



TITLE IX TOOLKIT



Investigative Report Template For Investigations of Title IX Sexual Harassment July 1, 2020

Chantelle Cleary, Esq.
Senior Consultant, Grand River Solutions, Inc.



What is the purpose of the Investigative Report Template?

The Title IX Final Rules, issued May 19, 2020, mandate that all Title IX recipients follow a specific procedure for investigating formal complaints of sexual harassment covered under Title IX, including sexual violence. The Title IX Grievance Process is developed and enforced according to the Institution's obligations under the U.S. Department of Education's Final Title IX Rule of May 19, 2020 (you may view the Final Rule at <http://bit.ly/TitleIXReg>). This investigative process must include an opportunity for the parties to present and review relevant evidence, and requires that recipients create an investigative report that the parties may review before the hearing. While many institutions already perform many of the steps described here and provide investigative reports, the Final Rules impose specific requirements that may need to be built into your current process.

How is the Template organized?

This Template provides a step-by-step analysis of the procedures that must be followed when investigating Title IX-covered sexual harassment. It also outlines sample language that institutions may use when drafting the investigative report.



TITLE IX TOOLKIT



Investigative Report Template

Overview of the Investigation

In this section, provide a very brief overview of the case. Include:

- the names of the parties,
- the applicable policy(ies)
- the prohibited conduct alleged,
- the date, time, and location of the conduct,
- a brief description of the alleged misconduct

Sample Language

The following investigative report summarizes the relevant evidence obtained in an investigation conducted in response to a report that TAYLOR DOE (herein after “Responding Party”) violated certain provisions of the *(Institution’s Name) (Name of Policy)*.

On or about *(date)*, *(Institution’s Name) (student/faculty/staff)* DREW SMITH (herein after “Reporting Party”) filed a Formal Complaint with *(Institution’s Name)* Title IX Coordinator, wherein it is alleged that *(include very brief description of the allegation(s))*.

{NB: SCI suggests using this naming convention throughout the Report in order to limit the use of parties’ names and to maintain gender neutral language.}

Jurisdiction

In this section, include a statement of jurisdiction.

Sample Language

The *(College/University)* has jurisdiction to investigate this matter because the Responding Party is a *(institutional identity of the Respondent)* and

1. The conduct is alleged to have occurred on or after August 14, 2020;
2. The conduct is alleged to have occurred in the United States;
3. The conduct is alleged to have occurred in *{institution’s}* education program or activity, *(select one or more)*:
 - a. Any on-campus premises
 - b. Any off-campus premises that *{institution}* has substantial control over. This includes buildings or programs controlled by a recognized campus organization.



TITLE IX TOOLKIT



- c. Activity occurring within computer and internet networks, digital platforms, and computer hardware or software owned or operated by, or used in the operations of {Institution}'s programs and activities over which the {institution} has substantial control.
4. The alleged conduct, if true, would constitute covered sexual harassment.

Investigators

Identify the Investigators.

Sample Language

The *(College/University)* has assigned the following individuals to investigate the report:

- *(name)*
- *(name)*

Person 1 has received training in conducting the investigation and writing this report, as required by law and regulation. Specifically [TRAINING and DATE]

Person 2 has received training in conducting the investigation and writing this report, as required by law and regulation. Specifically [TRAINING and DATE]

Objective of the Investigation and the Investigation Report

Sample Language

This investigation was conducted in accordance with the procedures set forth in *(the Institution's policy)*. This investigation focused on a fair and impartial collection of all available evidence including, but not limited to, witness accounts and documents. The Reporting Party and the Responding Party were given opportunities to offer evidence for inspection and review by investigators. Prior to completion and submission of this report, both parties and their advisors were afforded the opportunity to review all evidence obtained as part of the investigation that is directly related to the allegations in the formal complaint. The parties were given *(at least ten days)* to review the evidence and submit a written response for consideration by the investigator(s) prior to the completion of this report. Their responses were considered by the investigators and are included in Appendix (cite)

This report is a summary of all relevant evidence collected and reviewed as a part of the investigation. The final report was provided to the parties on *(date)* and the parties were given *(at least 10 days)* to respond. Their responses are included in Appendix (cite).



