

# Foundations of Title IX Investigations: Training & Certification

## *Welcome & Faculty Introductions*



**Rabia Khan Harvey, M.Ed., MSHR**  
Senior Learning & Development Manager  
Academic Impressions  
[rabia@academicimpressions.com](mailto:rabia@academicimpressions.com)  
June 11 & 14, 2021



1

1

## RESOURCES

### Welcome (back) to Zoom!



- A. Mics (keep muted please)
- B. Camera (option to keep on or off)
- C. Chat Box
  - Use whenever you need it to ask questions or respond
  - Any question for our instructors that you would like to keep anonymous, please send a private chat to Rabia
  - Look here for downloadable files during the presentation
- D. Recording (for quality purposes only – not for distribution)
- E. Participant List with Emoji's
  - Change your name option (hover over your name, select “more” then “rename” to change your name, pronouns, institution)
- F. To resolve any of your tech issues, please send a private to Rabia and I will assist you as soon as I am able to.

2

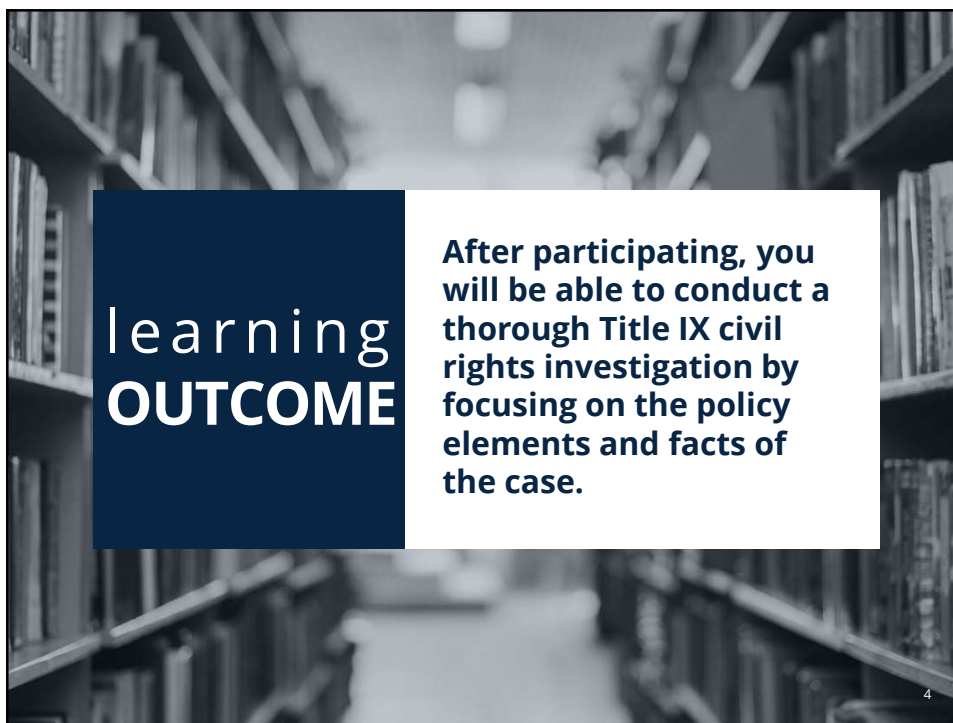
2

■ **Overview of the Virtual Conference**



ai ACADEMIC IMPRESSIONS 3

3



**learning  
OUTCOME**

After participating, you will be able to conduct a thorough Title IX civil rights investigation by focusing on the policy elements and facts of the case.

4

4



# AGENDA

*June 11, 2021*

1. **Intro to Mock Complaint**
2. **Your Role as an Investigator**
3. **Factual Analysis: Intro to Policy Grids including Activity and Large Group Discussion**
4. **Day One Q&A**

5

5

## Meet Your Faculty



**Bev Baligad, J.D.**  
Director of Compliance & Title IX Coordinator  
University of Hawaii, West O'ahu  
[bevbaligad@gmail.com](mailto:bevbaligad@gmail.com)

UNIVERSITY  
*of HAWAI'I*  
WEST O'AHU

ACADEMIC IMPRESSIONS

6

6

# #1

## Introduction to Mock Complaint

7

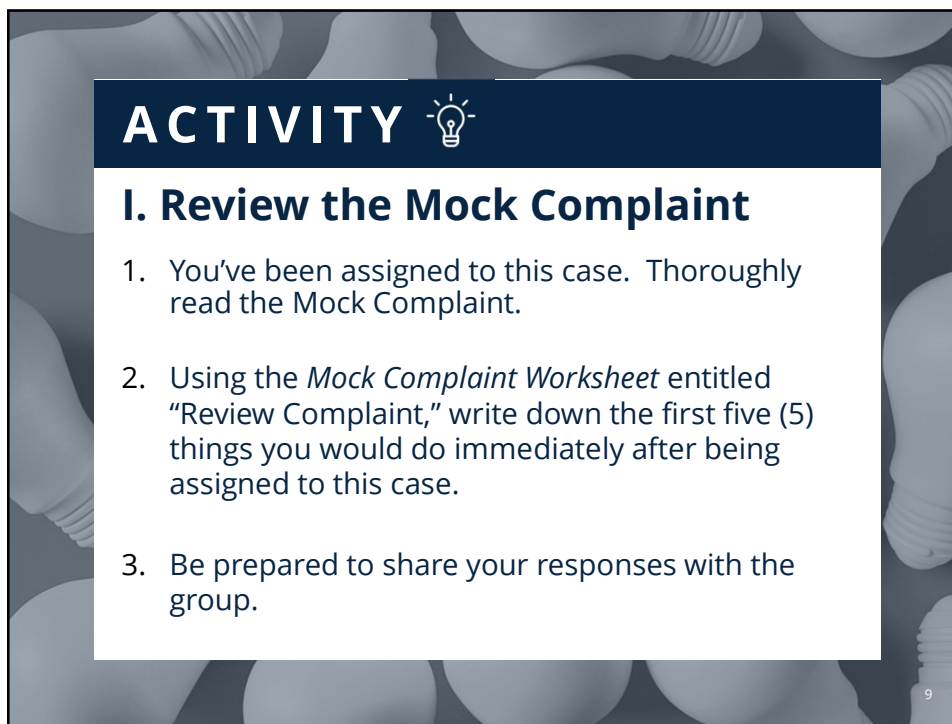
7


### The “Mock” Formal Complaint

- Designed to get new investigators to think about “how” they might move forward, when assigned an investigation
- Throughout the conference, information provided is meant to build upon previous info discussed
- Keep all the pieces together and use everything you are provided as you work through the mock investigation

8

8

The slide features a dark blue background with a pattern of lightbulbs. A white rectangular box in the center contains the text for the activity.

