

Key query:

Whether Respondent knew/should have known that Complainant was incapacitated and *took advantage of Complainant's* incapacity to engage in sexual activity.



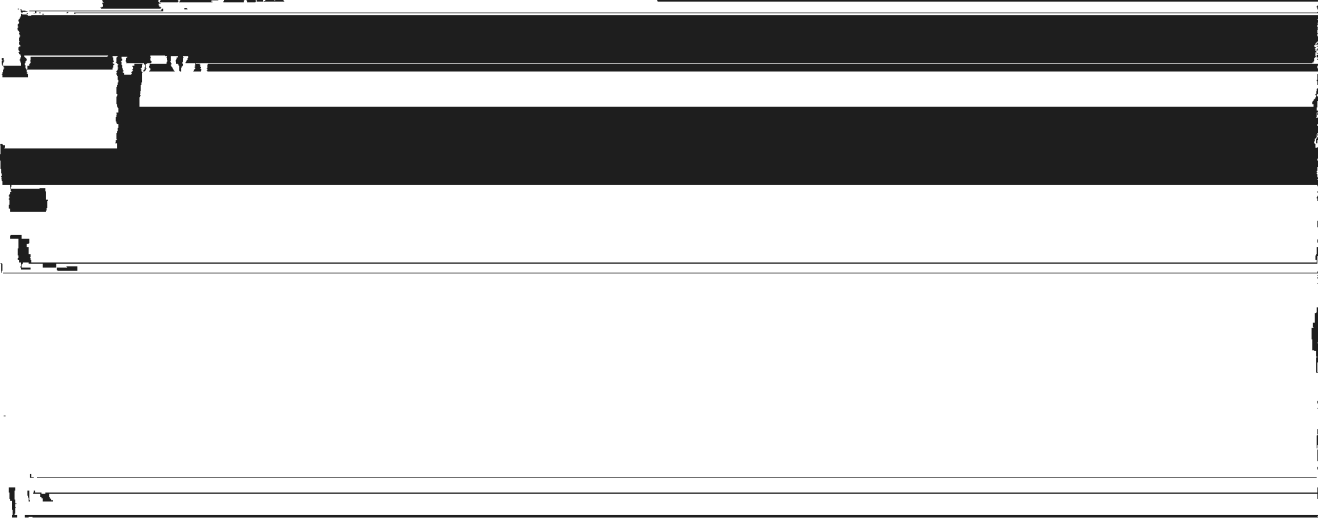


Use parallel communications for parties (updates)

Identify and address barriers to participation by:

- Communicating care through tone and word choice
- Using inclusive language

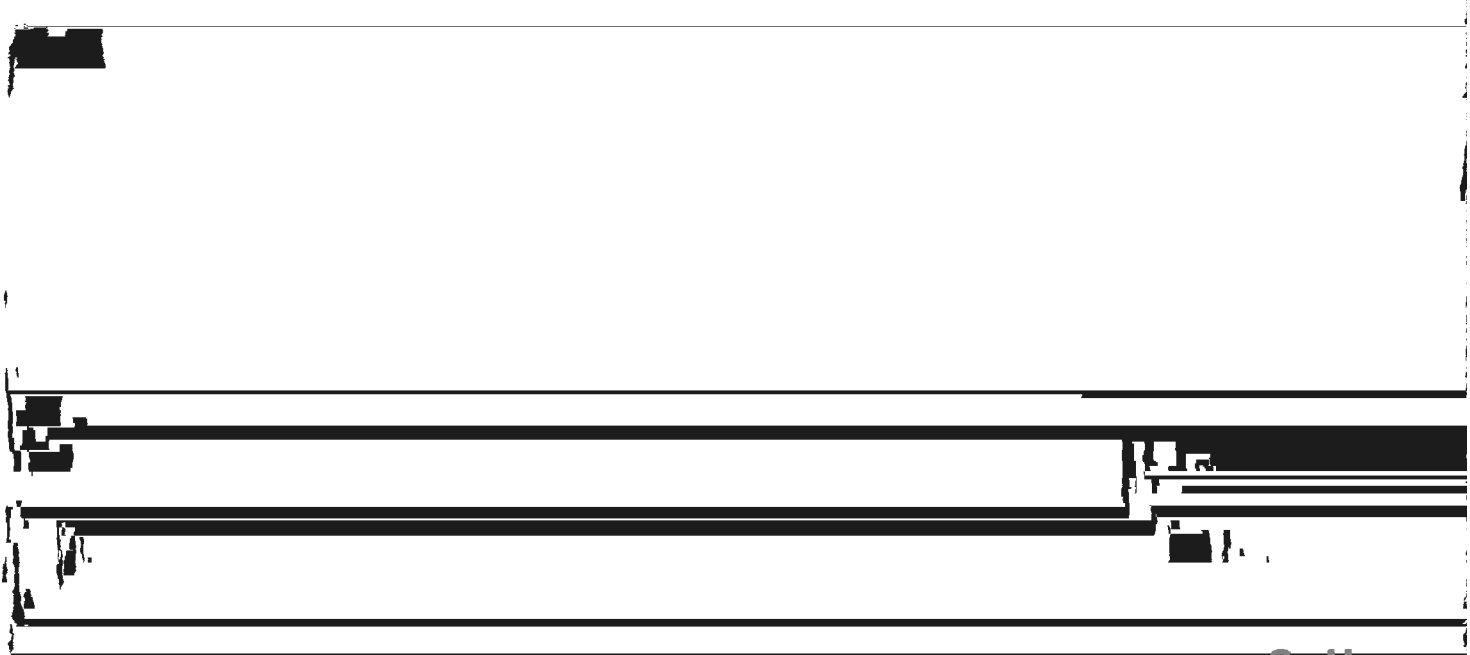
Addressing disability accommodations and interpreter services



