Trauma Informed Investigations for Campus Sexual Misconduct Cases

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Harris County Domestic Violence Coordinating Council
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Agenda

1. Title IX
2. What is Trauma?
3. Trauma-Informed Approach to Investigations
4. Interview & Questioning Approaches & Example Prompts
5. Trauma & Credibility Analysis
Title IX

Sex Discrimination
Sexual Harassment
Retaliation

University Process
- University SHSM Policy
- Grievance Procedures
- Preponderance or Clear & Convincing standard
- University Policy Violations/Sanctions

Criminal Process
- Penal Code
- Code of Criminal Procedures
- Beyond a Reasonable Doubt standard
- Conviction/Sentencing

Civil Process
- Civil Code
- Rules of Civil Procedure
- Preponderance standard
- Monetary Damages/Court Order
Key Pillars: Title IX Process

For all of the participants in the process:
- Complainants
- Respondents
- Witnesses
- Third-party Reporters

Serving Impartially in Your Role

- Must avoid **prejudgment** of the facts at issue
- Must avoid **conflicts of interest**
- Must avoid **bias**

*Source: Title IX Regulations (2020)*
Principles for Title IX Process

• Must maintain complete neutrality & impartiality at all times in investigating alleged conduct violations of institutional policies.
• Understanding bias & whether it exists: Need to take an “objective, common sense approach to evaluating whether a person serving in a role is biased.” (Title IX Preamble (2020))

Avoiding Bias

• Must not treat a party differently:
  o On the basis of the person’s sex;
  o On stereotypes about how men or women behave with respect to sexual violence; and/or
  o On the basis of the person’s protected characteristics.

Source: Title IX Preamble (2020)
A. Encourages all participants to share what they are able to recall about their experience without demanding chronological recall; and
B. Facilitates the gathering of information in a balanced manner from all individuals

What is Trauma?
What is Trauma?

- **Exposure** to an event or situation that creates a *real or perceived threat* to safety, survival, or sense of well-being.
- Trauma can result from different situations, such as: natural disasters, war, or severely distressing events, etc.
- The **brain** releases hormones or chemicals in the body to **help react** to the perceived threat (e.g. “survival” in the moment).
- The brain may be reacting to the **immediate situation** and/or **prior traumatic experiences** too.

Trauma & Memory

- **Memory** occurs:
  1. **Encoding** (organizing sensory information)
  2. **Consolidation** (grouping memories & storing)
- **Traumatic events** can **interfere** with the memory process:
  - Can create fragmented or scattered memories
  - **Recall** can be slower and/or more difficult
  - **Substances** (alcohol, drugs) can affect memory
  - **Sensory information** may still be intact and accessible though
Emotional & Behavioral Reactions to Trauma

- Flat affect (no emotional signs)
- Giggling or laughing demeanor
- Impaired rational thoughts
- Hyper or jumbled thoughts

Signs of Post-Traumatic Stress

- Shock, denial, irritability, anger
- Difficulty trusting others
- Social withdrawal
- Depression
- Suicidal ideation
- Emotional numbness (apathetic)
- Difficulty concentrating
- Guilt, shame, embarrassment
- Increased substance use (coping mechanism)
Conducting an Investigation

Investigative Framework

- Establish facts & timeline(s).
- Understand each party’s perception & experiences of the alleged incident(s).
- Elicit details & descriptions of the alleged incident(s) from the parties & witnesses.
- Address disputed facts or conflicting evidence (if any) & seek responses from the parties (if applicable).
- Gather sufficient information available for a determination of facts, importance, & relevance to the formal complaint.
Breakdown the Elements of the Possible Policy Violation at Issue

Engaging in a course of conduct directed at a specific person that would cause a reasonable person to fear for his or her safety or the safety of others or suffer substantial emotional distress.

For the purposes of this definition:

- **Course of conduct** means two or more acts, including, but not limited to, acts in which the stalker directly, indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to or about a person, or interferes with a person’s property.

- **Reasonable person** means a reasonable person under similar circumstances and with similar identities to the victim.

- **Substantial emotional distress** means significant mental suffering or anguish that may, but does not necessarily, require medical or other professional treatment or counseling.

Look at the Provision(s) at Issue:

*Example definition from UT System Model Policy for Sexual Misconduct*
Engaging in a (1) course of conduct (2) directed at a specific person that would (3) cause a reasonable person to fear for his or her safety or the safety of others or suffer substantial emotional distress.