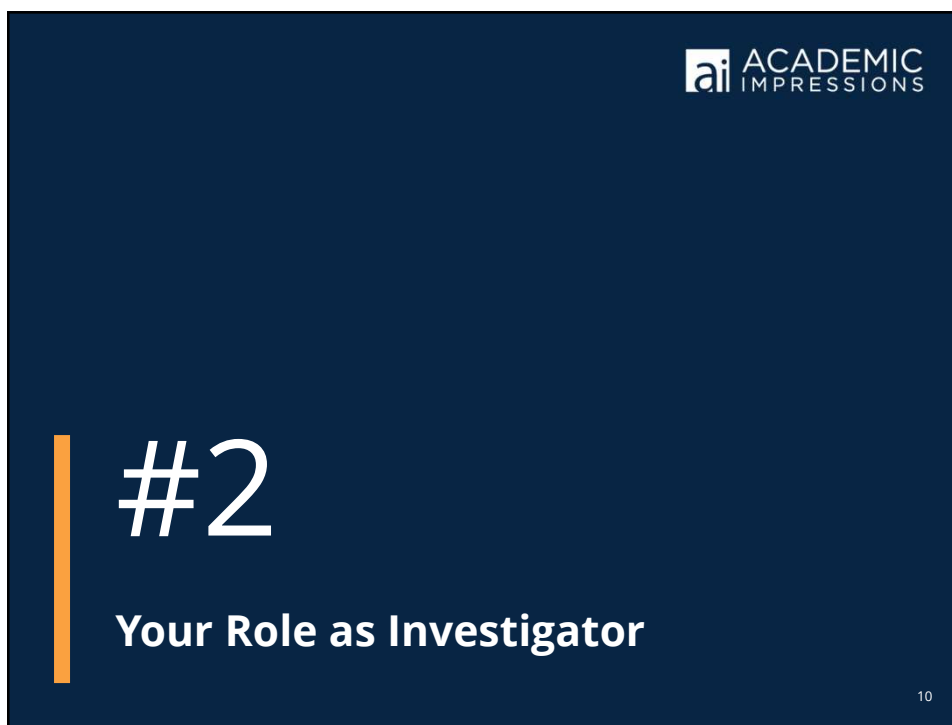
**ACTIVITY** 

**I. Review the Mock Complaint**

1. You've been assigned to this case. Thoroughly read the Mock Complaint.
2. Using the *Mock Complaint Worksheet* entitled "Review Complaint," write down the first five (5) things you would do immediately after being assigned to this case.
3. Be prepared to share your responses with the group.

9

9

The slide has a dark blue background. In the top right corner is the logo for 'ai ACADEMIC IMPRESSIONS'. On the left side, there is a vertical orange bar. The text '#2' is written in a large, white, sans-serif font. Below it, the text 'Your Role as Investigator' is written in a smaller, white, sans-serif font. The number '10' is in the bottom right corner.


ai ACADEMIC IMPRESSIONS

**#2**

**Your Role as Investigator**

10

10



**POLL**

**True or False?**

A Title IX investigator's job is to gather facts, such where a determination by an adjudicator can be made as to whether "more likely than not" (based on a preponderance of the evidence) an individual has violated Title IX.

11

11

**Title IX Review**

The Federal Law

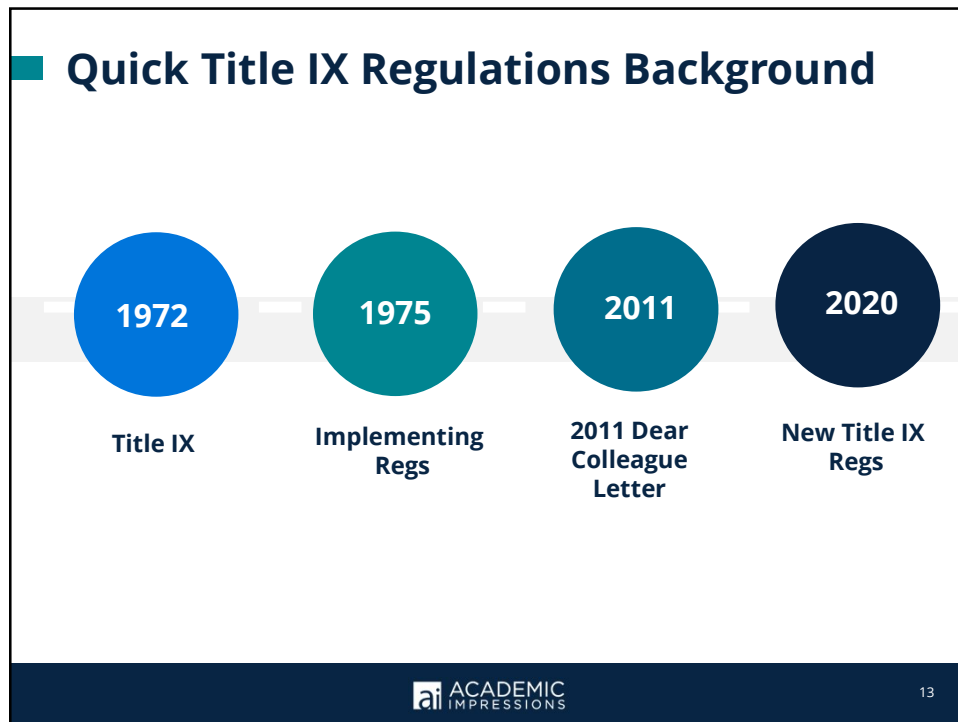
"No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance..."

