



**UW Administrative
Investigator Training**

Based on the Civil Rights Investigation Model




Fundamental Principles



Investigations should be...

- ✓ Thorough
- ✓ Reliable
- ✓ Impartial
- ✓ Prompt
- ✓ Effective
- ✓ Equitable



Prompt

- Old regulations: 60 days
- New: "Prompt"
 - 60-90 business days
 - Can it be less than 60 days?
 - Can it be more?
 - What about pending criminal/civil matters?
 - Injunctions or protection orders?



Timelines

- Make sure all steps in the investigation are conducted according to policy
- Parties and witnesses should be interviewed as soon as possible
 - Memory will be as fresh/accurate as possible
 - To secure resolution as soon as possible
- Document unavoidable delays
- Notice of extensions



Effective

- Stop
- Prevent
- Remedy



Equitable

- Equitable = fair under the circumstances
- Each party’s rights, privileges, and opportunities need to be balanced
- Not exact parity, but equitable procedures that reach equitable outcomes that impose equitable remedies
- If you do something for one party, ask whether you need to do for the other(s) (Usually yes!)



Remember: as an investigator, you have no “side” other than the integrity of the process!

(We’re on the side of the truth.)



Jurisdiction

- Respondent is a member of UW community
- Behavior that happens on campus or in connection with UW programs/activities (conferences, travel, etc)
- Off-campus or online behavior that has continuing effects on campus or in an off-campus sponsored program or activity
 - Misconduct that effectively deprives a person of access to educational program/employment
 - Actions that constitute a criminal offense
 - Respondent poses an immediate threat to physical health/safety
 - Situations that interfere with educational interests or mission of the University



Law Enforcement Investigations

You may review allegations that are also being reviewed by law enforcement

- LE processes and outcomes are separate from internal administrative investigations
- Legal standards are different for criminal investigations
- LE looks for violations of law, we look for violations of UW policy
- Criminal charges don't necessarily relieve UW of our obligations
- We can't wait for the outcome of criminal processes



The Civil Rights Investigation Model




Civil Rights Investigation Model

- No direct applicability to "victimless" violations
- Active gathering of information by investigator(s), not intended to "build a case"
- Doesn't prevent alternative dispute resolution approaches
- Characterized by an intentional effort to equalize procedural and support mechanisms




When do we investigate?

- Receive a formal complaint
- Actual or constructive notice
 - How do rumors, gossip, online postings, etc fit in?




Types of Notice – Actual Notice

- Someone files a grievance
- Someone notifies a supervisor or responsible employee
- Someone notifies UW Police Department
- Employee witnesses incident/behavior
- Indirect notice (flyers, media, online postings, video, email, etc)



Types of notice – Constructive notice

- In some cases, the behavior may be pervasive enough that UW should have known of the hostile environment (widespread, openly visible, well known to students/staff)
- Reports made to someone who has a duty to report but fails to do so



Steps of investigation

- Complaint/report/notice
- Preliminary inquiry/assessment
 - Gatekeeper determination
 - Notice of allegations
 - Strategize Investigation
- Formal comprehensive investigation
 - Witness interviews
 - Evidence gathering
 - Analysis
- Finding
- Sanction/resolution/remedy



Preliminary inquiry

- An initial inquiry to determine if a comprehensive investigation is desired or necessary
- Checking background, obvious patterns, indicators of threatening or inappropriate behavior
- One domino at a time
- How much involvement does the complainant want?
- Can we remedy informally or without discipline?
- Give complainant as much control in the process as possible




Preliminary inquiry

- Information should typically be kept confidential at this stage
- Strategic sharing of information necessary to manage situation during inquiry (supervisors, DOS, HR, Academic Affairs)
- Protects the rights of ALL parties (privacy/reputation)




Preliminary inquiry

- Determine if there is a reasonable cause to charge the respondent (accused party), and what policy violations should be alleged as part of the investigation
- Establish a preliminary timeline for the investigation
- Investigate all allegations to determine:
 - Extent of the harassment
 - Level of threat to department/program/etc
 - What might be necessary to put an end to it




