BRAVE Training: Creating a Trauma-Informed Conduct Process

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GRAND RIVER SOLUTIONS
Chantelle Cleary is a nationally-recognized subject-matter expert in Title IX and related fields. She has more than 10 years of experience in the investigation and adjudication of sexual and interpersonal violence. She lectures extensively at universities and conferences throughout the U.S. on Title IX, VAWA, harassment, and implementation of best and emerging practices. Prior to joining Grand River Solutions, Chantelle served as the Director for Institutional Equity and Title IX at Cornell University, and before that as the Assistant Vice President for Equity and Compliance and Title IX Coordinator at the University at Albany. In these roles, she provided direct, hands-on experience in the fields of Title IX, civil rights, employment law, and workplace and academic investigations. Her responsibilities included focusing on diversity efforts, sexual assault prevention and training, affirmative action, and protecting minors on campus.
Grand River Solutions provides Title IX, equity, and Clery Act consulting services. Together, our experts have more than 50 years of direct, on-campus experience at both small and large, public and private institutions. This practical expertise derived from years of hands-on experience enables our team to offer customized solutions unique to your educational institution’s needs. Grand River has a suite of creative, cost-effective and compliant solutions to help schools meet their needs in innovative ways.
Agenda

01 Regulatory Overview
   Brief Overview of the New Regulatory Requirements

02 Trauma-Informed Practices

03 Conducting Trauma-Informed Investigations
   Essential Elements of a Thorough Investigation

04 Trauma Informed Hearings in a Post-Regulation World
   Coordinating and Conducting Hearings

05 Evidence Review
   Assessing Various Types of Evidence
Regulatory Overview

Brief Overview of the New Regulatory Requirements
Jurisdiction

Formal Complaint filed by a non-community member

- Section 106.45 process not required

Formal Complaint filed by a Student, Applicant, or Employee

- Conduct Alleged is Sexual Assault, Dating Violence, Stalking, Sexual Harassment (quid pro quo; Severe and Pervasive, objectively offensive, and denies access)
  - Conduct occurred on campus or off campus and, (1) incident occurred as a part of the institutions operations, (2) institution exercised substantial control over respondent, (3) incident occurred in a building owned or controlled by a recognized student organization.
  - Section 106.45 Process required

- Conduct occurred off campus or outside of the United States.
  - Section 106.45 Process NOT required

Conduct alleged includes sexual harassment that is severe or pervasive, or retaliation.

- Section 106.45 Process not required
Investigations

- NOTICE TO BOTH PARTIES
- EQUAL OPPORTUNITY TO PRESENT EVIDENCE
- TO HAVE AN ADVISOR OF CHOICE
- WRITTEN NOTIFICATION OF MEETINGS, ETC., AND SUFFICIENT TIME TO PREPARE
- OPPORTUNITY TO REVIEW ALL EVIDENCE, AND TEN DAYS TO SUBMIT A WRITTEN RESPONSE TO THE EVIDENCE PRIOR TO COMPLETION OF THE REPORT
- REPORT SUMMARIZING RELEVANT EVIDENCE AND 10 DAY REVIEW OF REPORT PRIOR TO HEARING
Hearings

- Must be live, but can be conducted remotely
- Standard of proof used may be preponderance of the evidence or clear and convincing; standard must be the same for student and employee matters
- Decision maker determines relevancy of questions and evidence offered
- Cross examination must be permitted and must be conducted by advisor of choice
- Written decision must be issued
Appeals

Appeals for all parties on the following basis:

- Procedural irregularity affected the outcome;
- Newly discovered evidence that could affect the outcome;
- Title IX personnel had a conflict of interest or bias that affected the outcome; or
- Others, as determined by the school.
Training Requirements

Title IX Coordinators, Decision Makers, and Facilitators of Informal Resolution

• Training on the definition of sexual harassment
• The scope of the institutions program or activity
• How to conduct an investigation and grievance process
• How to serve impartially

Investigators

• Issues of relevance
• How to create an investigation report that fairly summarizes relevant evidence

Decision Makers

• Technology being used at a live hearing
• Issues of relevance of questions and evidence
And their application to the investigation and adjudication of campus sexual misconduct reports.
What do we mean when we say “trauma-informed”?

An understanding of the impact that a traumatic event may have on brain function and a person’s ability to record and recall the event.
Why is it important to be “trauma-informed”?

Informs how we engaged with folks

- Seek to minimize further harm

Informs how we conduct our investigations

- The questions we ask
- How we receive the information provided
But seriously, why is this important?
Historically, the seemingly inconsistent behaviors that frequently accompany disclosures of sexual assault and interpersonal violence result in the belief that the reporting party is being dishonest.
CASE CLOSED.
An understanding of trauma provides another explanation of these seemingly inconsistent behaviors.

- Inconsistencies
  - Lack of Detail
  - Non-Linear
  - Fragmented
  - New Information

- Deception? Trauma? Other (alcohol)?