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Example definition from UT System Model Policy for Sexual Misconduct
Before an Interview

- Develop a **safe space** for a person’s physical & emotional well-being.
- Have **handouts** & **resources** readily available.

Additional Considerations

- **Do not make assumptions** on what a Complainant or Respondent looks like, acts like, or behaves.
- Focus on gathering **evidence** and **statements**.
- Remain **neutral, fair, and balanced** toward all participants.

Pre-Interview: Rapport-Building Prompts

- **“Help me understand** how you are feeling right now.”
- **“What, if anything, can I explain to you about this process before we get started?”**

**Note:** Consider possible **barriers** or **concerns** to building trust with a participant.
- How can you minimize or eliminate these factors?

**Source:**
*Forensic Experimental Trauma Interview (FETI)*
Pre-Interview: Explain the Process

“Before we begin, would it be okay if I talked about information that I am required to share with you?”

- What to expect of the process
- Applicable policies; amnesty for alcohol/drug use; prohibition of retaliation
- Rights of the parties
- Purpose for the interview
- Options for decision-making
- Resources & supportive measures available
- Title IX Coordinator & investigator(s) contact information
- Follow-up & next steps

Body Language & Nonverbal Cues

- **Small** head nods (periodic, not overly animated)
- **Eye contact** (be attentive, soften eyes)
- **Facial expressions** (show genuine interest, avoid emotional movements/reactions)
- **Open** body language (limit crossed arms or legs)
- Focus on your **breathing** (mental mindfulness)
- Take **pauses** between questions/cues (pace yourself)

- Listen with your **eyes and ears** (nonverbal cues from the interviewee)
- **Check-in** (when appropriate):
  - “**Help me understand** how you are feeling right now.”
Funneling Technique

1. Open Phase
2. Clarification Phase
3. Pinning Down Phase

Interview Start (Open Phase)

- Allow the person to provide their account of the incident in their own words & at their own pace:
  - “What are you able to tell me about your experience?”
  - Allow time for the person to respond.
  - Do not ask a lot of questions at first.
- Be patient & respectful.
- Be comfortable with silence.
- Nodding or “Mmm” are ok (shows interest).
- Follow-up (if a general prompt is necessary):
  - What, if anything, do you remember once you...[insert last part]...?
Clarification & Follow-ups (Clarification Phase)

Attempt to clarify from all parties. Examples…
- “Tell me more about [blank]…”
- “When you said [blank]…help me understand what you meant…”
- What, if anything, do you remember once you…[insert last part]…?
- Instead of asking “Why or why not?…”
  Say “Help me understand your thought process for [insert the clarifying part]…”
- “What did you mean by [blank]…?”
- “How do you know about [blank]…?”
- “There are differences in your account vs. [blank]…[insert specifics]…help me understand the reason(s) or rationale for this different account…”

Sensory Recall (Clarification Phase)

“What, if anything, are you able to remember about…”

Taste  Smell  Feel/Touch  Hear  See
Pain  Body Position  Pressure  Temperature

Source:
Forensic Experimental Trauma Interview (FETI)
Recall (Cont.)

• Instead of asking “Why or why not…?”
  Ask “What was your thought process…?”
  o …During [blank]?”
  o …Before [blank]?”
  o …After [blank]?”
• “What, if anything, are you able to remember about…?”
• “What were your reactions to…?”
  o Emotional response?
  o Physical response?
• “What was the most difficult part of [blank]?”
• “What, if anything, can’t you forget about… [before/after]…?”

Source:
Forensic Experimental Trauma Interview (FETI)

Statement Gaps or Ambiguities (Pinning Down Phase)

