

The Investigation Report and File



IN THIS CHAPTER



ELEMENTS OF THE
INVESTIGATION
REPORT



INTERVIEW
SUMMARIES



EVIDENCE
SUMMARIES



THE INVESTIGATION
FILE



ANALYZING THE
REPORT AND FILE



SAMPLE REPORT

Elements of the Investigation Report



Investigation Report Requirements

At the conclusion of the investigation, the Investigator will prepare a written report. The report shall:

- ✓ Identify the allegations
- ✓ Identify relevant policies, guidelines, and other standards
- ✓ Explain the procedural steps taken between receipt of the formal complaint and the conclusion of the investigation, including all notifications to the parties, interviews with the Parties, interviews with other Witnesses, dates of all interviews, any site visits, and the methods used to gather evidence
- ✓ Fairly summarize relevant evidence

Elements of the Investigation Report

Allegations Investigated

Allegations, if proved, that meet the definition of Sexual Misconduct

- *Should be roughly identified in the Formal Complaint*

Alleged form(s) of sexual misconduct

- *Sexual Harassment, Dating Violence, Domestic Violence, Sexual Assault, Stalking*
- *Copy full definitions from policy*
- *Many forms of prohibited conduct are also dependent upon factors such as consent, length or type of relationship between the Parties, number of alleged incidents, etc.*

Elements of the Investigation Report

Allegations Investigated

Allegations, if proved, that DO NOT meet the definition of Sexual Misconduct

- *Other policies implicated?*
- *Harassment not based on sex or gender*
- *Sexual misconduct that does not fall under Title IX's scope, but may need to be addressed under another policy*

Elements of the Investigation Report

Relevant Policies, Procedures, Guidelines and Standards



Sexual
Misconduct
Policy



Additional
Relevant
Institutional
Policies

Elements of the Investigation Report

Procedural Steps Taken Between Receipt of Formal Complaint and Conclusion of Investigation

Timeline

- The importance of documentation during the interviewing process presents here
- Utilize communication logs, activity logs, or other templates that document your information-gathering timeline
- Provide the following:
 - Dates of notices
 - Interview dates
 - Date of provision of investigation file
 - Dates of responses to investigation file, etc.

Elements of the Investigation Report

Procedural Steps Taken Between Receipt of Formal Complaint and Conclusion of Investigation

- Documentation if a Party or Witness does not respond or declines to participate in the investigation
- Documentation of communication with other departments or off-campus sources (i.e., local police)
- Documentation of supportive measures in place during the investigation

Elements of the Investigation Report

Summary of Relevant Evidence

The “meat” of the Investigation Report

- Should include:
 - Summaries of interviews with Complainant, Respondent, and Witnesses
 - Summaries of evidence, with exhibits attached
 - Reference the evidence log and appendix which should contain relevant information collected, including any evidence obtained or submitted as part of the investigation, electronic records, written statements, photographs, or other documentation

Elements of the Investigation Report



REMINDER



The written report shall not make findings of facts or conclusions regarding the application of facts to this policy.

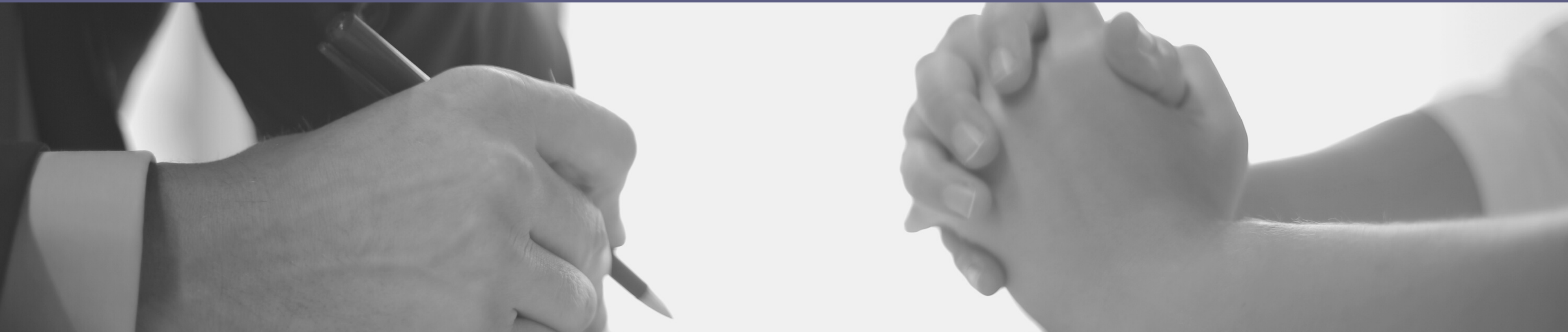
This is the responsibility of the Decision-Maker!