*20 U.S.C. §1681, et seq.*

ACADEMIC IMPRESSIONS

12

12



13

## The Code of Federal Regulations (CFRs):

- Jurisdiction/authority
- What are CFR's?
- Previous requirements (pre-May 2020)
- New federal regs (May 2020; implementation date August 14, 2020).
- "Grievance process"

ACADEMIC IMPRESSIONS 14

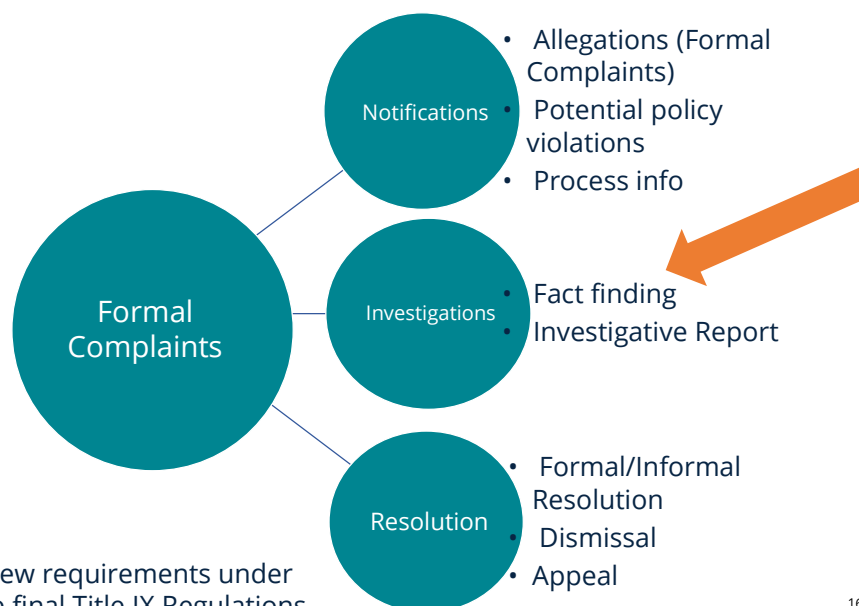
14

## Grievance Process

- Previous Title IX Regulations required a "grievance process" but never described what the process should look like
- Process must adhere to the new Title IX regs (as of August 14, 2020)
- Provides information regarding general requirements all institutions must have within their grievance process
- Process must be fair and equitable (for complainants and respondents)
- Describes expectations for investigators and investigations

15

## Grievance Process



16



## ■ Investigations: Generally

- New regulation requirements continue “civil rights” investigation model
- Investigator Training [*§106.45(b)(1)(3)*]
- Conflict of Interest and Bias [*§106.45(b)(1)(iii)*]
- “Not Responsible” Presumption [*§106.45(b)(1)(iv)*]
- Supplemental Notice [*§106.45(b)(2)(ii)*]
- Discretionary Dismissal [*§106.45(b)(3)(ii)*]

17

## ■ Investigations: Rights of Parties

- Focus is “equity” for both parties
- Advisor of choice [*§106.45(b)(3)(iv)*]
- Equal opportunity to present witnesses and offer information inculpatory and exculpatory info [*§106.45(b)(5)(ii)*]
- No gag orders on parties; ability to gather and present relevant information [*§106.45(b)(5)(iii)*]
- Legal privileges; waiver [*§106.45(b)(1)(x)*]
- Right to inspect, review, access, and respond to information [*§106.45(b)(3)(vi)*]

18

## ■ Investigations: Other Key Requirements

- “Relevance” will be key to evidence gathering process
- Burden of Proof and Gathering Evidence  
[§106.45(b)(5)(i)]
- Medical Records [§106.45(b)(5)(i)]
- Inclusion of Inculpatory and Exculpatory Info  
[§106.45(b)(5)(ii)]

19

## ■ The Investigation Report [§106.45(b)(3)(vii)]

- Must fairly summarize relevant info
- Must be sent to both parties and advisors at least 10 days prior to scheduled hearing or time of determination regarding responsibility
- Must be in electronic format or hard copy
- Allows for both parties to review and/or provide written response to info presented
- Investigator's reports, and the way in which they conduct their investigations, are extremely important!

20

## ■ The Investigator's Role

- Remain fair and equitable during the entire process when dealing with both parties and all witnesses.
- Gather "relevant" and "sufficient" information as they relate to the allegations and potential prohibited conduct.
- Understand and analyze the institution's policy.
- Write an investigative report that fairly summarizes relevant evidence.
- **"Whether more likely than not" an individual violated an institution's policies** (investigation focus!).

21

## ■ Expectations and Requirements

- Reasonable, not judgmental
- Empathetic, not gullible
- Comfortable asking extremely personal questions in a non-judgmental (yet appropriate) way (e.g., "Can you tell me if the respondent ejaculated while he was still inside of you?")
- Understands (and respects) the rights of both parties
- Does not dictate the outcome of an investigation through coercive questioning and "selective" fact-finding
- Gathers facts as the witnesses present them; does not insert personal opinions and assumptions

22

## ■ Expectations and Requirements (cont.)

- Skilled and well-trained in civil rights investigations
- Detail-oriented
- Organized and flexible
- Appropriately identifies and deals with their own personal stereotypical thoughts and/or biases
- Good writing skills
- Able to analyze information according to the institution's policies and/or procedures
- Meets deadlines
- Capable of understanding "relevance" and "sufficiency"

23

### Civil Rights Investigation

- Investigator open to all information
  - Should remain unbiased
- Distinction between a preliminary and a full-blown investigation
- Determines if college policy was violated
- "Preponderance of the evidence" (low standard) -51%