- Thank the person for coming.
- Brief explanation of matter.

Explain recording.

Explain process of the investigation/hearing, including expectations for



## Basic Interviewing Techniques

Build a rapport—don't interrogate.

Be sympathetic in neutral manner.

- Listen to understand and do not assume.
- Be comfortable with silence.
- Plan out questions, but let conversation evolve naturally.

What are you able to tell me about your experience → Who, what, where, when, how?

Avoid “leading” questions (*i.e.* questions that presume an answer)

- Establish a timeline.

Make sure to ask the difficult questions!

Get clarification.

- Ask: Anything else?
- Opportunity for follow-up.

Avoid asking for opinions, speculation, or what-if scenarios

# Interview Techniques

- Focus on sensory details.
- Pay attention to emotional cues and responses.
- Look for evidence of motive/bias/interest, even where not immediately apparent.
- Listen for “ring of truth” answers.
- Rely upon maps, photos, electronic evidence where available.
- Create running timeline.

- Reluctant complainants → what to do?

Open-ended, non-judgmental questions.

Do not ask about prior sexual history (except as relevant/permitted)

Consider impact of parents, advisors, etc.

- Handling conflicting statements (reconciliation)

Handling difficult disclosures (explain why you need to know)

Interview for clarification – don't interrogate



What are you able to tell me about your experience?

What are you able to tell me about . . .

- What you saw?
- What you heard?
- What you tasted?
- What you smelled?
- What you touched/felt?

What are you able to tell me about how that made you feel?

What are you able to tell me about what you thought was going to happen?

What are you able to tell me about what your thought process was when . . .

Can you tell me more about . . . ?

# Complainant Interview

- What are you able to tell me about any specific moments that stand out in your mind?
- What are you able to tell me about your physical reactions to this experience when it happened?

What are you able to tell me about your emotional reactions to this experience when it happened?

- What are you able to tell me about impact on your life and behavior now compared to before? Eating? Drinking? Sleeping Other routines?



Acknowledge difficulty of conversation and affirm presumption of non-responsibility.

- Follow same structure and approach to questioning as Complainant interview.
- Allow Respondent to give statement in own words, uninterrupted

Seek exculpatory evidence, information and/or leads, other witnesses, etc

Ask Respondent to explain inconsistencies with known evidence & provide opportunity for Respondent to explain evidence disclosed by Complainant and witnesses.

Explore sensory and peripheral details disclosed by Complainant.

Explore motive, bias, interest.

Identify where there is agreement/dispute about what occurred.

# Example Difficult Interview

What you say . . . .

What the interviewee hears . . . .

Are those the clothes you were wearing when this happened?

