



# Equal Opportunity & Nondiscrimination

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## Investigatory Training

**Office of Equity and Inclusion**

*November 13-14, 2024*

# Outline of Today's Presentation

- » Brief review
- » Investigation Techniques

# DESIGNATED OFFICER TASKS

- » Jurisdiction and scope
- » Conflicts of interest
- » Interim actions re: health, safety concerns
- » Primary person to ensure process moves forward through each relevant step of the procedure
- » Release of information requests



# INVESTIGATOR TASKS

- » Conducts a fact-finding inquiry or investigation of the complaint, including scheduling and holding interviews and requesting record information; may delegate this to another trained investigator
- » Informs involved parties of right a union representative or support person to accompany them during investigative interviews, as appropriate
- » Informs involved parties of the protection and prohibition of retaliation per policy
- » Creates, gathers, and maintains investigative documents as appropriate



# INVESTIGATOR, CONTINUED

- » Writes investigation report with organized attachments
- » Outlines facts in the investigative report based on information collected through the interview process and review of gathered documents
- » Primary person to ensure process moves forward through the investigative steps
- » Handles all data in accordance with applicable federal and state privacy laws, consulting with the campus Data Practices Officer when necessary
- » Provides all investigative materials to the Designated Officer for recordkeeping



# THE INVESTIGATION

- » Provides enough information for the decisionmaker to make a reasoned decision about whether policy has been violated
- » Maintains integrity of process
  - Timely
  - Fair to both parties
  - Provide confidentiality as required by law
  - Thorough
  - Tailored to individual circumstances
- » Provides findings of facts, **not** findings of policies



# DECISION-MAKER TASKS

- » Determines whether there is any real or perceived conflict of interest
- » Receives and reviews the investigation report
- » Provides notice to the Complainant and Respondent regarding receipt of report, their role as Decisionmaker, and anticipated timeline for decision
- » Makes sure the investigator has complied with Minnesota State procedures
- » May meet with parties or request additional information from the investigator



# DECISION-MAKER, CONCLUDES PROCESS

- » Decides whether policy has been violated based on information provided in report
- » Writes reasoned decision based on facts, available information, and policies
- » Provides decision letters to complainant and respondent of their findings regarding a policy violation; copy to the Designated Officer
- » Provides all related report materials to the Designated Officer for recordkeeping





# DECIDING IF MISCONDUCT OCCURRED

- » Standard of proof in determining a 1B.1 violation
  - Preponderance of evidence; i.e. more likely than not to have occurred
  - Secondary information has value
  - Reasonable inferences also are used

*The scales of justice:*

*Preponderance= > than 50%*

*Clear and convincing= 75% vs. 25%*

*Beyond a reasonable doubt= 99.9% vs. .1%*



# DECISION FACTORS

- » Weigh nature and context of behaviors, the relationship(s) between the parties, the context in which the alleged incident(s) occurred, and other relevant factors
- » Consider the totality of circumstances
  - History of complaints/grievances
  - Treatment of others (those who are different and those who are similarly situated)
  - Skills/competencies of supervisors demonstrated by past actions
- » What is more convincing and has greater probability



# Investigation Skill-building

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Investigation Specialist & Deputy Title IX Coordinator

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# Part 1: Investigation Strategy

# INVESTIGATION SCOPE

## » Scope of Investigation

- What are the allegations?
- Who are the involved parties?
- Do the allegations arise out of same set of facts
- Why is scope important?



# CREATING INVESTIGATION PLAN

- » Outline the scope
- » Allegations
- » Witnesses
- » Investigative questions
- » Evidence



# COLLECTING EVIDENCE

- » Initial evidence to collect and review
  - Time sensitive evidence
  - Standard records to review
  - Create a timeline
  - Tracking



# TYPES OF EVIDENCE

- » Direct Evidence
- » Documentary Evidence
- » Circumstantial Evidence
- » Character Evidence
- » Corroborating evidence
- » Hearsay Evidence





# TYPES OF EVIDENCE, CONT.

- » Hearsay Evidence
- » Exceptions to hearsay



# EXAMPLES OF EVIDENCE

- » Personnel files/conduct records
- » Meeting minutes
- » Emails, voicemails, text messages. Etc.
- » Security or Residential life report
- » Social media records
- » Supervisory notes
- » Grading data
- » D2L records