### Criminal Investigation

- Investigator looking more specifically for evidence of guilt
- May appear somewhat biased (more building prosecutor's case)
- Determines if law was violated
- "Beyond a reasonable doubt" (high standard)

24

### ■ 3 Standards of Proof

1. Beyond a reasonable doubt
2. Clear and convincing
3. Preponderance of the evidence

25

### ■ Preponderance of the Evidence

- Standard of evidence used in civil courts
- Less rigorous than the other two (2) standards of proof
- "More likely than not"
- Also described as "50% plus a feather"
- Standard required by Title IX in sexual misconduct cases to determine whether behavior is considered "prohibited" by an institution

26



27



28

An Analysis Story:  
**Tom's Lunch**



29

**Which dish is a "Loco Moco?"**

A Loco Moco is a popular dish in Hawaii made of rice, a hamburger patty, brown gravy, and eggs. Macaroni salad is optional.



30

**Definition:** A Loco Moco is a popular Hawaii dish made of rice, a hamburger patty, brown gravy, and eggs. Macaroni salad is optional.



Elements:	Lunch A (Tom's Lunch)	Lunch B
Rice		
Hamburger patty		
Brown gravy		
Egg(s)		
Optional: Macaroni Salad		

## Was Tom's Lunch a "Loco Moco?"

31

31

## Understanding the Importance of an "Analysis"

- Investigative reports must link the institutional policies/procedures to the facts.
- Shows "elements" of the alleged sexual harassment (What kinds of facts should the investigator focus on?)
- Assists the investigator in focusing on the right questions to ask
- Helps to show the "relevancy" of the facts that are presented, as they relate to the policy (also helps with showing the information collected is "sufficient")
- "Gridding" helps to demonstrate the "reasonableness" of the investigation and supports the decision that a Decision Maker may make ("reasonable minds may differ").

32



## ■ Factual Analysis: The Importance of the “Grid”

- “Gridding” is a methodical way of determining which information is necessary and relevant
- Witness narratives may contain information that may be relevant and irrelevant to the allegations; gridding often help to keep information in order
- Relevant facts (no matter the source) should support the elements of the policy (“gridding”)
- It helps determine relevance and sufficiency of the evidence
- Gridding helps the investigator stay focused and on task

33



## Factual Analysis: The Importance of the “Grid” (cont.)

- When the facts are insufficient to show a policy violation, there is no policy violation.
- When the quality/quantity of the facts appear equal (one party witness vs. one party witness), a credibility assessment may become extremely important. (Remember the Standard of Proof?)

34

## ■ Anatomy of an “Analysis” Approach

- Make sure you use the correct institutional policy/policies or process(es).
- Based on the information contained in the complaint, what potential type(s) of sexual harassment might you have? What makes you think that? (e.g., “If it looks like a duck, waddles like a duck, and quacks like a duck, it **MIGHT** be a duck.”)
- How does the policy **define** the specific behavior?
- Break down the definition and list each “element.” (Think: Loco Moco ingredients!)

35

## ■ Some “Gridding” Suggestions

- For each grid worksheet, focus on only ONE type of prohibited conduct (i.e., primary type of sexual harassment, sub analysis of a required term mentioned in the primary type, etc.) on a single worksheet.
- Place a single element in each row; don’t overcrowd information within a single row. Give yourself a lot of space.
- Use only relevant elements mentioned in a definition; don’t grid seemingly inapplicable portions of the definition (based on the facts as they are presented).
- Learning how to grid (i.e., elemental breakdown, assigning notes, etc.) takes practice!

36

## ■ Some “Gridding” Suggestions (cont.)

- Some institutions create “Gridding” worksheets so that the investigators won’t have to create a grid for the same definitions listed in a policy.
- Use a clean grid for **each** witness; this will help investigators keep their information straight.
- Ask yourself: According to the definition, what kinds of relevant information would I need to collect?
- Once you get comfortable with gridding, you can design your own grid to help you build your own investigative efficiencies.

37

## ■ Grid Example

**Definition: Sexual Assault is defined as**\_\_\_\_\_.

Element	Supporting Facts	Interview Questions
Element 1		
Element 2		
Element 3		
Element 4		
Element 5		

38

## Sub-Analysis Example:

[Sub-analysis is used when the primary definition requires a further analysis of a term essential to the primary definition.]

Element	Supporting Facts	Interview Questions
Element 1		
Element 2		
Element 3		
Element 4		
Element 5		