Preliminary inquiry

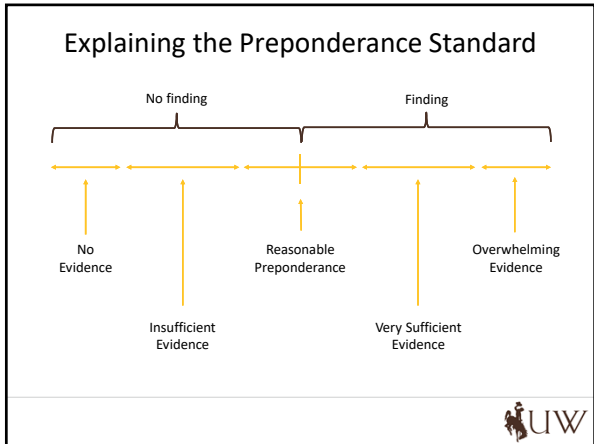
- Be able to show that a comprehensive review was completed and documented
- Responding to anonymous reports
 - Determine if a trend or pattern may be apparent
 - We may have a duty to attempt a remedial response, even with anonymous reports



Standards of Proof


- Beyond a reasonable doubt
 - highest standard in criminal prosecution
 - freedom is on the line
- Clear and convincing
 - highly probable or probably certain
- **Preponderance of the evidence**
 - Use language the community understands
 - 50.1% (50% plus a feather)
 - “More likely than not”
 - “Tipped scale”






Gatekeeping

- As the investigation unfolds, the investigators should determine if there is reasonable cause to believe that policy may have been violated
- If that threshold is reached, the investigators should communicate with supervisors to ensure a formal notice of investigation is given
- If investigators cannot produce sufficient evidence of reasonable cause, the investigation should end with no finding



Notifications

- In a civil rights model, notice has many phases, some or all of which may occur (equitably)
 - Notice of investigation or initial meeting
 - Post-gatekeeper phase, notice of allegation (complaint)
 - Updates of investigation status (ongoing)
 - Notice of outcome/sanctions
 - Notice of hearing/appeal
 - Notice of final determination



Notice of Investigation

- Prepare and deliver the NOI on the basis of the initial inquiry
 - Include list of charges/allegations
 - If shared verbally, also provide a copy in writing
 - Should also be shared with the complainant
 - If the scope of the investigation grows, send a revised NOI with updated list of charges



Formal Investigations




Comprehensive Investigations

- Commence a thorough, reliable, and impartial review
- Determine the strategy
 - Witness interviews
 - Evidence gathering
 - Intended timeframe for completion
 - Basis of finding
 - Presentation of finding
- Complete the review promptly, without unreasonable deviation from the timeline




Witness Interviews

- Be strategic about contacting witnesses, the order of interviews, and preventing contact between witnesses (where necessary)
 - Who is aware?
 - Who SHOULD we talk to?
- Solicit a witness list from the complainant
- Solicit a witness list from the respondent
- Determine when you are going to question the respondent




When to interview

- Interview “as soon a possible”
 - Does not mean IMMEDIATELY following an incident (effects of trauma)
 - Memory is as fresh and accurate as possible
 - Resolve situations as soon as possible
- When do you notify/interview the respondent?
 - Is admin leave necessary?
 - Immediately upon receipt of formal complaint
 - Sometimes interviewing witnesses and gathering evidence first is the best practice



Witness Lists and Flowcharts

- These can be important!
 - Identify the role/involvement of a witness and their relation to other parties
 - Specify how the witness was identified (how did you get their name?)
 - Keep track of statements/compare accounts between witnesses
 - Document your outreach attempts
 - Quickly locate how to contact a witness
- Timeline of incident is also very helpful




Investigators



Who should investigate?