# PARTNERSHIPS TO OBTAIN EVIDENCE

- » Security
- » Student Conduct/Student Affairs
- » Human Resources
- » Residential Life
- » Athletics
- » Other campus processes
- » Ombudsperson
- » Campus advocate
- » Law enforcement



# WHO TO INTERVIEW

- » Complainant & Respondent
- » Witnesses
- » Document interview decisions



# SCHEDULING INTERVIEWS

- » Order of interviews
- » Timing
- » Flexibility – timing and location
- » Accommodations



# TYPES OF MEETINGS AND INTERVIEWS

- » Complainant
  - Intake
  - Investigatory interview
  - Follow-up interview
  
- » Respondent
  - Initial meeting
  - Investigatory interview
  - Follow-up interview
  
- » Witness
  - Investigatory interview
  - Follow-up interview



# NOTICE OF MEETINGS

- » Complainant
- » Respondent
- » Witness



# MEETING STRUCTURE

- » Interview structure consistent for all parties
  - "speeches" - overview of meeting, about role/office, policy, procedure, flowchart; advisory notice, waiver of union, privacy of interview' recording/note taking timing of interview
  - Review allegations – respondent meetings
  - Background – name, title/year, start date, major, involvement in extracurriculars/committees, explanation of role, where they live on campus
  - Interim actions and supportive measures
  - Resources
  - Next steps
  - Reminder about retaliation





# Part 2: Strategies for managing investigation-based challenges

# BIAS

- » A disproportionate prominence in favor of or against an idea or thing, usually in a way that is closeminded, prejudicial, or unfair
  - Can be innate or learned
  - Bias can be for or against an individual, group, or belief
- » Title IX requires a college or university to conduct a “prompt, thorough and impartial inquiry.”



# TYPES OF BIAS

- » First Impression Bias
- » Affinity Bias
- » Confirmation Bias
- » Attribution Bias
- » Characteristic based bias
- » Anchoring bias
- » Beauty Bias



# Sexual Violence Case Specific Biases

- » The subject matter of these cases is often personal and very intimate
- » Most of us hold our own conscious beliefs and practices when it comes to this content area so it is important not to intentionally or unintentionally cast your lens on the matters you investigate
  - Your own sexual experiences
  - Moral or religious views about sex
  - Comfort level in using terms – subject matter



# Alcohol and Drug Use Biases

- » You may have your own views on and experiences with:
  - Alcohol use
  - Drug use
- » These things may have impacted your life



# Investigator-Specific Biases

- » Complainant/Respondent is likeable/sympathetic
- » Complainant/Respondent is not likeable/sympathetic
- » Repeat Complainant/Respondent
- » Fact pattern similar to a prior, unrelated investigation
- » Complainant/Respondent behavior patterns



# Bias Impact on Investigation

- » Priming – Your pre-investigation or mid-investigation thoughts about the case
- » Phrasing – The way you ask a question can influence the answer – the misinformation effect