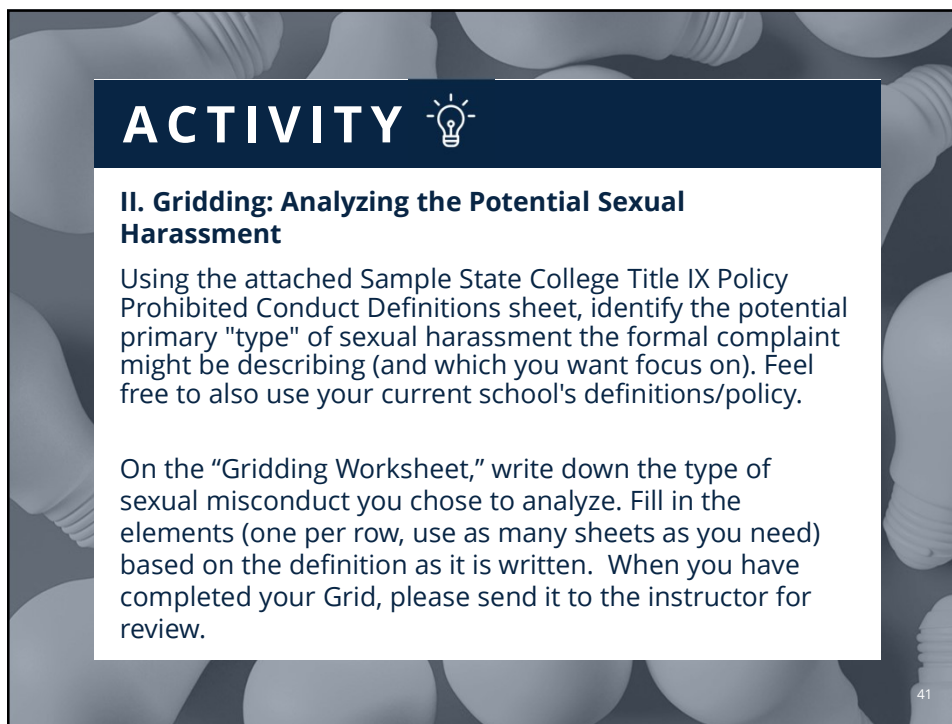
ACADEMIC IMPRESSIONS 39

39

**BREAK**

ACADEMIC IMPRESSIONS 40

40

The slide features a dark blue header with the word "ACTIVITY" in white, accompanied by a lightbulb icon. The background is a pattern of lightbulbs. The main content is in a white box with dark blue text.

## ACTIVITY

### II. Gridding: Analyzing the Potential Sexual Harassment

Using the attached Sample State College Title IX Policy Prohibited Conduct Definitions sheet, identify the potential primary "type" of sexual harassment the formal complaint might be describing (and which you want focus on). Feel free to also use your current school's definitions/policy.

On the "Gridding Worksheet," write down the type of sexual misconduct you chose to analyze. Fill in the elements (one per row, use as many sheets as you need) based on the definition as it is written. When you have completed your Grid, please send it to the instructor for review.

41

41

The slide has a dark blue header with the word "QUESTIONS?" in white. The background is a pattern of question marks. The slide also includes a logo for "ACADEMIC IMPRESSIONS" in the bottom right corner.

## QUESTIONS?

ACADEMIC IMPRESSIONS

42

42




# AGENDA

June 14, 2021

1. Investigative Knowledge & Skills: Relevancy and Sufficiency, Including Activities
2. Investigative Knowledge & Skills: Interviewing Witnesses and Activity
3. Investigative Report & Recap of Five General Phases
4. Day Two Q&A

1

1



# #4


## Investigative Knowledge & Skills: Relevancy and Sufficiency

2

2

**Relevance:**  
*What is it?*

- Legal term
- Federal Rules of Evidence (FREs)
- FRE Rule 401.  
Evidence is relevant if:
  - a)** it has a tendency to make a fact more or less probable than it would be without the evidence; and,
  - b)** the fact is of consequence in determining the action



TITLE IX

3

3

**Relevance: *What is it?* (cont.)**

- Evidence must help to show that “something” is either true OR not true; or that it happened OR didn’t happen.
- Administrative hearings are not subject to the FREs (unless they are adopted).
- However, FREs serve as a good way ensure evidence is relevant.
- The Title IX grievance procedure is considered an administrative process.
- What is “inculpatory” vs. “exculpatory” evidence? [§106.45(b)(5)(ii)] Which one is “relevant?”
- Basically know WHY you are asking a question (Slide 30) and make sure your questions are “relevant.”

4

4

## ■ Can relevant evidence be excluded? YES!

- FRE Rule 403
- If the reason for asking the question tends to cause the following:
  - a) Unfair prejudice
  - b) Confusing the issues
  - c) Misleading the jury
  - d) Undue delay
  - e) Wasting time
  - f) Needlessly presenting cumulative evidence

5

## ■ Other “Relevance” Considerations


- Rape Shield Law
- Information protected under a legally recognized?  
[§106.45(b)(1)(ix)]
- What about “hearsay?” Can you use hearsay evidence?

6



## ■ Hearsay

- What is hearsay?
- An out-of-court statement offered by a party to establish the truth of the matter asserted.
- It can be a document or a witness telling you what another witness said.
- Hearsay evidence should have corroboration.
- A Decision maker may “consider” hearsay evidence.




7

## ■ Hearsay: *What is it?*

**Example 1:**  
Witness A says: “I was standing right there and saw Car A run the red light and hit Car B.”

**Example 2:**  
Witness B says: “My cousin told me that she was standing right there and saw Car B run the red light which caused Car A to hit them.”

- Which one is hearsay?
- What is the problem with hearsay?

 8

8

## ACTIVITY


### I. Relevant vs. Irrelevant Facts

1. Using the written formal complaint, identify at least 5-7 relevant and 5-7 irrelevant facts from the case. Be prepared to explain your choices with the group.
2. Using the relevant facts you identified above, place the facts in the row of the appropriate element on your grid to help you analyze the facts provided. Be prepared to discuss your grid.

