statement?
  - How major or minor are the inconsistencies
  - Is there a reasonable explanation for the inconsistencies?
- Is there continuing harassing behavior?
- Does either party have a pattern of past similar behavior?
- Was the witness in the best position to perceive matters about which they testified?
- Did the person seem to be telling the truth: why or why not?
- Consider the impact of trauma?

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Asking Hard Questions

- Preface hard questions
- Break them down
- Avoid questions implying judgment: "Why?"
- Focus on details
  - Senses
  - What were they thinking
  - How did they feel
  - Facts, not explanation
- Reestablish witness agency

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Motive

- You may consider whether a witness had, or did not have, a motive to lie.
- If a witness had a motive to lie, you may consider whether and to what extent, if any, that motive affected the truthfulness of that witness's testimony.
- If a witness did not have a motive to lie, you may consider that as well in evaluating the witness's truthfulness.

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Preponderance of the Evidence

- What are the elements to establish a violation?
  - Sexual contact/conduct
  - Welcome/unwelcome or consent/unconsented
  - Differences for hostile environment
  - Other discrimination
- As to each element
  - Balance of probabilities
  - More likely than not

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Matters of Evidence

- Preponderance of the evidence is determined by the superior weight of all the evidence
  - This is not necessarily determined by a greater number of witnesses
  - Consider quality of the evidence
  - Consider opportunity for knowledge, information possessed
  - Consider credibility (with caution)

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Types of Evidence

- Direct
  - Based on personal knowledge or observation, that if true, proves a fact without inference or presumption.
- Circumstantial
  - Based on inference and not on personal knowledge or observation.
- Corroborating
  - Evidence that differs from but strengthens or confirms what other evidence shows.

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Alcohol and Drugs

- BAC
- Strength of Drink
- Weight, gender and food
- Rate of Consumption. Studies have shown that an adult male can metabolize one drink (1.5 oz. of 80 proof) in about 2 hours. 4 drinks in about 7 hours – resulting in BAC of 0.
- Medication
- Fatigue

How does consumption of alcohol affect witness evidence?

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Trauma Informed Interviews

- Consider that trauma might influence an individual's ability to recall an event or information about an event
- Trauma might influence how and when an individual recalls information about an event
- Be sure to offer interviewee the right to have a support person
- Calm and caring atmosphere; not rushed
- Address concerns first
- Organize interview
  - Safety concerns/assessment
  - Support measures
  - Evidence preservation

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Trauma Informed Interviews

- Allow witness to begin where they feel comfortable and are able
- Avoid blaming, leading, implying doubt
- Focus on what witness recalls (before, during, after)

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Documentation

- Notes
- Summary of Notes
- Inculpatory
- Exculpatory
- Irrelevant

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Thank You!

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