- **EORR** - allegations involving sexual misconduct, civil rights discrimination, or workplace violence/threats
- **DOS** - allegations involving students
- **HR** – allegations involving staff
- **AA** – allegations involving faculty/academic professionals



Investigator Competencies

- Civil rights investigation model
- Due process and procedural fairness
- Note taking and retention
- When to interview parties and witnesses
- Timeline and timeliness
- Notifications
- Interviewing skills
- Investigative reports
- Standard of proof
- Making determinations
- Witness at hearings



More Investigator Competencies

- Evidence collection and preservation
- Concurrent criminal actions
- Witness lists, flowcharts, and timelines
- Confidentiality/privacy
- Awareness of remedies
- Sharing outcomes
- Formal and informal resolution
- Appeals
- Retaliation
- Sanctioning
- Post-finding actions



More than one investigator?

Investigations must:

- be prompt, thorough, and impartial
- collect the maximum amount of relevant information available

A pool of investigators may help you meet these requirements



Benefits of investigation team

- Can be strategic about who investigates a specific case
- Ability to brainstorm investigation steps and lines of questioning
- Co-facilitation of interviews
- Flexibility if there are conflicts with investigators and parties



Team investigations overview

- The team (and supervisors/advisors) strategizes the entire investigation, including methodology, order, timeline, goals, obstacles, etc.
- Interview all witnesses
- Gather and assess evidence
- Write a report
- Make a finding or recommendation



The Report



Report overview

- Every allegation/complaint should result in a report that documents your review
 - ROI – more formal/structured, used when a comprehensive investigation occurs
 - Assessment memos – used for allegations that don't rise to the level of violation, preliminary inquiries
- Both types should describe the allegations, list everyone involved/interviewed, what you looked at, your decision, and what you based your decision on
 - Think about a book report or newsletter article



Think about report as you go

- It's helpful to think about the structure of the report as you're planning and conducting your investigation
- Group and organize information or documentation in the same manner (docs from complainant, docs from dept, etc.)
- Think about interviewee lists and questions to ask based on what you'll need to address in the report



Report Components

- Names and titles of parties
 - Multiple complainants/respondents
- Name and title of investigator
- Date reported
- Basis/summary of allegations
- List of witnesses interviewed
- Findings
- Factual overview (things both parties agree about or that are documented to be true)



Report Components

- Examples provided in support of allegations
- Complainant's desired resolution
- Response to the allegations
- Relevant information from witnesses
- List of evidence submitted/reviewed
- Summary of evidence that affects decision
- History
- Credibility (sometimes)



Report Components

- Analysis – “show your work”
- Conclusion – summary and violation/no violation
- Disposition – “This complaint is administratively closed.”
- Standard used – “A preponderance of evidence.”
- Confidentiality and retaliation statement
- Signature



Be flexible

- A complaint or allegation can be just about anything
- It's sometimes necessary to change the order of report sections based on the situation/facts
 - Are there audio recordings or critical evidence you need to summarize?
- The report will be as long as necessary to thoroughly address the allegations



Report reminders

- Be mindful of spelling and grammar
- Be clear about dates and timeline
- Explain acronyms or critical concepts, functions, and programs
- Have another person review before distribution!
- Ask yourself how you'll defend it in a hearing
- Is redaction necessary, or did you include medical/confidential info that shouldn't be shared?



More about reports

- Finding or no finding?
 - “Insufficient evidence,” “unfounded”
- The writing process is sometimes hard!
 - Keep going!
 - Re-interview someone rather than leaving a question unasked (email okay for 1-2 basic questions)
 - It’s okay to struggle!



Interviewing



The physical environment

- Is it conducive for an interview
 - At your desk? Comfy couches?
 - Sit in their chair too!
 - Distractions? (Phone might ring, water/tea, hot or cold?)
- Safety first – is there a chance for violence?
 - Multiple exits? Physical barriers?
 - Potential weapons in the room?
 - Need for UWPD standby or interview at the PD?