Elements of the Investigation Report

(Optional to Include)

A presentation of facts and analysis of consistencies and inconsistencies in the information collected

Interview Summaries



Key Questions

Information gathered in the investigative interviews should attempt to answer these questions:

- Did the alleged incident occur?
- Is the alleged incident a policy violation?

Upon reading the investigation report, you will get a deeper understanding of the following...

Identities and Dates

- Time, date, location of interview and if advisor present
- Explain the interviewee's relation to the case
 - Complainant, Respondent
 - If a Witness, who are they?
 - Example: *“Joshua Kaplan was the person working the front door of Myers Hall on the night of November 28.”*

Summary of Responses

The investigation report should transform the individual's responses into a coherent narrative.

Summary of Responses

Interviews may be organized into subsections when dealing with multiple allegations.

- If a formal complaint alleges multiple policy violations or forms of sexual misconduct, the report could be organized into sections related to each policy violation
- Example: Relationship with a history of dating violence and sexual assault

Summary of Responses

Direct quotes may be cited from the individual's interview.

- Direct quotes are extremely powerful and useful for those reading the report

Summary of Responses

An individual's statements should not be conflated with fact.

- If a Complainant says the incident occurred at 9:00 pm, ideally, a summary should read: "*NAME OF COMPLAINANT stated that the incident occurred at 9:00 pm*" rather than "*The incident occurred at 9:00 pm.*"
- It may be noted at the end of an interview summary if evidence (photographs, text messages, surveillance footage, etc.) supports or refutes the interviewee's statements

OPINIONS SHOULD NOT BE A PART OF THE SUMMARIES

Interview Observations

Investigator may include answers to the following questions:

- Did the individual ask for a break?
 - Note how many breaks
- Was the individual accompanied by an Advisor?
- Did the Advisor attempt to speak on the individual's behalf?
 - What occurred?

Evidence Summaries



Examples of Summarizing Evidence

May simply be a list of all evidence, referencing its Appendix Number.

VIII. Table of Appendices

Documents and evidence obtained during the course of the investigation such as the formal complaints and Notices of Investigation can be found in the attached Appendices.

Additionally, each investigative interview was recorded by Investigator Chapman with the consent of the interviewee. The transcripts of each interview can also be found in the attached Appendices.

A list of Appendices is as follows:

Appendix No.	Description	Date Received
Appendix A	Jacob Smith Formal Complaint to the Title IX Coordinator	January 3, 2022
Appendix B	Amanda Parsons Formal Complaint to the Title IX Coordinator	January 4, 2022
Appendix C	Jacob Smith Email to the Title IX Coordinator with additional allegations	January 6, 2022
Appendix D	Notice of Allegations to Smith - Complainant	January 7, 2022
Appendix E	Notice of Allegations to Parsons - Complainant	January 7, 2022
Appendix F	Notice of Allegations to Thompson – Respondent	January 7, 2022
Appendix G	Smith Interview Transcript	January 9, 2022
Appendix G-1	Smith Interview Recording	January 9, 2022

Examples of Summarizing Evidence

You may also decide that specific pieces of evidence require an explanation.