# Rape Myth vs Common Behavior for Victims of Rape

## Common Behavior for Victims of Rape

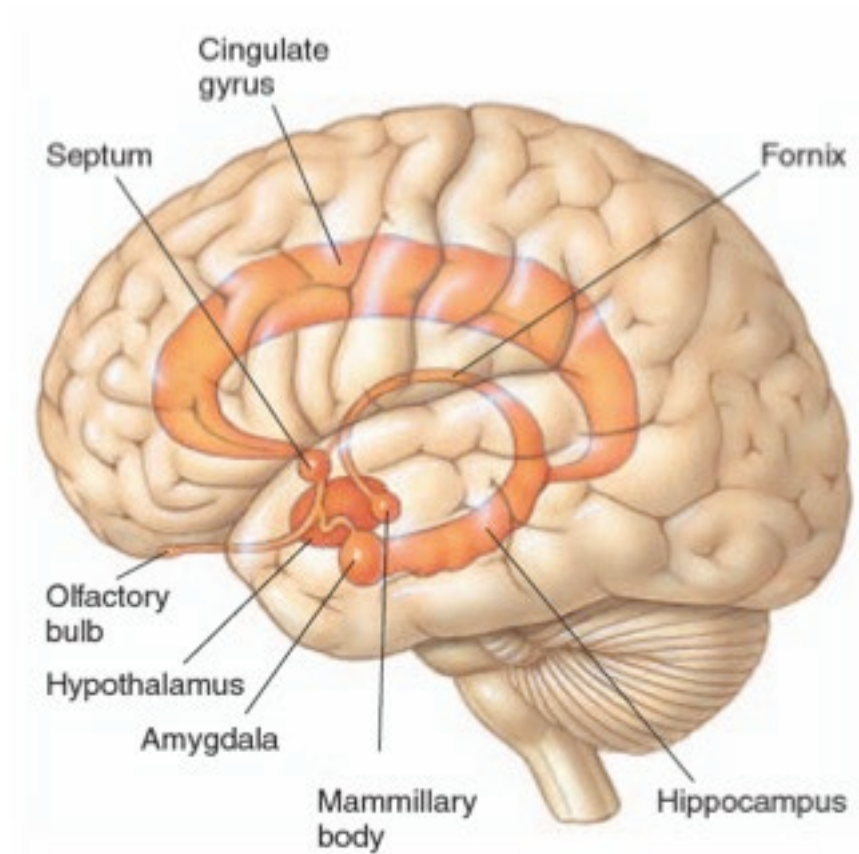
- Delay in reporting
- Change in account of what happened
- Unexpected demeanor/disposition
- Unexpected behavior



