

## INVESTIGATIONS

- **An institution bears both the burden of proof and the burden of gathering evidence sufficient to reach a determination regarding responsibility.**
  - Parties cannot be restricted from discussing the allegations under investigation or gathering and presenting relevant evidence at hearing, but the burden of proof or burden to gather sufficient evidence does not shift to the parties at any point. The burden remains on the institution.
- **Investigators:**
  - Should not have a conflict of interest or bias for or against complainants or respondents generally, or an individual complainant or respondent.
  - Must be impartial, avoid prejudgment of the facts at issue, and not rely on sex stereotypes.
  - Should receive adequate training to allow them to fulfill their roles:
    - Conducting an investigation
    - Serving impartially, including avoiding prejudgment of the facts at issue, conflicts of interest, and bias
    - Relevance
    - Creation of investigative reports
- **Examples of evidence gathered as part of investigation, where relevant, appropriate and/or available:**
  - Interviews of parties/witnesses
  - Prior statements of parties/witnesses, including related social media
  - Prior communications between parties/witnesses
  - Physician, psychiatrist, psychologist, or other professional or paraprofessional records made and maintained in connection with the provision of treatment to a party may only be accessed, considered, disclosed or used with a party's voluntary, written consent.
- **Discovery of additional allegations during investigation**
  - If, in the course of the investigation, the institution decides to investigate allegations about the complainant or respondent that fall within the scope of sexual harassment and were not included in the original written notice of the complaint, the institution must provide notice of the additional allegations to the parties whose identities are known.
- **Investigations**
  - Investigations must reflect an objective evaluation of all relevant evidence.
  - Respondents are presumed not responsible until a determination indicating otherwise is made at the conclusion of the grievance process.
  - Parties shall have equal opportunity to present witnesses, including fact and expert witnesses, and other inculpatory or exculpatory evidence.

- Parties may also discuss the allegations under investigation and gather evidence during the investigatory phase.
- Parties must be provided with the opportunity to be accompanied by an advisor of their choice during an interview (or other related meeting or proceeding related to the grievance process).
  - The advisor may be, but is not required to be, an attorney.
  - The choice of and presence of the advisor cannot be limited, although institutions may establish restrictions regarding the extent to which an advisor may participate in proceedings, as long as such restrictions apply equally to both parties.
- Notice of interviews to parties/witnesses:
  - If an investigative interview (or other meeting/hearing) is scheduled during an investigation, written notice must be provided to a party whose participation is invited or expected during that proceeding at least five (5) working days prior to the scheduled interview.
    - The written notice must contain the date, time, location, participants, and purpose of the investigative interview.
- An institution shall ensure both parties and their advisors have an equal opportunity to inspect and review any evidence obtained as part of the investigation that is directly related to the allegations raised in the complaint.
  - This includes evidence that the institution does not intend to rely upon in reaching a determination regarding responsibility and inculpatory or exculpatory evidence, whether obtained from the parties or another source.
- This review must be timed so that parties can meaningfully respond to the evidence prior to the conclusion of an investigation.
- The institution must provide the evidence subject to inspection to the parties and their advisors and allow at least ten (10) days for the parties to review and submit a written response to the compiled evidence.
  - The evidence may be supplied in electronic or hard copy format.
- When proceeding to compile the investigative report, the investigator will consider the written responses of the parties.
- **Investigative Report:**
  - After completing the investigation and providing the parties with an opportunity to inspect and comment on the evidence, the investigator must complete an investigative report.
    - The report must fairly summarize the relevant evidence.
      - Relevant evidence is evidence pertinent to proving whether facts material to the allegations under investigation are more or less likely to be true, and is a narrower category of evidence than “directly related” evidence.
  - The written report must be sent to each party and their advisor in electronic or hard copy format at least ten (10) working days prior to the scheduled date of a

hearing or other time of determination regarding responsibility, in order for the parties/their advisors to review the report and provide a written response.

- **Availability of investigative evidence at hearing:**
  - Institutions must ensure that all evidence compiled by the investigator that was subject to the parties' review at the conclusion of the investigation is made available at the hearing, in order for each party to have equal opportunity to refer to the evidence during the hearing, including for cross-examination purposes.