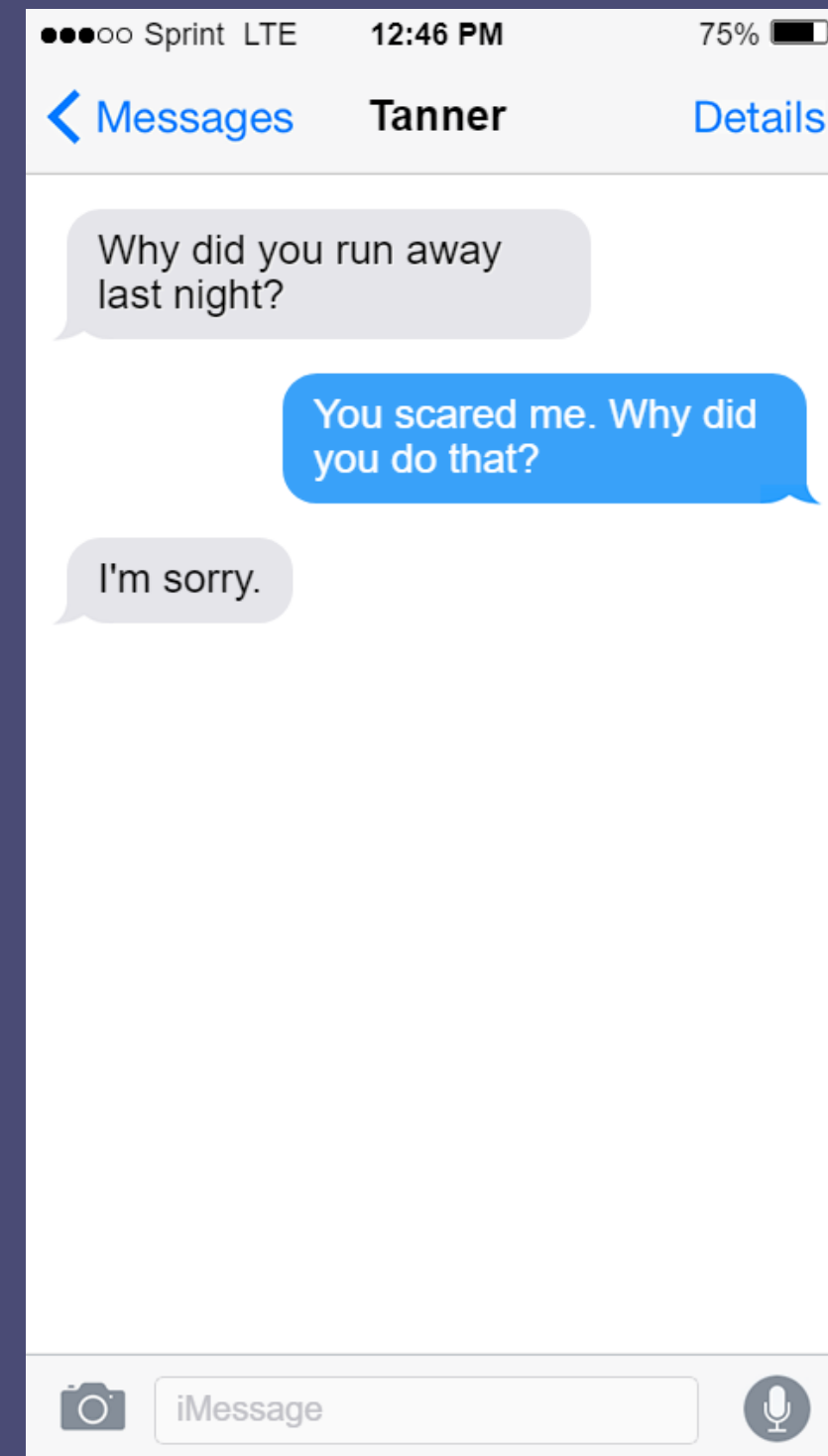


Example: Security camera video recording from Gentry Hall timestamped from January 1, 2022 at 9:00 PM to January 2, 2022 at 6:00 AM.

Security camera video recording was obtained from Sample University Police Department (SUPD)

Saved as SUPD_Evidence_2.mp4 in Investigation File

Still image from 00:18:14 Attached to Investigation Report as Appendix K



Example: Screenshot of text message received by Complainant Jacob Smith timestamped on January 2, 2022 at 8:07 AM. Alleged to be sent by Respondent Tanner Thompson. Screenshot was provided by Complainant Smith.