Demeanor

- Try to establish a baseline of relaxed conversation
- Maintain steady eye contact
- Listen carefully to the answers to your questions
 - If possible, avoid writing while they are talking
 - Don't be thinking about your next questions while they're talking
- Ask questions in a straightforward, non-accusatory manner
- Nod affirmatively



Establish ground rules

- Can the subject record?
- Who will attend?
- How will records be kept?
- Advisors/Attorneys
- Roommates, parents, etc.
- Confidentiality/FERPA



Keeping notes

- Create an investigative file and keep it in a secure location
- Keep a timeline of steps in the process, including dates of all meetings and interviews
- Interviews
 - Notes vs. recording
 - Hand-written vs. computer
 - Interviewee verification
- Records of all contacts including email and phone calls with parties



Notes about questions

- List of questions
- Questions and answers
- Follow up questions
- Their questions!
- “repeated,” declined, etc.
- Short-hand/codes (pros and cons)
 - Δ σ φ \approx \neq $<$ $>$ \sim \emptyset \rightarrow $f(x)$ $t(x)$ $c(x)$ ★



Creating questions

- What do you want to know?
- Why do you want to know it?
- If it’s not related to the allegations or your decision, it might not be a good question to ask



Avoid judgmental questions

- Don’t assign blame or moralize
 - Be careful with “why” in general
 - “Why did you” or “why didn’t you?”
 - “Why did you wait to report?”
 - “You should have...”
 - “What were you thinking?” (Reword or use “feeling”)
- Don’t take sides!
 - Becomes a problem if there’s an external complaint/allegation of investigator bias
- Be careful with analogies/responses/comments
 - Facial expressions, laughter/smiling



Comments to avoid

- Everything is going to be okay.
- Don't cry.
- You shouldn't feel that way.
- You must get on with your life.
- Time heals all wounds.
- It could have been worse.
- At least you're not injured.



Open-ended questions

- "What happened next?"
- "Tell me more about that."
- "Do you recall what you/they said?"
- "What was their reaction?"
- "What were you hoping would be the result/outcome?"



Setting expectations

- Be sure everyone understands the parameters of the policy, what it does and doesn't cover, how the process plays out, and what the process can and cannot accomplish
- Provide ample opportunity for them to ask questions
- Keep the complainant and witnesses in the loop as to when notice will be given to the respondent

If you conduct the investigation with skill, you're secure in the knowledge that all the people involved (including witnesses) were treated objectively and fairly



Sharing info with Interviewees

- Decide how much info you'll share in advance of each interview and have a rationale for what you will/won't share ("breaching" or "drops")
- Explore only those facts that are relevant to the issue at hand
- Start with broad questions then move to narrow, more pointed questions
- Can be difficult for respondent to answer effectively to broad-based or abstract allegations (can diminish trust and hurt rapport building)



Interview skills

- Outline your questions, but be flexible
- Plan the order
- In person interviews are the most beneficial
- Should be conducted in a neutral, quiet, and private setting with minimal interruptions
- Explain the process, your role as a neutral fact finder, and privacy protections/limitations



Interview skills

- Discuss thoroughness and the need for completeness, make sure parties don't leave facts out because they're afraid of getting (someone) into trouble
- Create comfort with language and sensitive subjects
- Establish rapport before questioning
- Determine their role/relation to other parties
- Document whether they're cooperative/resistant
- Be professional: gather the facts, make no judgements, make no statements about other parties



Interview skills

- If drugs/alcohol are mentioned, pay attention to timing
- Be aware of difference between what's "heard" (rumor) and what's "witnessed" (facts)
- Ask who else you should talk to, and ask for any relevant documentation (texts, emails, etc)
- Let parties know you may need to follow up with them as review progresses
- Recommend they not discuss the investigation
- Discuss non-retaliation and how to report
- Discuss confidentiality (and limits)



Witnesses may ask...

- Am I being investigated?
- What are you really investigating?
- How will you use the information I give you?
- Is it confidential?
- Will I get in trouble by giving you this info?
- I don't want to cooperate.
- Do I need a lawyer?
- Will you use my name?
- Will they know who said what?

Anticipating these questions/answering them in advance can help ensure you get complete truthfulness




Confidentiality of the process

- Privacy of the parties' and witnesses' names and allegations should be maintained as much as possible
 - Why not 100% confidentiality?
- Best practice – summarizing concerns vs. furnishing a copy of a written complaint (without redaction or summarizing)
- What advice do we give a complainant who wants to "share" their story?