TITLE IX TOOLKIT

Prohibited Conduct Alleged:

List all allegations of prohibited conduct in the formal complaint along with the policy definitions. Use a clear numbering system such as Allegation I., II., etc. so that allegations and responses can be easily reviewed together.

Witnesses:

In this section, list all witnesses offered by the parties and identified during the course of the investigation. Designate which witnesses were interviewed. For those witnesses that were not interviewed, set forth the reasons that an interview was not conducted, and if applicable, all attempts made to conduct the interview.

For more complex cases, consider adding more information about each witness in this section. For example, consider including who/how the witness was identified, the witness's relationship to the parties, and a brief explanation of why they are a witness.

Pursuant to the final regulations, if a witness does not participate in the hearing, their statements and other evidence attributed to them (text messages, etc.) may have to be excluded from consideration by the decision maker. If you believe that a particular witness is not going to participate in the hearing, you should NOT exclude that witness and the evidence obtained from them during the investigation from the investigation report. It is the responsibility of the decision maker to exclude the evidence related to that witness from consideration when making their final determination.

Sample Language (Simple Case)

The following witnesses were interviewed:

1. Reporting Party
2. Responding Party
3. John Doe
4. Jane Doe
5. Janet Roe

The following witnesses were identified, but were not interviewed:

- a. Joe Smith
 - a. Mr. Smith was identified as a witness by the reporting party. Mr. Smith did not respond to attempts made by investigators to schedule an investigative interview.
- b. Jane Smith



TITLE IX TOOLKIT



- a. Dr. Smith was identified by the investigators as a potential witness during the investigation. Dr. Smith declined to participate in an investigative interview.

Sample Language (Complicated Case)

Witness Name	Witness identified by:	Information offered
John Doe	Reporting Party	Mr. Doe is the Reporting Party’s best friend. He was with the Reporting Party the night of the reported incident.
Jane Doe	Investigators	Jane Doe is the Responding Party’s roommate. It is believed that she saw the Reporting Party leave the Responding Party’s residence immediately following the reported incident.
Jane Smith	Responding Party	Responding Party identified Dr. Smith as a witness. Responding Party reported that Dr. Smith is the Reporting Party’s therapist and therefore, may have information relevant to the allegations. The Reporting Party declined to sign a release that would allow Dr. Smith to submit to an interview with investigators. Thus, Dr. Smith declined to participate in an interview.

Evidence Collected

The final Title IX regulations require that all evidence obtained as part of the investigation that is directly related to the allegations in the formal complaint be shared with the parties and “made available at any hearing to give each party equal opportunity to refer to such evidence during the hearing including for the purposes of cross-examination.”

The final regulations also require that the written decision include, among other things, “A description of the procedural steps taken from the receipt of the formal complaint through the determination.” Thus, it is strongly recommended that the institution keep a detailed timeline of all procedural steps, including requests by the parties for extensions of procedural deadlines and responses thereto. It is further recommended that this procedural timeline be attached in an appendix to the final report so that the decision maker can incorporate that timeline into their written decision.

It is recommended that all the evidence be attached to the final report, in multiple appendices. The appendices can take many forms. For example, Appendix A might include



TITLE IX TOOLKIT



all evidence deemed relevant by the investigators; Appendix B, the remaining evidence deemed irrelevant, but directly related to the allegations in the formal complaint; Appendix C, the procedural timeline. Alternatively, Appendix A might include witness testimony only (e.g., transcripts, statements summaries, etc.); Appendix B, relevant documentary evidence (e.g., text messages, SANE reports, photographs, etc.); Appendix C, the remaining evidence deemed irrelevant, but directly related to the allegations in the formal complaint; and Appendix D, a procedural timeline.