- Investigation Continues
This is essential to a fair and thorough investigation.
Trauma informed interview techniques may:

• Allow the interviewee to recount the experience in the manner in which the trauma was experienced;
• Enhance a reporting party’s ability to recall;
• Result in more information about the experience;
• Reduce the potential for false information.
Without trauma informed training and knowledge, those conducting the process risk:

- Conducting the process with bias
- Prematurely concluding, without conducting a thorough investigation or inquiry, that the reporting individual is lying and that no investigation is needed;
- Causing further trauma;
- Jeopardizing future reporting.
Conducting Trauma-Informed Investigations

The Essentials of a Thorough Investigation
Essential steps of an investigation

- Intake
- Initial interview
- Notice of formal investigation
- Evidence Collection
- Report writing
Initial Intake, Notice, and Interviews
Prior to the Intake/Interview

- Inform the person of their right to have an advisor present
- Secure an appropriate meeting location
- Allow for enough time to conclude the meeting
- Prepare yourself for the meeting
Intake and Interview Objectives

**Connect**
- Build rapport
- Build trust
- Empower
- Listen

**Safety Assessment**
- Physical and Emotional Safety of the Victim
- Safety of the Community
- Safety of the Accused

**Services**
- Advocates
- Police/Campus
- Medical care
- Interim action

**Evidence Preservation**
- Text Messages
- Photographs
- Names and contact info for witnesses
Set Expectations

What they should expect of you

• That you are neutral
• That you will listen, what they are saying is important to you
• That you will keep the information they share private
• What you will do with recording/notes
• That you may have to ask difficult questions
• Patience, respect, and appreciation

What you expect of them

• Honesty
• That they will seek clarity if needed (give them permission to do so)
• That they won’t guess or fill in blanks
The importance of empowerment and the power of empathy

An investigator must make the person being interviewed feel safe, in control, and supported.

This will lead to feelings of safety and trust and will result in a more cooperative subject.

The subject will be able/willing to remember and share more information.

Increased evidence collection and quality → More accurate investigatory findings
Start the interview by eliciting a narrative...

Where would you like to begin?

Start where you are comfortable and share what you are able to remember.

What are you able to tell me about your experience?
Ask questions that are intended to clarify and more deeply explore the information and details provided by the victim in their narrative.

**Do Ask:**
- Interview for clarification
- Help me understand…
- Can you tell me more about…?
- Is there anything else you can share about…?

**Avoid:**
- Interrogation
- Questions that imply doubt.
- Questions that blame.
- Leading questions.
Capture the Entire Experience

**Before**
- How did they meet?
- Prior relationship?
- What they did in the hours prior?
- Pre-assault communications

**During**
- Solicit details about the physical contact
- The interviewee’s physical and emotional reactions
- Their sensory experience

**After**
- Post assault communications
- Changes in behavior
- Changes in pre-assault relationship
Developing an Investigative Strategy
The Process: Developing an Investigative Strategy

1. Receive Report
2. Develop a timeline
3. Identify Witnesses
4. Identify Potential Evidence
5. Develop Strategy to Collect Evidence
Investigation Timeline

Prior History
- Between the Parties
- Of the Parties

Assault
- Consent
- Type of Contact

Pre-Assault
- Pre-Meditation
- Manipulation
- Attempt to Isolate

Post Assault
- Behaviors
- Communications
Identify and Interview Witnesses

Interview Objectives

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Your approach to interviewing the Respondent and the witnesses should mirror your approach to interviewing the Reporting Individual.
Evidence Collection and Assessment
Evidence

“Something (including testimony, documents, tangible objects) that tends to prove or disprove the existence of an alleged fact; anything presented to the senses and offered to prove the existence or non-existence of a fact.”

Black’s Law Dictionary
Types of Evidence

Direct Evidence
Evidence that is based on personal knowledge or observation and that, if true, proves a fact without inference or presumption.

Circumstantial Evidence
Evidence based on inference and not on personal knowledge or observation.

Corroborating Evidence
Evidence that differs from but strengthens or confirms what other evidence shows.
## Non-Testimonial Evidence

<table>
<thead>
<tr>
<th>Text Messages</th>
<th>Social Media posts</th>
<th>Social Media Communications</th>
<th>Emails</th>
</tr>
</thead>
<tbody>
<tr>
<td>Surveillance</td>
<td>Videos</td>
<td>Photographs</td>
<td>Police Body Camera Footage</td>
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<tr>
<td>Swipe Records</td>
<td>Medical Records</td>
<td>Phone Records</td>
<td>Audio Recordings</td>
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Compilation of Evidence

10-day review of ALL evidence

Investigation Report summarizing relevant evidence

10-day review of report
Coordinating and Conducting Hearings

Trauma-Informed Hearings in a Post Regulation World
The “Title IX” Hearing

A “Title IX” Hearing is a College Process

A “Title IX” hearing is an administrative process used to determine whether or not a College/University policy has been violated, and if so, what actions will be taken to address the violation.