Saved as Smith_Evidence_1.png in Investigation File

Attached to Investigation Report as Appendix H

Examples of Summarizing Evidence

Noting Inconsistencies

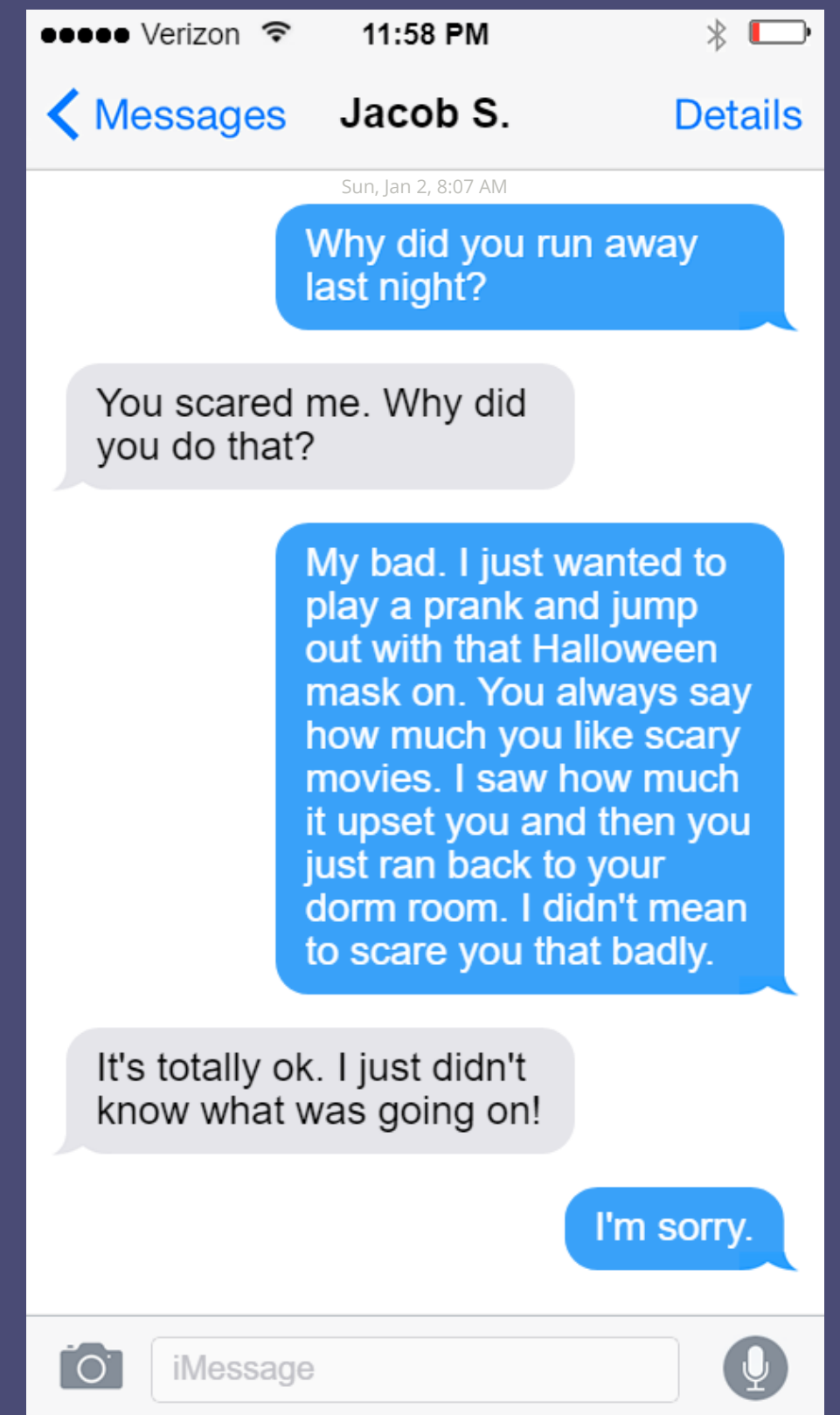
Example: Screenshot of text message exchange alleged to be between Complainant Jacob Smith and Respondent Tanner Thompson on January 2, 2022 timestamped at 8:07 AM. Screenshot was provided by Respondent Thompson.