Interviewing Complainants




Interviewing complainants

- Acknowledge difficulty of reporting and thank them
- Acknowledge they may have told this story multiple times already
- Explain why you're taking notes (ask for permission to record if applicable)
- Provide a copy of your policies and procedures
- Ask them to share a complete account of what occurred
 - Perhaps have them give full story without asking questions, then drill down on details
- Ask whom they spoke to and told about the incident
- Ask about witnesses and possible documentation (blogs, journals, etc.)



Interviewing complainants

- Ask what their motivation is for reporting and what they hope to see as a result
- Ask if their academics/work have been affected
- Ask how this has affected them emotionally/physically
- Advise that the report will be discussed with the respondent and witnesses
- Discuss other reporting options and resources on and off campus



Interviewing complainants

- Discuss counseling options if they're not already connected
- Discuss non-retaliation and interim measures (no contact orders, schedule changes)
- Give examples of retaliation and to whom it should be reported immediately
- Review next steps and when they will hear from you, and that they can contact you anytime with questions or problems that arise



Confidentiality for complainants

- If they request that their name not be used:
- UW will take reasonable steps to respond and investigate consistent with that request
 - As long as it does not prevent UW from responding effectively and preventing harassment of complainant or others
 - Must produce a written report, which must contain names of all witnesses



Confidentiality for complainants

- Explain that:
- Responsive action may be limited
 - We cannot guarantee privacy if it would jeopardize safety of complainant or others
- Emphasize that only those with a need to know will be informed
- Review confidentiality expectations with those who will be informed



Reluctant complainants

- If someone is reluctant to make a report or returns to withdraw a report, consider that request and determine the reason for reconsideration
- Reasons that involve the investigation or process should be addressed by the investigator. Those that involve other issues should be addressed by their support person.
- A comprehensive investigation and resolution should not automatically involve the alleged victim (it may be conducted without their involvement if sufficient independent evidence permits)



Reluctant complainants

Notify them of their options:

- The process will still be available to them, regardless of how long they wait
- UW will support them as we can (no contacts, scheduling changes, etc)
- If information is brought to UW's attention that involves a threat to the community, we may be forced to proceed with an investigation, but they will be notified of this process




Interviewing Respondents




Interviewing respondents

- Acknowledge difficulty of situation and thank them
- Provide a copy of your policies and procedures
- Ask them to share a complete account of what occurred
- Explain why you're taking notes (ask for permission to record if applicable)
- Question them about the allegations – ask a combination of open and closed ended questions
- Be detailed – don't leave a question unanswered
- Ask whom they spoke to and told about the incident
- Ask about witnesses and possible documentation (blogs, journals, etc.)
- Ask about possible motivation for complaint



Interviewing respondents

- Review next steps and when they will hear from you, and that they can contact you anytime with questions or problems that arise
- Discuss counseling options if they're not already connected
- Discuss non-retaliation and interim measures (no contact orders, schedule changes)
- Give examples of retaliation and to whom it should be reported immediately
- If interim suspension/admin leave is used, review the terms and provide a time frame



Interviewing Witnesses



Interviewing witnesses

- It may be helpful not to label the allegations “misconduct” or “harassment,” but to describe it in terms of behavior
- Determine relation to other parties in the case
- Ask questions, address the need for complete truthfulness
- Ask for opinions
- Ask if either party spoke about the incidents after they happened
- Ask if they saw any change in behavior



Interviewing witnesses

- Ask if they were already contacted by one of the parties
- Ask if they have made any previous statements, such as to law enforcement, attorneys, etc.
- Ask if there is anything you know that had not been covered or if there is anyone else they think you should contact
- Discuss non-retaliation and give examples (some people only see it as threats)
- Discuss privacy and FERPA
- Ask all interviewees to contact you if they remember anything else or want to add to their interview



After the Investigation



Sharing outcomes

- Best practice is to apprise both parties of the status of investigations, findings, and the rationale for them
- Review privacy
- Discuss information to which they might not be privy (employee discipline/sanctions)



Resolution processes

- Informal resolution can be a best practice as long as it is voluntary
- Some minor incidents can be resolved through confrontation/intervention/supervision
- More significant behavior may be resolved informally through a process in which the respondent accepts responsibility or by forms of conflict resolution/arbitration