The method and manner in which the evidence is organized and included should be described in this section.

Sample Language

All relevant evidence collected during the course of the investigation is attached hereto in Appendix A. Evidence deemed irrelevant by the investigator, but that is directly related to the allegations in the formal complaint is included in Appendix B. Appendix C contains a document detailing the procedural steps taken in this matter from the receipt of the formal complaint to the submission of this report. All Appendices and the evidence therein has been shared with the parties and their advisors. The parties have had equal opportunity to review and submit written comments in response to the evidence. The written responses of the parties are included in Appendix A.

Summary of the Relevant Evidence

In this section, include a summary of all relevant evidence. This section can be organized in several ways. It is important that, however organized, the evidence is summarized clearly and accurately, and without opinion or bias. In this section, the writer should cite the evidence and information in the Appendices.

In a case involving one allegation, the report might be organized as follows:

- 1) History between the Parties
 - a) *The Reporting Party's Account*
 - b) *The Responding Party's Account*
 - c) *Witness A's Account*
- 2) The Hours Leading up to the Reported Incident
 - a) *The Reporting Party's Account*
 - b) *The Responding Party's Account*
 - c) *Witness B's Account*
 - d) *Witness C's Account*



TITLE IX TOOLKIT



- 3) The Reported Incident
 - a) The Reporting Party's Account
 - b) The Responding Party's Account
- 4) After the Reported Incident
 - a) The Reporting Party's Account
 - b) The Responding Party's Account
 - c) Witness A's Account
 - d) Witness D's Account

Alternatively, in a case with multiple alleged incidents, you may want to break it up by incident. For example, it may look like this:

January 1, 2021 incident

The parties agree that they agreed to meet at 100 Main Street for a party. They further agreed that they eventually went upstairs to a vacant bedroom and that once inside, they engaged in consensual kissing. Both parties reported that the oral sex occurred; the Reporting Party says that it occurred without their affirmative consent. The Responding Party states that it occurred with both parties giving affirmative consent:

*The Reporting Party's Account
(summary)*

*The Responding Party's Account
(summary)*

*John Doe's Account:
Summary*

January 15th incident

The parties agree that they met at the Reporting Party's residence to discuss what occurred on January 1, 2021. They disagree about....

*The Reporting Party's Account
(summary)*

*The Responding Party's Account
(summary)*

John Doe's Account:



TITLE IX TOOLKIT



Summary

NB: If some of the reported incidents occurred within a program or activity as defined in the Final Rule, and some did not, you should note that here, and note whether certain incidents will be dismissed from or maintained in this process.

Procedural Next Steps

In this section, summarize next steps in the process, including any procedural prerequisites for moving the matter forward to a hearing.

For example, if the institutional policy permits the Title IX Coordinator to dismiss a formal complaint where specific circumstances prevent the recipient from gathering evidence sufficient to reach a determination as to the formal complaint or its allegations, , this section should summarize the required procedural step and then should include the procedural analysis and conclusion.

Alternatively, if the institutional policy requires that all matters advance to a hearing, this section should summarize that procedural requirement.

Sample Language

Section X of (the policy/procedures) requires that, “Upon completion of the investigation, if specific circumstances prevent the institution from gathering evidence sufficient to reach a determination as to the formal complaint or its allegations, the Title IX Coordinator may dismiss the formal complaint prior to the hearing.”

It is the finding of this investigator that there is sufficient evidence to advance the allegation of dating violence to a hearing. However, owing to the unavailability of witnesses and the lack of evidence reasonably obtained through further investigation, there is insufficient evidence to reach a determination as to whether the Respondent engaged in conduct constituting stalking. To be sure, the record is lacking in evidence to support a finding that the Respondent engaged in a course of conduct. Thus, it is advised that the charge of dating violence will be advanced to a hearing, but it is advised that the charge of stalking is dismissed. Any such dismissal will rest in the reasonable discretion of the Title IX Coordinator.