NOTE: There are inconsistencies between the messages displayed on the screenshot of the exchange provided by Complainant Smith and the screenshot provided by Respondent Thompson.

The screenshot provided by Respondent Thompson contains a text message from the Respondent stating, "My bad. I just wanted to play a prank and jump out with that Halloween mask on. You always say how much you like scary movies. I saw how much it upset you and then you just ran back to your dorm room. I didn't mean to scare you that badly."

The text reply from Complainant Smith states, "It's totally ok. I just didn't know what was going on!"

These messages are absent from the image provided by Complainant Smith.



The Report Should Lay Out:

Who, What, When, Where, Why, and How

- The investigation report, including the summaries of interviews and evidence, answers the following questions:

Who was involved?

What are the allegations?

Where and when did the incident occur?

Why and how did the incident occur?

Keep in Mind

The information provided may not definitively answer all of these questions, but piecing together information may help gain a clearer picture.

- Complainant states that the incident occurred at 1:00 PM on Tuesday, June 15th
- Respondent states that the incident occurred at 11:30 AM on Tuesday, June 15th
- Access logs to the campus building where the incident occurred show that the Complainant swiped in to access the building at 11:00 AM, and the Respondent swiped in to access the building at 12:00 PM

The Investigation File



What is the Investigation File?

At the conclusion of the investigation, prepare what we refer to as an investigation file.

- May also be referred to as a case file or case binder
- May be a hard copy or digital file



What Does The Investigation File Contain?

ALL EVIDENCE obtained as part of the investigation that is directly related to the allegations raised in a formal complaint to the Complainant and Respondent.

- No information is filtered from the file at this point
- Parties have had an equal opportunity to inspect and review all of the directly related evidence
- Includes evidence that tends to prove and disprove the allegations (inculpatory and exculpatory), whether obtained from a party or other source

What Does The Investigation File Contain?

- Includes evidence that is directly related to the allegations but upon which the institution does not intend to rely in reaching a determination regarding responsibility.
 - For instance, where evidence is directly related to the allegations, but the investigator does not believe the evidence to be credible and thus does not intend to rely on it

All evidence must be made available to the parties, but not all evidence may be “relevant.”



Reviewing the investigation file provides the Advisor and the party the opportunity to argue whether certain evidence is relevant or not

After Parties review the investigation file:

The final investigation report is created. It should contain the following:

- Relevant elements of the parties' written responses (or absence thereof)
- Any additional relevant evidence
- Rationales for changes made after the review and comment period

Elements of the Investigation File



Schools may have a template or predetermined method of organizing the investigation file.

Generally, it should contain the following elements:

Table of Contents

1

- Organized for quick reference as the file can be large
- Separate major sections and create subsections, if necessary, to help Parties, Advisors, and the Decision-Maker locate key information

Investigation Report



- This report will not be finalized until the Parties and Advisors review and respond within the required ten day review period
- Includes allegations, relevant policies/guidelines and other standards and procedural steps, as well as:
 - Fairly summarizes relevant evidence
 - Summaries of Interview (summary for every interview conducted)
 - Summaries of Evidence

List of Parties Interviewed and Evidence Submitted



- Communications log
- Evidence log

Witness Interviews



- If recorded, each interview should have the following documentation:
 - Transcript of interview
 - Recording of interview (if available)

Appendices

5

- Contains relevant documentary and physical evidence
 - Examples: electronic records, written statements, photographs, surveillance video, copies of text messages or emails, snapchats, restraining orders, or other documentation
- Evidence will likely be catalogued and organized into Appendices with numbers or letters corresponding to the line in the evidence log

Analyzing the Report and File



Reviewing the Information

Read the investigative report and entire investigative file CAREFULLY.

The report and evidence can be the primary basis for the decision of the Decision-Maker. The contents may not be repeated at the hearing itself.