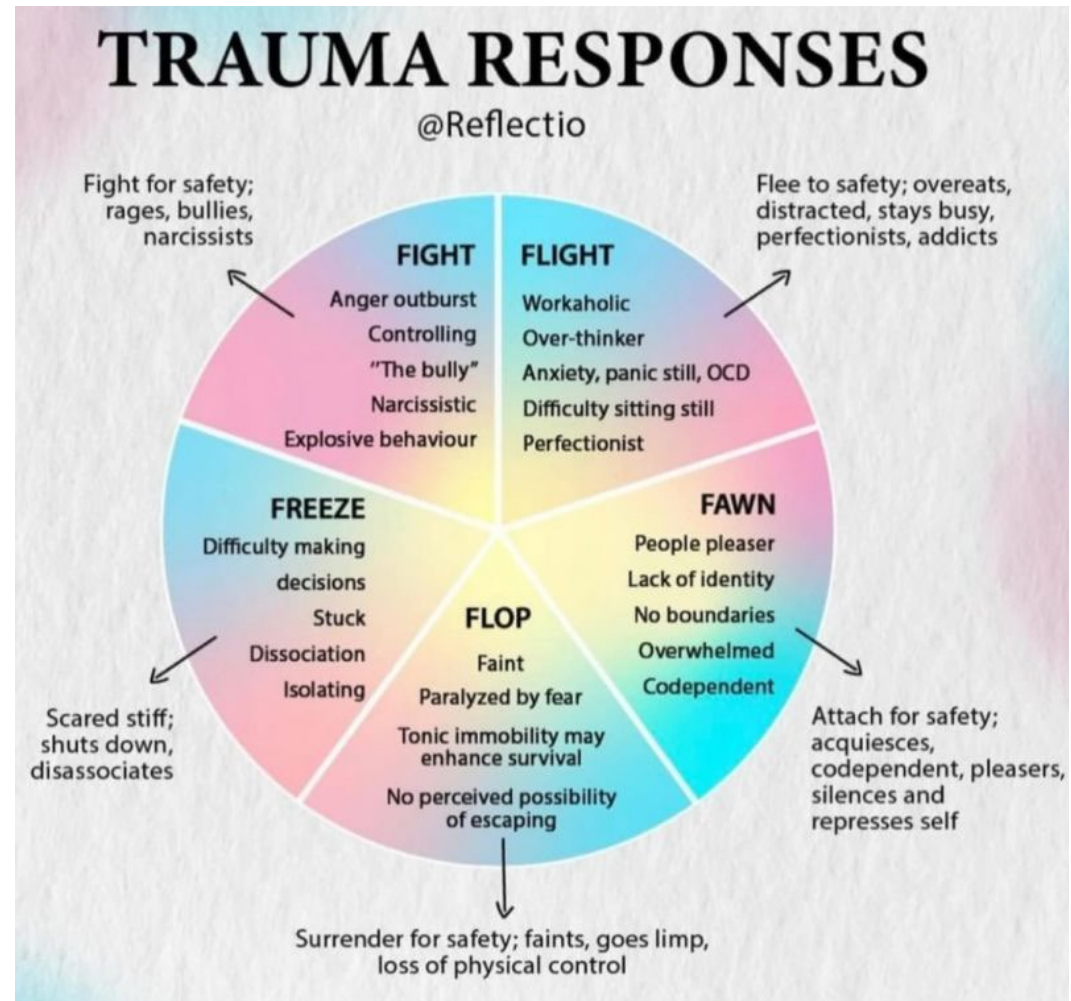


# Neurobiological Responses to Trauma

# Neuroscience – The Limbic System

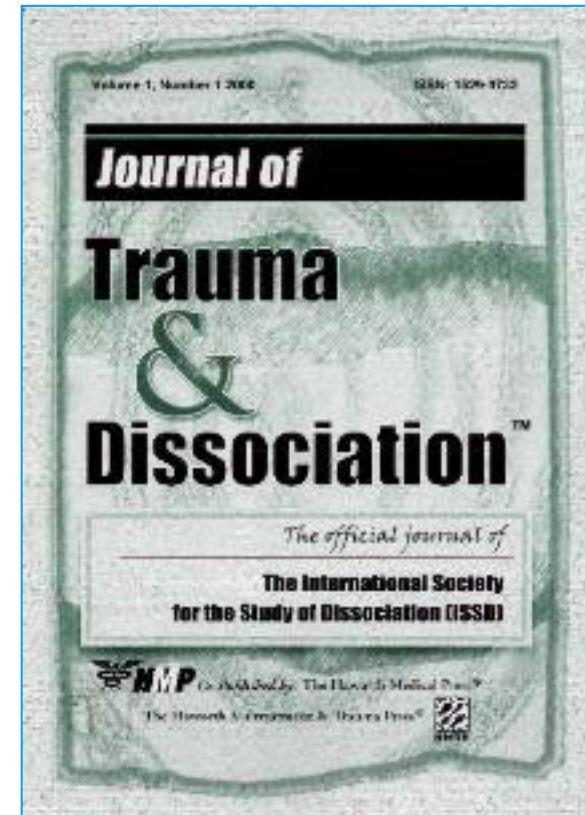


# Responses of the Brain & Body During Trauma



# Dissociation

- » Defense mechanism (of the brain) to protect against overwhelming sensations & emotions
  - Occurs automatically, without trying
- » Portions (i.e., memories) of an experience that are normally linked together become “dis-associated”
- » Examples (during & immediately following a trauma):
  - “Blanked out” or “spaced out” – in some way felt that I was not part of what was going on
  - What was happening seemed unreal to me – like I was in a dream or watching a movie or a play
  - Felt “disconnected” from my body



# Tonic Immobility

- Uncontrollable response
- Mentally know what's happening but physically unable to move (like being awake during surgery)
- Rate of occurrence
  - 12 – 50% victim/survivors of rape experience tonic immobility during assault (most studies are closer to 50%)
- » Caused by:
  - Fear
  - Physical restriction
  - “Perceived” inability to escape