<table>
<thead>
<tr>
<th>Type</th>
<th>Example Statements</th>
<th>Interview Approaches</th>
</tr>
</thead>
<tbody>
<tr>
<td>Text Bridges</td>
<td>• After that...</td>
<td>Clarity prompt</td>
</tr>
<tr>
<td></td>
<td>• The next thing I knew...</td>
<td></td>
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<tr>
<td></td>
<td>• Later on...</td>
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<tr>
<td></td>
<td>• Afterwards...</td>
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<td>• Besides...</td>
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<td>• And then...</td>
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<td>• Finally...</td>
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<td>Ambiguous Responses</td>
<td>• Kind of...</td>
<td>Clarity or recall prompt</td>
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<td></td>
<td>• I think...</td>
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<td>• Sort of...</td>
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<td></td>
<td>• I believe...</td>
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<td></td>
<td>• To the best of my knowledge...</td>
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<td>• I may have...</td>
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<td></td>
<td>• Maybe...</td>
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<tr>
<td>Broad Statements</td>
<td>• Always...</td>
<td>Clarity prompt; specific examples?</td>
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<tr>
<td></td>
<td>• Never...</td>
<td></td>
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<tr>
<td></td>
<td>• Everyone...</td>
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<tr>
<td></td>
<td>• No one...</td>
<td></td>
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<tr>
<td>Hearsay</td>
<td>• I heard from Person X that...</td>
<td>Clarity prompt; personal knowledge or first-hand experience?</td>
</tr>
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</table>
Misc. Interview Prompts (Pinning Down Phase)

<table>
<thead>
<tr>
<th>Example Interview Prompts</th>
<th>Purpose of the Prompt</th>
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<tbody>
<tr>
<td>“Let me give you this information so that you can respond…”</td>
<td>Provides an opportunity to respond to other testimony, statements, or evidence.</td>
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<td>“It’s been reported that you said X, Y, and Z.”</td>
<td>Responding to a denial; corroboration.</td>
</tr>
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<td>“What’s the reason that Person X said/did [blank] with this specificity, if you didn’t?”</td>
<td>Responding to a denial; corroboration.</td>
</tr>
<tr>
<td>“Others have reported you said [blank]. What’s the reason (or rationale) for considering that you didn’t?”</td>
<td>Responding to “I don’t recall”; corroboration; credibility</td>
</tr>
<tr>
<td>“Is there anything else that you’d like to add to this statement?”</td>
<td>Provides an opportunity to respond; gather information not explicitly asked about.</td>
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Document the psychological & physical responses of the experience (if applicable):

- Nausea
- Flashbacks
- Trembling
- Muscle Rigidity
- Terror
- Memory Gaps
- Sensory Recall
- Injuries
Document these additional **elements** (if applicable):

- Force
- Threats
- Coercion
- Intimidation
- Fear

**Note:** These elements may not be based on weapon use or actual physical threat for it to be perceived as real.

Document any **defensive strategies** (if applicable):

- Forceful Physical Resistance (Fight)
- Verbal Resistance
- Attempt to Get Away (Flight)
- Bargain (Appease)
- Tonic Immobility (Freeze)
Show appreciation:

“I really appreciate you being willing to speak with me.”

Explain the following:

- Revisit what to expect for next steps of the process, person’s rights, person’s options, resources available, and applicable remedies
- Decision options (and timelines or deadlines, if applicable)
- Ways to provide evidence, witnesses, or respond to other party’s statements
- Contact information for the investigator and/or TIXC/Deputy
Trauma & Credibility

Trauma may explain elements that can typically negatively impact an individual’s credibility, such as:

- Statement inconsistencies
- Lack of a linear account
- Memory gaps about the alleged incident
- Demeanor or affect
- Brief answers or answers lacking in detail
Trauma & Credibility

• Understanding the impacts of trauma can provide insight into the reasons there may be deficits in credibility.
• However, understanding trauma-related impacts should not affect a credibility assessment.
• Trauma may assist in explaining elements or issues that impact an individual’s credibility, but it typically does not excuse those elements or issues.

Credibility assessments should address the following factors:
  • The reliability, consistency, and believability of an individual’s statement

Tips for Evaluating Witnesses: Credibility Considerations

• Are there inconsistencies? Is an explanation plausible?
• What did the witness do? What did they not do?
• Are there motives for the witness to be less than truthful?
• Are there motives for the witness to frame the event in a way more favorable to themselves? Are they lying to themselves?
• Is there an opportunity for a good faith mistake?
Beware of **Overvaluing** Credibility

- What are the facts in dispute, if any?
  - Does it relate to consent? 
    Incapacitation?
  - Breakdown the elements of the definition first, then analyze.
  - Once analyzed further, is credibility even a relevant factor?
- Each situation will be fact-specific.
- Avoid any biases that may be presented.
## Contact Information

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<thead>
<tr>
<th>Krista Anderson</th>
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<tbody>
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