A “Title IX” Hearing is Not a Criminal Proceeding

A “Title IX” hearing is not a criminal proceeding. Although there are elements and characteristics in these hearings that are similar to a criminal proceeding, these administrative hearings need not (and probably should not) follow the same processes or procedures as a criminal hearing. Moreover, these hearings do not establish whether a crime was committed.
Purpose of the Hearing

- Review and Assess Facts
- Make Findings of Fact
- Determine Responsibility / Findings of Responsibility
- Determine Sanction and Remedy

Why does it matter?
The Essential Elements of All Hearings

- Clear Procedures
- Due/Fair Process
- Fair, Equitable, and Neutral
- Consistency
- Trauma Informed
- Well Trained Personnel
Clear Procedures

Due Process

Fairness

Equity

Consistency

Trained Personnel
Clear Procedures

The Process
• Pre-hearing process, submission of evidence, opening statements, examination, closing statements, findings, impact statements, etc.

The Players
• The roles of all participants

The Evidence
• Relevancy, exclusions, timing of submission, etc.

The Outcome
• Deliberations; Notice; manner and method communicated.
<table>
<thead>
<tr>
<th>Hearing Participants</th>
<th>Description</th>
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</thead>
<tbody>
<tr>
<td><strong>Complainant</strong></td>
<td>the person bringing the complaint</td>
</tr>
<tr>
<td><strong>Respondent</strong></td>
<td>the person against whom the complaint has been filed</td>
</tr>
<tr>
<td><strong>Advisor</strong></td>
<td>will conduct cross examination; role varies depending on school</td>
</tr>
<tr>
<td><strong>Adjudicator(s) or Panelist(s)</strong></td>
<td>role varies depending on when in the process the hearing occurs and responsibility of the officer</td>
</tr>
<tr>
<td><strong>Investigator</strong></td>
<td>summarizes the investigation, answers questions</td>
</tr>
<tr>
<td><strong>Witnesses</strong></td>
<td>present in the room only when answering questions</td>
</tr>
<tr>
<td><strong>Hearing Coordinator/Officer</strong></td>
<td>coordinates all aspects of the hearing, ensures a fair and equitable hearing process, acts as a resource for all participants</td>
</tr>
<tr>
<td><strong>Administrative Staff</strong></td>
<td>assists with the logistical coordination of the people, the space, technology, etc.</td>
</tr>
</tbody>
</table>
The Players
The Coordinator/Chair

- Oversees the Process
- Maintains order/decourum
- Supports the panel
- Makes rulings
- Voting or non-voting
- Writes the decision
- Consistently serves in this role
The Players

The Panel

- Fact finders
- Number of panelists?
- Composition?
- Makes the finding
- Unanimous?
- Pool?
- Recruitment and retention
The Players
Advisors/Support Folks

- Will conduct examination/cross
- Roles
- Training/Qualifications
- Communicating their role
- Enforcing their role
The Process
Pre Hearing

Hearing Personnel
- Review of Investigation Report
- Evidentiary Decisions
- Preparation Meetings
- Questions
- Issues to explore
- Review of relevant training materials

The Parties
- Submission of Evidence
- Receipt and Review of Evidence
- Response Submissions
- Submission of Questions
- Preparation of Opening Statements
The Process
Opening, Closing, and Impact Statements

- Permissible content
- Pre-Submission
- Word or time limit
- Method of delivery
  - In writing?
  - Oral?
  - Both?
The Process
Testimony

How the parties/witnesses will participate?
• Remotely
• Behind a screen

Questioning
• Order of Examination
• Rulings on question
• Documentation of rulings
The Evidence

• Timing of Submission
  • Prior to the hearing?
  • At the hearing?

• Evidentiary Rules?

• Evidentiary Rulings
  • Who makes these?

• Exclusions
  • Character evidence
  • Prior bad acts
  • Mental health history
  • Prior sexual history
Evaluating the Evidence

Is it relevant?
Evidence is relevant if it has a tendency to make a material fact more or less likely to be true.

Is it authentic?
Is the item what it purports to be?

Is it credible?
Is the evidence worthy of belief?

What weight, if any, should it be given?
Weight is determined by the finder of fact!
Assessing Authenticity

Never assume that an item of evidence is authentic.

Ask questions, request proof.

Investigate the authenticity if necessary.
Assessing Credibility

No formula exists, but consider the following:

- opportunity to view
- ability to recall
- motive to fabricate
- plausibility
- consistency
- character, background, experience, and training
- coaching
- Your own bias and limited experience
The Outcome

- Deliberations
- Written Findings/Notice of Outcome
- Method of Delivery of Notice of Outcome
- Timing of Notice of Outcome