Goals for the Review Process



Determine what
needs to be
asked at the
hearing

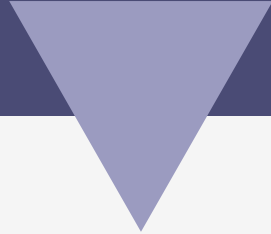


Determine what
information is
missing
(if any)

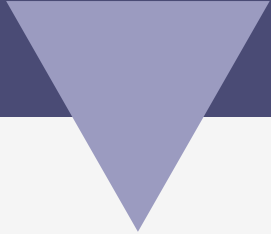


Determine which
Witnesses
should appear at
the hearing

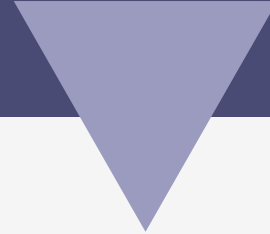
Excluded Information



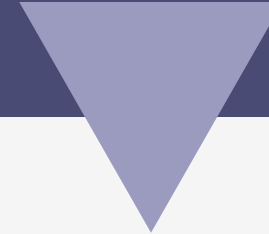
Ideally, all information gathered by the investigator should be discussed in the report and included in the file



At some schools, however, the Investigator might exclude from the report and file information that the investigator deemed irrelevant



Best practice - the Decision-Maker should determine what is and what is not relevant, not the Investigator



If you believe information has been excluded that you would like to review, do not hesitate to communicate with the Investigator or Coordinator to obtain the information

Weighing the Evidence

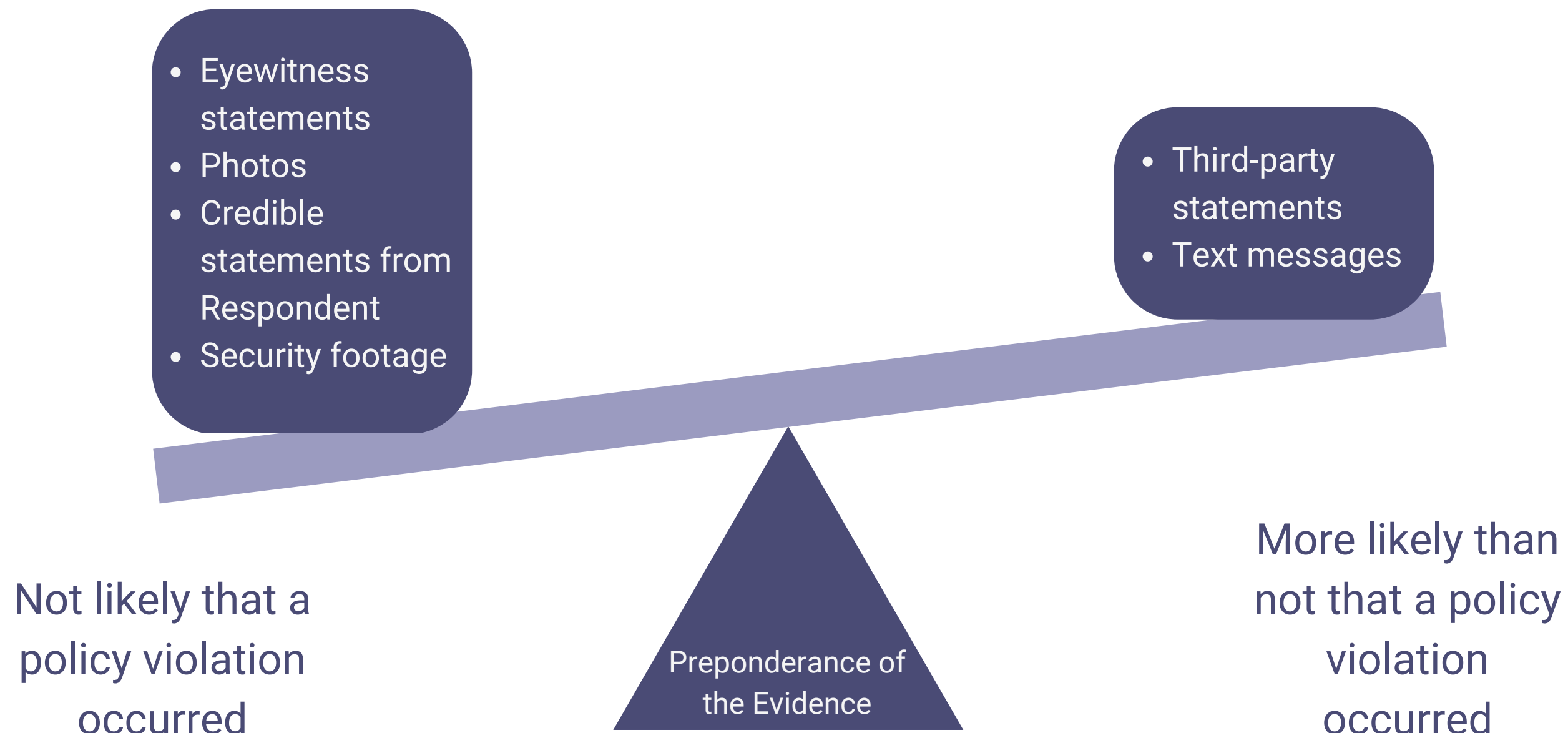
Upon analyzing the investigation report and file, you may begin to consider the weight of each piece of evidence, as well as the credibility of statements. You'll want to consider the following:

- Parties' statements and credibility
- Witness statements and credibility (eyewitnesses vs. third-party information)
- Evidence gathered and the sources from which it was obtained

Begin thinking about which pieces of information hold the most weight as it relates to the allegations.

Standard of Evidence

Now is the time to review your institution's standard of proof and examine how the information gathered in the investigation tips the scale. You will continue to gather information during the hearing or questioning process.



Sample Report



Contents

I. ALLEGATIONS

II. IMPLICATED POLICY

III. STANDARD OF PROOF

IV. PRESUMPTION OF NON-RESPONSIBILITY

V. PROCEDURAL STEPS AND INVESTIGATION
TIMELINE

A. CASE PROGRESSION

B. LIST OF INTERVIEWS

VI. SUMMARY

VII. EVIDENCE

VIII. APPENDIX

I. ALLEGATIONS:

The following was alleged in the ABC College Notice of Investigation and Allegation (NOAI) (Appendix A):

“The alleged actions include Respondent John Doe engaging in unwanted sexual contact through touching the Complainant’s [Jane Smith’s] buttocks under her underwear. Respondent also allegedly placed hands on Complainant’s face and leaned in and tried to kiss the Complainant prior to her turning their head and verbally refused. This allegedly occurred while in the bathroom at the XX Eating Club Fall formal.”

This is alleged to have occurred on or about January 25, 2021, at the Madison Performing Arts Halls on ABC College’s campus.

II. IMPLICATED POLICY

The Complaint was filed alleging the following 2020 Sexual Discrimination and Sexual Misconduct Policy “Title IX Policy” (hereinafter referred to as “the Policy”), and section was violated:

Then cite to the specific policy and sections and definitions.

PROHIBITED CONDUCT:

- Allegation/Incident 1: Section B. Sexual Misconduct
- Sexual Assault- Sexual assault defined in 20 U.S.C. 1092(f)(6)(A)(v), is an offense classified as a forcible or non-forcible sex offense

Sections III(A) and III(C) of The Policy provides its definition and examples of consent, as follows:

Consent: Lack of consent...

III. STANDARD OF PROOF

The Hearing Panel shall employ the Preponderance of Evidence/Clear and Convincing Standard in evaluating the facts and circumstances of this matter, according to the ABC College 2020 Title IX Sexual Harassment Complaint Resolution Procedures. (Sec.6b)

IV. PRESUMPTION OF NOT RESPONSIBLE

Pursuant to the ABC College Sex Discrimination and Sexual Misconduct Policy, there is a presumption that the Respondent is not responsible for the alleged conduct until a determination regarding responsibility is made at the conclusion of the investigation and resolution process.

V. PROCEDURAL STEPS AND INVESTIGATION TIMELINE

a. Case Progression

Pre-Formal Complaint

On Saturday, March 17, 2021 Jane Doe contacted her advisor, Chantel Johnson, to arrange a meeting. On Sunday, March 18, 2021, Jane Doe sent an email to the ABC Title IX office stating that she “was the victim of non-consensual sexual touching while asleep” (Appendix B). She attached to that email a statement she had typed detailing her allegations and including electronic messages between herself and John Doe (Appendix C).