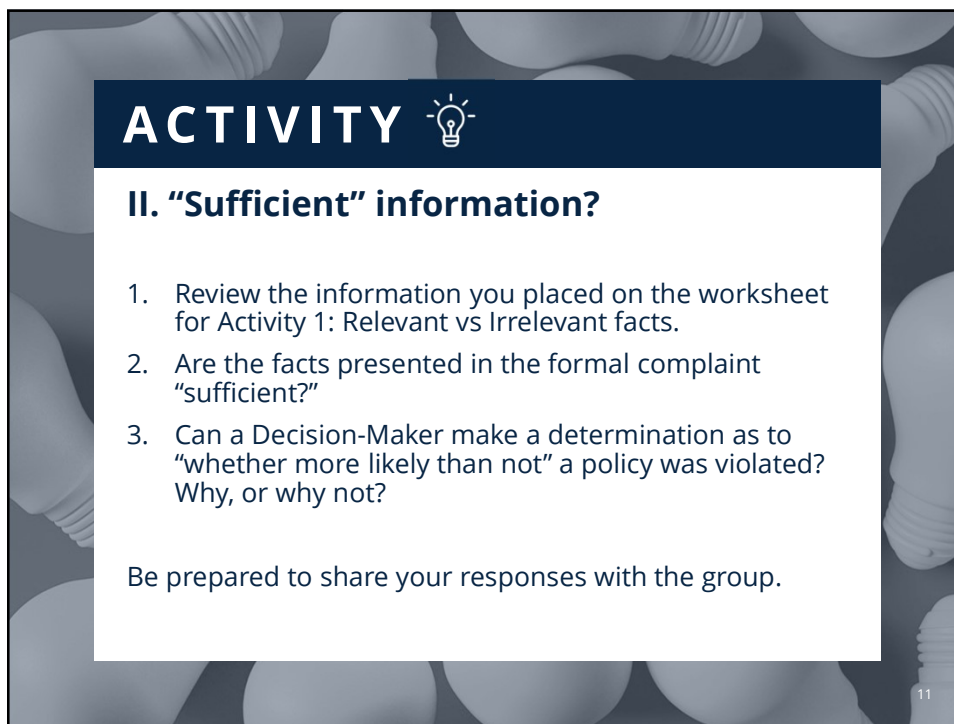
9


**Sufficiency:** *When is evidence “sufficient?”*

- The institution’s “burden” [106.45(b)(5)(i)]
- What can you do to ensure you’ve gathered sufficient evidence for the case?
- How do you know when you gathered “sufficient” evidence, such where a decision maker can make an appropriate determination?


10

10

A slide titled "ACTIVITY" with a lightbulb icon. The background is a pattern of lightbulbs. The main content is on a white rectangular area.

**ACTIVITY** 

**II. "Sufficient" information?**

1. Review the information you placed on the worksheet for Activity 1: Relevant vs Irrelevant facts.
2. Are the facts presented in the formal complaint "sufficient?"
3. Can a Decision-Maker make a determination as to "whether more likely than not" a policy was violated? Why, or why not?

Be prepared to share your responses with the group.

11

11

A slide titled "QUESTIONS?" with a question mark icon. The background is a pattern of question marks. The main content is on a dark blue rectangular area.

**QUESTIONS?**



12

12




13



14

## ■ Basic Interviewing Techniques

- Atmosphere is important.
- Be very conversational, NEVER accusatory!
- Build rapport — ASAP!
- Schedule enough time for the interview.
- Be aware of “why” an interview is important before you interview a witness. (What information do you need from this witness?)




15

15

## ■ Basic Interviewing Techniques (cont.)

- Get “comfortable” discussing “uncomfortable” topics.
- Ask extremely detailed questions.
- Make sure the questions have a “reasonable” nexus to the policy violation and/or an issue of credibility.
- Make sure you record as many “direct quotes” from the witnesses as possible—you’ll need these for your report.
- Rephrase statements for clarification. (e.g., “I’m hearing you state that...is that a correct understanding?”)



16

ACADEMIC IMPRESSIONS

16

## Basic Interviewing Techniques (cont.)

- Consider using an introductory disclosure statement and/or “script” when meeting with a witness.
- Take breaks if the witness seems to need one (i.e., to regain composure).
- Don’t miss the obvious! If the witness mentions something that occurred via email or social media, ask for a copy!
- Investigators should control the interview.



17

17

## Open vs. Leading Questions

- “Open-ended” — asking questions in a manner that allows the witness to provide a narrative (e.g., “What did you do last week?”)
- “Leading” — you only want a “yes,” “no,” or a very specific answer (e.g., “You went to the party at 615 Harriet Avenue on Friday the 13th, correct?”)
- Start with open-ended and then narrow down the questions as the witness begins to give you more detail.



18

18

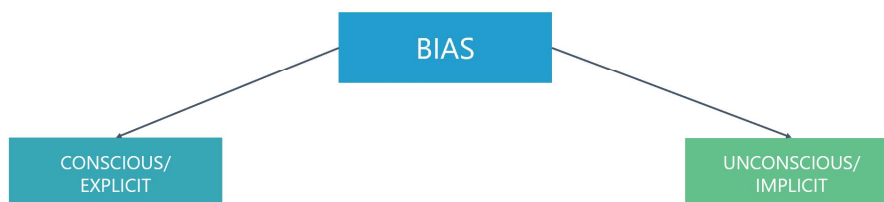
## Basic reasons why Interviewers would ask a witness a question

- ✓ To establish rapport
- ✓ To receive foundational/background information
- ✓ To receive information specific to policy “elements”
- ✓ To test witness credibility
- ✓ To corroborate information
- ✓ To verify/clarify previous facts provided

What are some other reasons why an investigator would ask a witness a question?

19

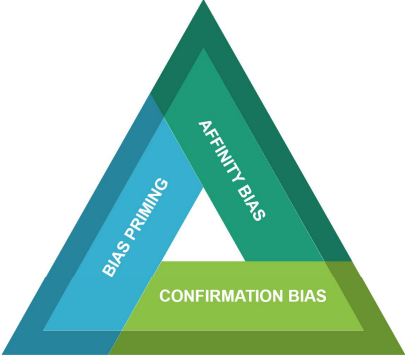
## BIAS IN INVESTIGATIONS



## Mitigating Investigator Bias

20

### 3 TYPES OF UNCONSCIOUS/IMPLICIT BIAS



- 01 **AFFINITY BIAS**  
Favoring information by someone who is similar.  
3 contexts: interviewer; interviewee; investigator evaluating representations of others location
- 02 **CONFIRMATION BIAS**  
Natural tendency to favor information that confirms a preconceived notion
- 03 **BIAS PRIMING**  
Asking questions or using words that may influence the way someone answers or responds to a question (like "leading" questions)

21

21




## Some Thoughts...

- Everyone has biases. Bias and stereotyping are based on personal experiences and opinions, and they are different for everyone.
- Not everyone will fit your expectations or preconceived notions; be careful of stereotypes.
- Identify and acknowledge your own personal biases; don't allow them to influence you during an investigation.
- Dealing with implicit bias takes a lot of practice.
- Let the facts determine the outcome.