Investigator Role in Hearings

- Investigator may be a witness at any hearings
- Investigation report is usually admitted as evidence
- Other witnesses can be called, or investigators may summarize their testimony instead
- Investigator can attest to credibility, call attention to discrepancies, and arrange for expert sources of information as needed
- Investigator's finding may be introduced but it's not binding on the hearing body



Lawsuits

- Can you be sued as an investigator?
 - It’s okay to be concerned about this, but...
 - Were you honest and acting in good faith?
 - Legal protections and representation available
- Administrative hearings vs. lawsuits
 - Practice/prep sessions
 - Don’t worry about being perfect – documents will be there!
 - Focus on being truthful!



Prior acts as evidence

- Previous conduct violations by respondent are not generally admissible in due process hearings
- They are essential considerations in civil rights investigations
- Must be considered as evidence of finding, not just of sanction
- Previous good faith allegations, convictions, and campus findings should be considered
- Entire continuum of behavior may establish a pattern



Sanctions/resolution

- Bring an end to the behavior
- Take steps reasonably calculated to prevent the future recurrence of the behavior
- Restore the victim as best you can to their pre-behavior status

At UW, investigators do not determine sanctions. If there is a finding, this is assigned by appropriate supervisors/administrators



Patterns

- Investigations should include an examination of possible patterns of complaint/behavior
- Be sure to watch for changes to “normal” behavior
- Are there similarities between affected parties?
- Evidence of premeditation, intimidation, or coercion?



Patterns

- Hard to identify a “predator” absent evidence of a series of pattern acts
- We CANNOT profile or base decisions on personality characteristics
- Experienced investigators may develop a “spidey sense” that informs their investigation
 - Can they empathize with others?
 - Do they show genuine remorse?
 - Are they able to reflect on how their actions impact others?
 - Are their justifications of their actions nothing more than attacks on their accusers?
 - Are they externalizing responsibility, rationalizing or trying to justify behavior?



After a finding

- Where does the report go?
- How are sanctions determined and enacted?
- Are changes needed to the department?
- Are strategic education or training requirements necessary?
- Do you need to refer any issues not connected to your investigation?
- Will you see parties at meetings or around town?



Other considerations

- Remedies should not be clearly unreasonable in light of the known circumstances
- Avoid undue delays
- Take immediate steps to protect parties, even before the final outcome of investigation
- Ensure remedies are equitable
- Monitor for retaliation and respond immediately to allegations
- Regularly review policies, procedures, and practices to ensure they're in accordance with best practices, state and federal case law



Possible remedies

(not an exhaustive list)

- Providing an escort
- Limiting interaction between respondent and complainant/witnesses (including no contact orders)
- Relocating work locations
- Changes to work schedules
- Providing counseling services
- Reviewing disciplinary actions taken against complainant for evidence of causal connection/adverse action
- Progressive discipline
- Termination/no trespass orders
- Training and education initiatives



Investigating Retaliation



Intent

- Establishing retaliation requires proving motive – the intent to retaliate.
- Since someone’s intention is rarely displayed openly, the analysis is about whether a retaliatory motive can be inferred from the evidence.
- There are three primary elements of a retaliation claim; if any are not present, the claim fails.



3 Primary Elements

- Did the reporting party engage in a protected activity?
- Was the reporting party subsequently subjected to adverse action?
- Do the circumstances suggest a connection between the protected activity and adverse action?
 - Did the respondent know about the activity?
 - How soon after the protected activity did the adverse action occur?



Protected activity

- Did the reporting party engage in a protected activity?
 - Examples: report policy violations, question procedures, file a grievance, etc.
 - Usually straightforward
 - Unless there is a question of reasonableness of belief or manner



Adverse Action

- Was the reporting party subsequently subjected to adverse action?
 - Significantly disadvantages or restricts the reporting parties as to their status as students/employees, or their ability to gain the benefits or opportunities of the program, OR
 - Precluded from protected activity, OR
 - Reasonably acted or could act as a deterrent to further protected activity

SCOTUS and federal courts have defined adverse action very broadly



Connection

- Do the circumstances suggest a connection between the protected activity and adverse action?
 - Did the respondent know about the activity?
 - How soon after the protected activity did the adverse action occur?
- Temporal proximity alone is insufficient to establish retaliation
- To establish the intent to retaliate, it is therefore necessary to “rebut the inference”



Rebutting the Inference


- What is the stated non-retaliatory reason for the adverse action, and is the explanation legitimate on its face?
- Is there evidence that the stated legitimate reason is a pretext, or is the explanation the true reason?