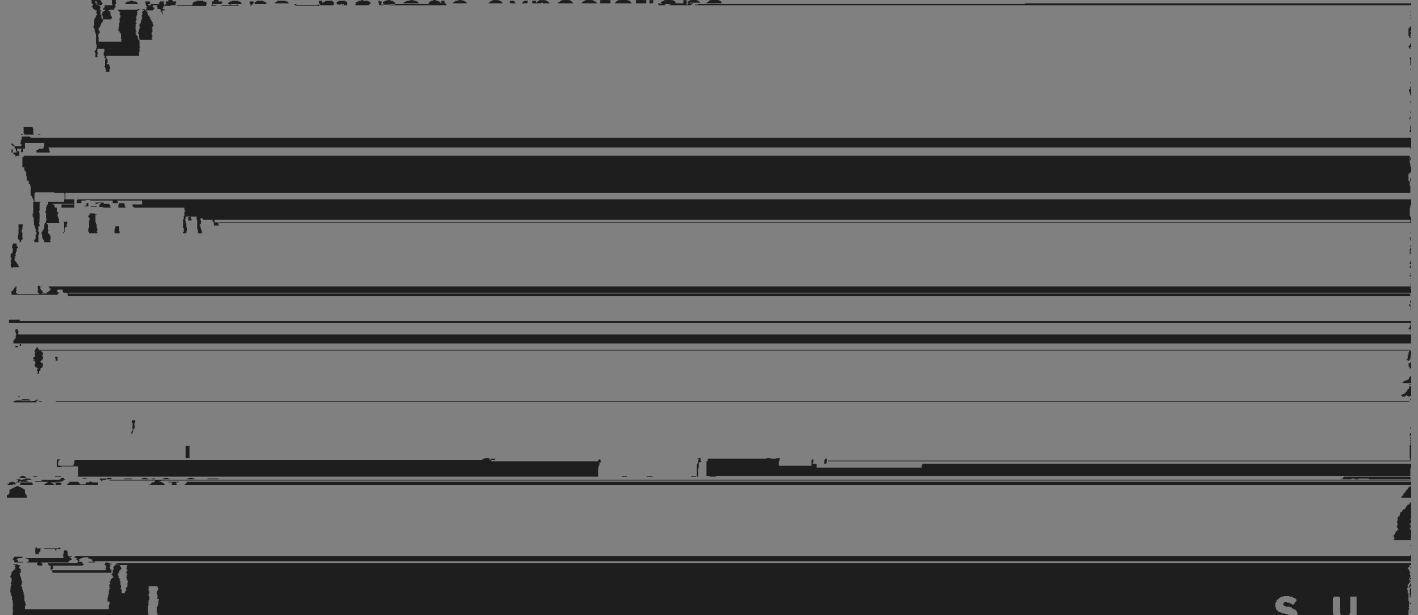
The investigator thinks it's my fault because of what I was wearing.



## Conclusion of Interview 21

- Questions for other party/witnesses.
- Opportunity/need for follow-up.
- Safety planning/interim actions.

Next steps/prepare expectations



- Seek clarification of facts and information to help determine elements of the alleged violation or other additional evidence

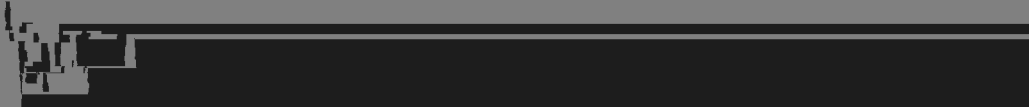
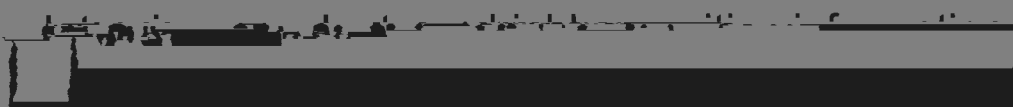
# Witness Interviews

- Explore witness's relationship to the parties.

- ~~Ascertain the source of the witness's knowledge.~~







Investigators may redact/withhold information that is not directly related to the allegations or that is otherwise barred from use, such as as because of a legally recognized and unwaived privilege.

Department warns against overbroad exclusion of evidence and cautions institutions to be “judicious” and “not redact more information that necessary.”

Keep log of any documents/information that is withheld or redacted.

“Directly related” is broader than “relevant.”

Prior to finalizing the report, parties and advisors must have equal opportunity to inspect and review evidence that is "directly related" to the allegations, including any evidence that the investigator does not intend to

rely on in the written investigation report.

- Parties and advisors have at least 10 days to inspect, review and respond to the evidence.

- Know the University's policies and procedures.

Decide whether to consolidate multiple complaints arising from same incident in a single investigative report

Have both parties had an opportunity to test/explain all information relied upon in report?

Think about how you can make the report understandable to someone who is entirely unfamiliar with process/parties:

- Spoon-feed factual information
- Explain acronyms

Document efforts to obtain information/interview witnesses that were unsuccessful

**S U**

Summary of Complaint.

- Jurisdiction.

Procedural history— when the report was made, when the investigator was assigned, when the interviews were conducted, any delays, dates for review of evidence and responses.

Applicable policies and procedures.

Information considered during the investigation, including:

- List of witnesses interviewed and when
- List of documents and other information reviewed and who provided
- List of witnesses proposed but not interviewed and why
- Standard of proof (preponderance of the evidence)
- Summary of Interviews and Evidence
- Appendix



# Investigation Report

Must fairly summarize the relevant evidence, including inculpatory and exculpatory information.

May include direct observations and reasonable inferences drawn from the facts.

- May discuss consistencies/inconsistencies from various sources of

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information.

Investigator does not make credibility assessments/determinations of

# Attachments

- Decide what will be attached to the report (e.g., Facebook/text messages, screenshots, photos, police report, etc.) keeping Department's guidance on relevance in mind.