# Traumatic Responses and the Body

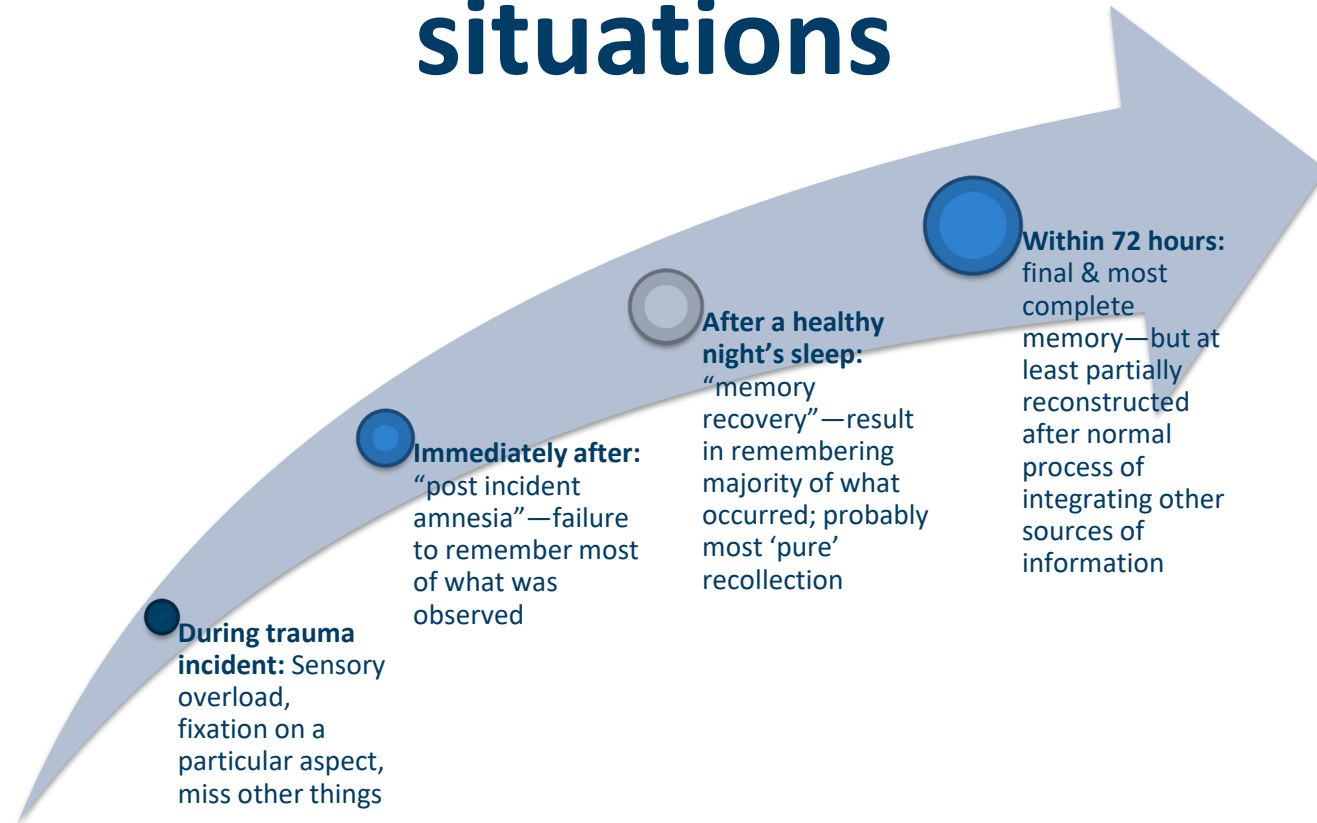
- » Physiology
  - Heart rate, respirations, dilated pupils, dry mouth, knot in the stomach
- » Affective (mood and emotion) responses
  - Fear, helplessness, horror
- » Cognitive (thought) processing
  - Memory – fragmented, out of sequence
  - Time distortion
  - Increased confabulation
  - Trauma memory and recall



# Trauma and Memory

- » The body and brain react to and record trauma in a different way than we believed traditionally
- » Many professionals were trained to believe that even when a person experiences a traumatic event, the pre-frontal cortex records the vast majority of the event including: Who, What, When, Where, Why, and How
- Memory recall can be very slow and difficult (or not possible)
  - Memories are “fragmented” – they come only in bits and pieces (often do not follow a timeline)
  - Process can be very frazzling and frustrating for victims

# Memory phenomenon in traumatic situations



By Lt. Col. Dave Grossman & Bruce K. Siddle  
*The Firearms Instructor: The Official Journal of the International Association of Law Enforcement Firearms Instructors*  
Issue 31 / Aug 2001



# Impact of Trauma on Victim/Survivor Behavior

- » The effects of trauma can influence behavior of a victim/survivor during an interview
- » People are often reluctant to recall experiences that evoke negative feelings and emotions such as anger, fear, humiliation, or sadness

--Strand, 2013



# PARALLEL PROCEEDINGS

- » Independent from any civil or criminal proceeding
- » Not required to delay, and in most cases should not delay due to other proceedings
- » May contact prosecutor/law enforcement to coordinator when feasible
- » Gather available information:
  - Police Report
  - Court records