On March 19, 2021, Jane met with Chantel Johnson. Jane alleged that she had been sexually assaulted by John. Rather than discuss the details of her allegations, Jane shared with MS. Johnson her typed allegations that she had forwarded to the Title IX office (Appendix C). On March 21, 2021, Jane met with Title IX Coordinator Victor Ramirez, to discuss her reporting options, her rights and discuss supportive measures. ...

Formal Investigation

On March 30, 2021, Jane filed a formal, written, and signed Complaint with the Title IX Office. That Complaint alleged “sexual assault” and “unwelcome sexual contact.”

On April 2, 2021, a Notice of Investigation and Allegation was sent to the...

DATE	ACTION
x/x/2021	Formal written complaint filed by Complainant via email and acknowledged by Title IX Office x/x/21
x/x/2021	Title IX Coordinator held follow up with meeting with Complainant post formal written complaint to clarify and questions about the process, rights or options shared at time of initial reporting
xxxx	Notice letter issued to Complainant and Respondent via email
xxxx	Title IX Coordinator email to External Investigator with instruction to begin investigation process
xxxx	Title IX Coordinator informed Respondent they have the right to meet to discuss rights and options
xxxx	Investigator reached out to Complainant to establish initial contact to begin scheduling initial interviews

DATE	ACTION
xxxx	Informed Parties the name of the external Investigator, Martha Collins
xxxx	Title IX Coordinator met with Respondent to share rights, options and procedural steps
xxxx	Process Delay-Investigation due to campus spring recess; Parties and Investigator Notified by Title IX Coordinator
xxxx	Title IX Coordinator informed Respondent, Complainant, and Investigator that the process (investigation phase) will continue effective this date.
xxxx	Investigator shared Draft Investigation Report with Complainant and Respondent
xxxx	Respondent emailed Investigator Response to Draft Report
xxxx	Complainant emailed Investigator Response to Draft Report

b. List of Interviews

- On April 22, 2022, Jane Doe was interviewed via Zoom. Jane chose not to have an Advisor present.
- Witness 1 was interviewed via Zoom on April 24, 2022.
- Witness 2 was interviewed via Zoom on April 28, 2022.
- Etc.

VI. SUMMARY

All relevant information that was shared during the interviews of the Parties and Witnesses are contained in this report. Other information that is directly related but not deemed relevant, remain in the investigation file but were not incorporated herein.

The following is a summary of undisputed facts:

Jane Doe is a student at ABC College and lives in Smithson Hall on the Burlington Campus with a roommate. As of the date of the alleged incident Jane was dating Witness 1 who also is a student at ABC.

INTERVIEW OF JANE SMITH

The following is an account of Jane's interview:

Jane was planning to attend the Fall Formal with Witness 1 after attending an off-campus "pre-gaming party..."

Interview of John Doe:

...

Interview of Witness 1:

...

VII. EVIDENCE

Jane provided the following items:

- Word document description of what occurred including most of her texts with John
- Messages between herself and Witness 1 (Appendix C)
- Messages between herself and John

John provided the following items:

- Snapchat screenshot (Appendix H)

Witness 1 provided the following items:

- Messages between himself and ...

Witness 2 provided the following items:

- Messages between herself and Jane

Witness 3 did not provide any physical evidence

VIII. RESPONSES TO DRAFT REPORT

On May 11, 2021 Respondent submitted a response to the Draft Report (Appendix J) requesting the Investigator include the description he provided in his interview of Jane's jeans being "very tight." This was incorporated into the report.

On May 14, 2021 Jane submitted a response to the Draft Report, which suggested a number of edits. The following changes were made in response to her submission:

- The labelling of Appendix H was corrected from G to H;
- Jane first arrived on campus after winter break, before the rest of the student body, for basketball practice.

IX.	Appendix
A.	Notice of Investigation and Allegations
B.	Email from Jane to Title IX Office, first reporting the allegation
C.	Formal Written Complaint of Jane, attached to email to TIX Office
D.	Case Report
E.	Floor Plan of Simpson Concert Hall
F.	Messages between Jane and Witness 1 provided by Jane
G.	Messages between Jane and Witness 1 provided by Witness 1
H.	Messages between John and Witness 4 provided by Witness 4
I.	Respondent's Response to Draft Report
J.	Complainant's Response to Draft Report