22

22





## Some More Thoughts...


- Ask yourself: Why do I think this way?
- Unconscious bias can occur before your investigation starts, while gathering information, choosing witnesses, during interviews and while writing the report.
- Focus on the information provided.
- Don't look for something that's not there (unless there is a reasonable basis to believe it exists and is relevant to your investigation).

23

## Trauma Informed, FETI, RAINN: Oh My!

While these victim-centered approaches are important, **ALWAYS REMEMBER:**

- These models of are usually identified as being “victim centered” and are mostly used in reference to dealing with sexual assault victims.
- While these models may help an investigator to adjust the method in which they receive or evaluate information provided by a victim or witnesses, **they should never serve as the sole basis for evaluating credibility.**
- Recognize that you **can and should** also use some of the methods for questioning other witnesses including the respondent (e.g., listening to their story, asking about their experience or what they remember, etc.).
- Bottom line: The institution must conduct the investigation in an equitable manner.



24

## ■ An Equitable Approach: *What about the Respondent?*

- They have constitution-based protections — assumptions about policy violations should not be determined all information has been presented, AND ONLY by the Decision Maker.
- They must have the ability to provide information and names of potential witnesses to show their side of the story.
- They are stressed out too; process can be intimidating. Show empathy.
- In the interest of a “fair” process, we should want to assist both parties during the process (even though our assistance may look different to the parties) and not ignore a party because of their status.
- Keep your own biases and stereotypes in check — always.

25

25

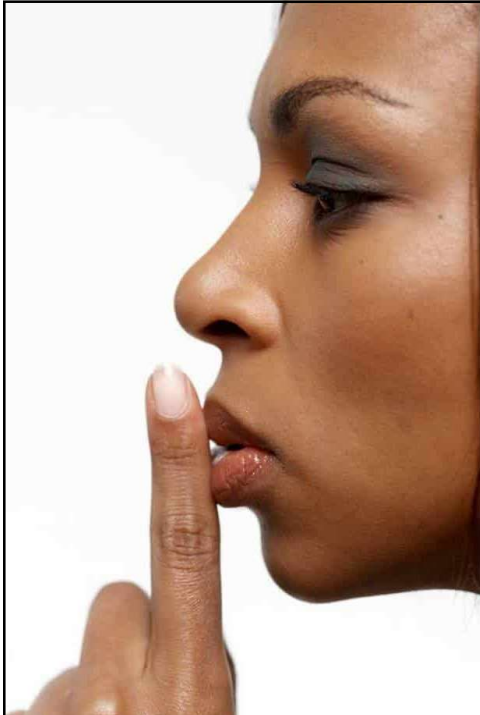


## Type of Witness: *The “Talker”*

- Witness talks...a lot
- Let them talk, unless they have a habit of talking about things that aren't related to your investigation.
- Get into the habit of "re-directing" the witness to providing information that you need.
- Understand that some of the extra information may also be important for some other reason (e.g., credibility, establishing timeframes, etc.).

26

26



**Type of Witness:**  
*The “Reluctant” Witness*


- May present as if there is a reason WHY they don't want to share information.
- Does the witness have safety concerns? If so, has the witness shared those concerns with the Title IX coordinator?
- Building rapport will be important for the witness to trust the investigator and feel comfortable in providing information.

27

27

**Type of Witness:**  
*The “Hostile” Witness*

- Displays anger or frustration about situation.
- Witness may try to confuse the investigator (focus on the facts related to the complaint, not the hostility).
- Try to ask why the witness is hostile; there may be a reasonable explanation.
- Be direct but remain neutral. Try “Notice & Wonder” technique.



28

28

**Type of Witness:**  
*The "I-Don't-Know-What-You're-Talking-About" Witness*

---

- Witness will appear "uncooperative."
- Try to gently remind them about why you wanted to meet with them (e.g., "I was given your name by a witness who saw you there at that time. Were they mistaken?")
- Don't try to "force" information out of this witness.
- If they don't want to share information, find another witness.



29

29


**QUESTIONS?**

30

30



31

**ACTIVITY** 

**III. Possible Witnesses**

With the limited information you have received thus far, **who** are the witnesses you believe you need to interview?

Why are they relevant?

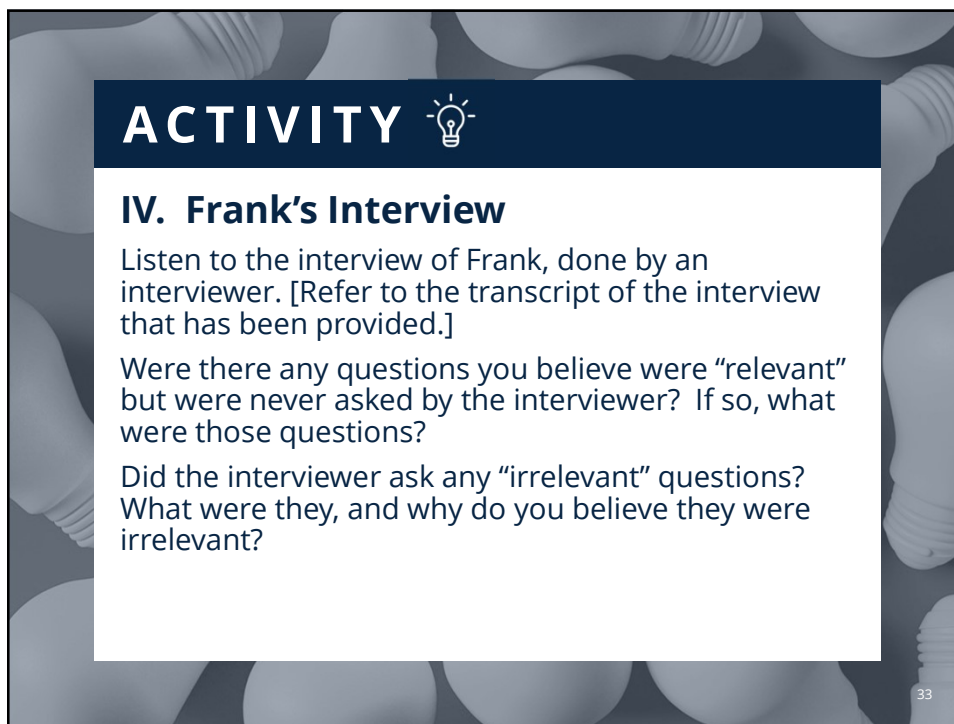
What information do you think they may be able to provide?