# NOTICE OF INVESTIGATION AND ALLEGATIONS FOR 1B.3.1

- » Notice of Formal complaint
- » List of allegations
- » Presumed not responsible
- » Right to advisor of choice
- » Opportunity to provide information to be considered
- » Right to review and inspect evidence before investigation report finalized
- » 10 calendar days to respond to investigation report
- » Option for informal resolution process
- » Retaliation
- » Investigator contact information



# Part 3: Interviewing Approaches

# TRAUMA INFORMED TECHNIQUES

- » Forming questions in a way that does not assign responsibility, blame, or guilt
- » Creating safe and comfortable interview environment/setting
- » Check your bias especially when assessing credibility
- » Ask questions that speak to the senses



# TRAUMA-INFORMED APPROACH

- » Acknowledge sensitivity and difficulty of topics
- » Understand the effects of trauma and triggers
  - Memory impacted, recall over time
  - Emotions and sensory details may be triggers
  - Varying emotions during interview
- » Attend to your own reactions or triggers



# Trauma-informed Approach, cont.

- » Framing and phrasing meeting invitations, email communications
- » Pre-interview framing: “it’s okay if you don’t remember something today,” “sometimes it takes time to remember, which is okay”
- » Let Complainant talk uninterrupted and ask clarifying questions afterwards
- » Consider asking questions about the other senses
- » Do not insist in chronological order retelling; gather the information and organize it



# Significant Time Between Incident And Report

- » The norm when the person causing the harm was not a stranger
- » Many victim/survivors are able to report only after they receive the necessary support to do so
- » Why do they wait? For many of the same reasons they later recant
  - They fear repercussions
  - They are pressured by others not to report
  - They feel shame, embarrassment
  - They are afraid of the person who caused the harm
  - They are afraid of not being believed
  - Fear that nothing will be done about it





# Cultural Considerations

- » Communication styles
- » Attitudes toward conflict
- » Approaches toward completing tasks
- » Decision-making styles
- » Approaches to knowing
- » Attitudes toward disclosure
  - Appropriate to share emotions, reasons for conflict

--Sue Ann Van Dermyden, 2017



# Common practice considerations

- » Be mindful of cultural differences
  - Continuum of honesty and face-saving
  - In-group vs. out-group
  - Linear vs. non-linear narrative
- » Check biases, especially when assessing credibility
- » Ask questions in a way that does not assign responsibility, blame, or guilt



# DETERMINE GOALS OF QUESTIONS

- » Who, what, where, when, why, how
- » Intake meeting vs. Investigatory interview
- » Refine scope
- » What information are you missing or have questions
  - Read through reports/complaints and note any questions
- » Policy elements
  - Policy element handout



# HOW TO STRUCTURE QUESTIONS

- » Start with broad/open ended questions
- » Allow to tell their story/experience however they choose
- » Clarifying questions
- » Allow for Silence
- » Additional questions/things left unanswered
- » Closing questions



# INTERVIEW QUESTIONS for ALL

- » Interview questions for all parties
  - Allow them chance to share their story/experience
  - Ask the who/what/where/when/how questions
  - Summarizing Information back
  - Policy elements
  - Effect/impact



# INTERVIEW QUESTIONS CONTINUED...

## » Interviewee specific questions

- Respondent – make sure to review allegations before questions
- Complainant – clarify protected class and identity
- What they observed/their perspective of incident(s)
- Inconsistencies with other parties/witnesses
- Evidence specific questions – what they have, might have seen/been part of, etc.
- Desired outcome/resolution



# Assessing Credibility



# INTERVIEW CONSIDERATIONS FOR CREDIBILITY

- » Look for consistency with out-cry witnesses or contemporaneous reports
- » Assess demeanor
- » Ask yourself if the story is plausible?
- » Compare overlap/consistency with other statements
- » Respondent who derails questions and/or focuses on irrelevant information
- » Providing inconsistent statements
- » Motives/Relationships
- » Positionality
- » Mind/memory altering substances





# Analyzing certain qualities and factors

- » Demeanor: noted reactions to allegations or information shared; behaviors or feelings shared with others
- » Logic and consistency: consistency with what others shared (including possible witnesses); plausible explanations
- » Corroborating evidence: any admission or rationalizing of conduct; specific denial; witnesses with the opportunity to observe, recognize, or understand the situation
- » Circumstantial evidence: statements or behavior in other situations that support or refute alleged conduct
- » Note: trauma-informed approach



# CONDUCTING INTERVIEWS



# EACH INTERVIEW MIGHT LOOK DIFFERENT

- » Emotion – crying, anger, indifference, being conflicted, shock, trauma, etc.
- » Timing – short answers, decisions to make, communication styles, etc.
- » How you ask questions
- » Credibility concerns
- » Effort needed to structure interview – redirect, diffuse conversation, etc.



