Module Two: Conducting the Investigation, Interviewing, and Information Gathering

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Module Overview

- Interviews: Logistics, Who to Interview, and How to Interview Effectively
- Participation by Parties and Witnesses
- Amnesty
- Required Disclosures – Garrity Rights
- Conducting the Interview – Tips for Good Questioning
- Post-Interview Considerations
- Interviewing High-Level Employees and Police
Interviews – General Considerations & Logistics

- Scheduling
- Location/technology
- Notes/recording/transcripts?
- Accessibility

Interviews – Representation & Support

- Right to representation/support? Permissible?
- Representative’s/support person’s role during interview
Participation by Parties

• Reasons for not wanting to participate?
  • Discuss prohibition on retaliation
  • Ensure it isn’t a barrier within the institution’s control (e.g., amnesty)
• Make decision based on available evidence
  • Should you draw an adverse inference from a failure to participate?
  • Can you?

Participation by Witnesses

• Witness refuses to participate, and/or
• One of the parties asks that a particular witness not be contacted
• Ask why
  • Fear of retaliation?
  • Concern about own misconduct?
• Consider how important the information would be, and whether other ways to get it.
Amnesty

“Any individual who reports discrimination or harassment or participates in an investigation will not be subject to disciplinary action by the University for personal use of alcohol or other drugs at or near the time of the incident, provided that such use did not harm or place the health or safety of any other person at risk. The University may offer support, resources, and educational counseling to such individual.”

Purpose of the Interview

• Establish a narrative and timelines of events – get the facts!
• Gather information to answer key questions
• Clarify conflicting information
• Understand how all parties perceived events
Purpose of the Interview

In devising questions, consider:
• Do I need to know the information?
• Will an answer to my question help me understand what happened?
• Will getting an answer to this question inform the decision?

Interviews – General Considerations

Who to interview  Order of interviews  Status of the investigation
Who to Interview

• Complainant
• Named respondent/individual making the challenged decision

Who to Interview

• Witnesses
  • Employees (faculty, staff)
  • Students
  • Individuals not associated with university
    • Visitors
    • Contractors
    • First responders
    • Medical personnel
Interviews – General Considerations

• Any required disclosures?
• Details of the incident/circumstances at issue

Interviews – General Considerations

• Ask for other sources of relevant evidence – witnesses, documents, etc.
  • Who would have more information about…
  • Is there anything else?
• For complainant, perhaps: What would you like to see as outcome?
Interviews – General Considerations

1. Set the TONE
2. Develop rapport – put individual at ease
3. Explain your role – neutral, no conclusion has been reached
4. Offer paper copy of policy and where to find it online

5. Explain the steps in process
6. Explain prohibition against retaliation
7. Discuss confidentiality/privacy/information security
8. Access to resources and support
Conducting the Interviews

**Do:**
- Remain impartial and keep an open mind
- Ask relevant questions that are specific to the incident
- Importance of tone

**Don’t:**
- Make premature conclusions
- Allow personal biases, belief system, stereotypes to guide your questioning
- Badger the witness(es)
- Ask accusatory questions/blame the victim
- React to what the witness is saying
Conducting the Interviews

Types of Questions

• “What” questions ask for facts and details
• “How” questions ask about the process, sequence of events, or focus on emotions
• Closed “Who/When/Where” questions ask for the specifics of the situation

Tips for Good Questioning

1. Ask open-ended questions
2. Listen more than talk
3. Give time to answer
4. Use appropriate tone
5. Be comfortable with silence
6. Avoid leading questions
7. Identify conflicting information
8. Ask questions that reveal attitude/belief
9. Avoid questions that imply judgment
Conducting the Interviews

Types of Questions

- Avoid “Why” questions
- Avoid multiple choice questions
- Avoid asking for conclusions

Conducting the Interviews

Leading Questions

- Were you upset with Ms. Harmani’s work schedule?

- Did Ms. Harmani’s FMLA leave interfere with the work of the department?

- Were you worried after your conversation with your manager about the grant?
Conducting the Interviews

Useful Phrases

- Would you be willing to tell me more about...?
- How did you feel about...?
- What did you do after...? What happened then?
- What did you mean when you said...?
- What was your reaction to...?
- How did you become involved in...?
- What is your understanding of...?

Concluding the Interview

<table>
<thead>
<tr>
<th>Action</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Thank</td>
<td>Thank the party/witness</td>
</tr>
<tr>
<td>Remind</td>
<td>Remind them of institution’s prohibition against retaliation</td>
</tr>
<tr>
<td>Inform</td>
<td>Inform parties of next steps</td>
</tr>
<tr>
<td>Discuss</td>
<td>Discuss confidentiality/privacy again</td>
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**Post-Interview**

- Review interview notes/recording/transcript.
- What do you know to be true? Are there undisputed facts?
- What do you not know?

**Post-Interview**

- How can you find this information out? Another witness? More evidence?
- Circle back to give each party a chance to respond to new information.
Thoroughness/Efficiency

• How many witnesses to interview?
• When to stop?

Interviewing High-Level Management Employees

LEGAL REPRESENTATION

NEUTRALITY

INFLUENCE
Interviewing Police

- As a witness in a non-criminal matter
- When investigating alleged misconduct by law enforcement

Gather Other Information

email  book  SMS  camera

POLICE REPORT

facebook

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Prepare Timeline

- Use interviews and documentation to develop timeline.
  - Will help to determine relevant follow-up questions for parties and witnesses
  - Will help factfinder/decision-maker understand what happened

QUESTIONS?
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