The preponderance of the evidence must establish that the adverse action was motivated by retaliation.




Factors to consider

- Is the explanation legitimate?
 - The explanation makes sense
 - The action was consistent with established policy or practice
 - No adverse action was taken against others who engaged in protected activity
 - Reporting party was treated the same as other individuals
- Is there evidence of pretext?
 - The explanation given is not credible
 - Other actions by the same individual are inconsistent with the explanation
 - The explanation is not consistent with past policy or practice
 - There is evidence of other individuals treated differently in similar situations.




Due Process



What is due process?

- Federal and state constitutional and legal protections against a state institution taking or depriving someone of education or employment
- Different expectations for criminal/civil courts vs. due process within an institution
- Due process analysis and protections have historically focused on the rights of the responding party



What is due process?

- Due Process in Procedure
 - Consistent, thorough, and procedurally sound handling of allegations
 - Institution substantially complied with its written policies and procedures
 - Policies and procedures afford sufficient due process rights and protections
- Due Process in Decision
 - Decision reached on the basis of evidence presented
 - Decision on finding and sanction appropriately impartial and fair



Due Process in Procedure

- A school's process should include (at a minimum):
 - Notice – of charges and of the hearing/resolution process
 - Right to present witnesses
 - Right to present evidence
 - Opportunity to be heard and address the allegations and evidence
 - Right to decision made based on substantial compliance and adherence to institutional policies and procedures
 - Right to appeal (recommended)



Due Process in Decision

- A decision must:
 - Be based on a fundamentally fair rule or policy
 - Be made in good faith (without malice, ill-will, or bias)
 - Have a rational relationship to (be substantially based upon, and a reasonable conclusion from) the evidence
 - Not be arbitrary or capricious
- Sanctions must be reasonable and constitutionally permissible (impartial/fair)



Traditional Resolution Models

- Student conduct – Focus on accused, hearing panels as investigator, administrative resolution (the Dean), limited appeal
- At-will employees – No hearing, investigation & decision by supervisor/HR, progressive discipline, no appeal
- Tenured faculty – Multiple hearings and appeals, faculty as hearing panels, termination rare (and time consuming)



Civil Rights Model

- Founded on principles of equity
- Best suited to victim-based situations
- Gatekeeping and preliminary investigation
- Investigation-centric: thorough, robust, active accumulation of evidence, trained investigators
- Informal resolution
- Formal resolution (option for a hearing or panel)
- Equitable appeal



What constitutes a hearing?

Using the Civil Rights Investigation Model:

- A team of two well-trained, impartial investigators who (often) meet multiple times with the parties to gather information, testimony, and evidence
- The parties are provided ample opportunity to provide a list of witnesses and additional evidence
- Detailed and written notice to the parties of the allegations and each of the policies alleged to have been violated
- Meetings by the investigators with all relevant witnesses
- Opportunity for the parties to provide a list of questions for the other party(ies) and/or witnesses that may be asked at the investigator's discretion
- Gathering all available and relevant evidence by the investigators



What constitutes a hearing?

Using the Civil Rights Investigation Model (cont.):

- Opportunity for the parties to review all evidence and information that will be used to render a finding, either in written form or verbally before the determination is finalized
- Opportunity for the parties to address each allegation and the evidence and information pertaining to those allegations with the decision-makers
 - On many campuses, the parties are provided with a copy of the draft investigation report for review and comment
- A reasonable and rational decision based on the evidence presented
- A finding or recommendation on each alleged violation by the investigators, who met and/or spoke with the parties and the witnesses, and who examined all relevant evidence



Questions or concerns?