# MAINTAINING CONTROL OF INTERVIEW

- » Provide roadmap of interview
- » Safety – Think about how you have arranged the room, security, etc.
- » Union reps/ support persons/parents/lawyers
- » Don't be afraid to end a meeting
- » Difference between control and parties not cooperating



# PROVIDING EMPATHY AND VALIDATION

- » Focus on treating the individual as a whole person.
- » As an investigator, remain neutral
- » Practice using sample language that validates a person's experience but remains impartial
- » Remember allow space for decisions



# CHALLENGING INTERVIEWEE TROPES

- » The Clueless one
- » The Denier
- » The Distractor
- » The Confessor
- » The Explainer
- » The Apologetic one
- » The TV lawyer
- » The Avoidant one
- » The Questioning one



# RECORDING AND NOTE TAKING



# NOTE TAKING

- » Handwritten, typed, Teams transcript
- » Some of this is a personal preference – be consistent
- » Have outline of meeting/interview
- » Consider a notetaker for support
- » Model notes after investigation report
- » Make notations where you still have questions for follow up or for other parties





# COMMON CHALLENGES & TIPS

## » Common challenges

- parties talk fast or talk in circles/share repetitive information
- interviews are long
- prioritizing typing notes after interview
- Self-care

## » Tips

- type notes/update as soon as possible after interview
- document thoughts for follow up
- have a notetaker
- encourage all to submit a written statement



# RECORDING INTERVIEWS

- » Allows the investigator to focus on content/information and being present during the interview
- » Recordings can ensure that all data and information is accurate.
- » Recordings can be taken in multiple ways
- » Record ALL the interview - including opening information, data privacy review (ask for verbal acceptance), all "housekeeping" information



# RECORDING INTERVIEWS, CONT.

- » There are additional nuances of recording that are different from standard interviewing.
- » Develop a plan for your recording - send for transcription, etc.
  - This provides a typed/hard copy of the interview.
- » Transcription review



# RECORDING CONSIDERATIONS

- » Contracts for transcription
- » Access to transcripts
- » Storage of recordings and transcripts
- » Data retention policies



# Part 4: Components of Investigation Report

# GOALS OF INVESTIGATORY REPORT

- » Present findings in a well-written and well-organized format
- » Document the steps taken during the investigation
- » Document the evidence collected and reviewed
- » Provide a clear, objective picture of investigation to the DM
- » Should contain all information a DM needs to make their decision



# INVESTIGATORY REPORT COMPONENTS

1. Transmittal letter & Cover Sheet/Disclosure Notice
2. Investigation report cover page
3. Table of contents
4. Synopsis
5. Methodology
6. Evidence
7. Synthesis
8. Exhibit Index



# TECHNICAL VS OBJECTIVE WRITING

## Technical Writing

- Focuses on explaining complex concepts clearly
- Instructional, procedural, and often involves guidelines/manuals
- Primary goal is to make technical information easy to understand and use
- Written for a specific audience





# TECHNICAL VS OBJECTIVE WRITING, CONT.

## Objective Writing

- Impersonal and factual
- Focuses on being neutral and informative, ensuring the reader can make their own judgments
- Focuses on credibility but avoids overt persuasions
- Presenting facts without bias
- Written for a general audience



# TECHNICAL AND OBJECTIVE WRITING

Comparing technical and objective writing:

- Both require clarity, structure and accuracy
- Both are focused on fact-based and credible information
- Share a purpose to explain or instruct without bias

Best practices:

- Be concise and avoid unnecessary complexity.
- Stick to facts and connect to relevant exhibits attached to investigatory report
- Avoid language that can be



# Thank you.



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