Is there a specific witness interview order you believe is important? Why or why not? (If so, list them in scheduling order on the worksheet.)

Be prepared to discuss your responses with the group.

32

32

The slide features a dark blue header with the word "ACTIVITY" in white, followed by a lightbulb icon. The main content is on a white background with a dark blue border. The background of the slide is a pattern of lightbulbs.

**ACTIVITY** 

**IV. Frank's Interview**

Listen to the interview of Frank, done by an interviewer. [Refer to the transcript of the interview that has been provided.]

Were there any questions you believe were "relevant" but were never asked by the interviewer? If so, what were those questions?

Did the interviewer ask any "irrelevant" questions? What were they, and why do you believe they were irrelevant?

33

33

The slide has a dark blue header with the word "QUESTIONS?" in white. The background is a pattern of question marks. The slide also features the "ai ACADEMIC IMPRESSIONS" logo in the bottom right corner.

**QUESTIONS?**



34

34

# #6

## Investigative Reports & Recap of Five General Phases

35

35

### ■ Don't Forget About... 2 Important Investigative Timeframes

1. Both parties must be allowed to inspect and review any evidence obtained as part of the investigation; provide 10 days to submit a written response [§106.45(b)(5)(vi)]
2. Create an investigative report that fairly summarizes relevant evidence and send a copy to the parties and the parties' advisors (if they have them) at least 10 days prior to a hearing OR before a determination regarding responsibility is made [§106.45(b)(5)(vii)]

36

36





### Basic Considerations:

- Fact-based report: No opinions. Is it information as it was provided to you by the witnesses? (substance)
- One voice?
- Written in first person?
- What is the template format (consistency)?
- Case identification?
- Is there a logical flow to the information as it is presented?

37

37

### Basic Investigative Report Considerations (cont'd)

- Always assume a newspaper reporter will receive copies of your report.
- Does it reflect professionalism and confidence?
- Does it contain personal opinion that appears to be biased?
- Numbering (UHWO2015-S-01; Page 1 of 14)
- Cite institutional policies and procedures as the basis for the investigation.
- Use as many relevant direct quotes from the interviews, written statements or documentary evidence provided by the witnesses. Make the witness summary "their" statement; not yours.

38

38



## ■ Basic Investigative Report Considerations (cont'd)


- Understand what each section of the report is designed to show or explain to a reader.
- Save "marking exhibits" for last.
- Consider making exhibits distinguishable (bold; italicized) within the report.
- Eclectic appeal. (Does it look nice?)

39

## ■ Pre-Report Writing Considerations

1. Permissive dismissals; “**may**” dismiss at any time during the investigation, if any of the following: [34 CFR 106.45(b)(3)(ii)]
  - A complainant notifies the Title IX Coordinator in writing that the complainant would like to withdraw the formal complaint or any of the allegations.
  - The respondent is no longer enrolled or employed by the recipient.
  - Or specific circumstances prevent the recipient from gathering evidence sufficient to reach a determination as to the formal complaint or allegations therein.

40



### Pre-Report Writing Considerations

2. If dismissal, institution must promptly send written notice of the dismissal and reasons simultaneously to parties [34 CFR 106.45(b)(3)(iii)].
3. Always check in with the Title IX Coordinator.

41

41

### ■ Investigative Report Requirement

“Create an investigative report that fairly summarizes relevant evidence and, at least 10 days prior to a hearing (if a hearing is required under this section or other wise provided) or other time of determination regarding responsibility, send to each party and the party’s advisor, if any, the investigative report in an electronic format or a hard copy for their review and written response.”

*[§106.45(b)(5)(vii)]*

42

ACADEMIC  
IMPRESSIONS

42

## ■ Important Report Section: *History of the Case/Background*

- Filing of the formal complaint through the appointment of the investigator(s).
- Usually written by the Title IX Coordinator; investigator edits to fit writing of the rest of the IR.

43

## ■ Important Report Section: *Involved Parties/Witnesses*

- Written in “list” format.
- Name of individual or “wiped identification” (i.e., “Comp” or “C” for Complainant), whichever is preferred.
- The individual will be referred to using this identification method for the rest of the report (“scrubbing”).
- If using name, use the name you intend to cite throughout the report for consistency [i.e., Beverly Baligad; Bev; Ms. Baligad.]
- Should state at the end of the witness section: “No other relevant witnesses were identified or available.”

44

## ■ Important Report Section: *Alleged Prohibited Conduct*

- Section includes information directly out of the Notice of Allegations.
- Allegations are in list format.
- Do not include allegations “dismissed” (permissive) by the Title IX Coordinator (if listed on the original notification).
- Cite to the Notice of Allegations document; and place in exhibits.

45

## ■ Important Report Section: *Standard of Proof*

- Short paragraph that describes what standard of proof the institution uses.
- Cite directly from the institution’s sexual harassment policy.
- Can be templated language.

46

## ■ Important Report Section:

### *Interview Summaries*

- Complete narrative of information provided by each witness.
- Should include a short introductory paragraph that gives a short description of the status of the individual, their relationship to the case, date/time and place of interview or when their written statement was provided, and the modality (email, interview, etc.).
- Summaries should ONLY include information that is relevant to the allegations.

47

## ■ Important Report Section:

### *Jurisdiction Statement*

- Cite directly from the policy that allows jurisdiction by the institution to conduct an investigation.
- Use direct language from the policy, then substitute with specific facts to establish jurisdiction.
- Use a final statement that states, "Therefore, based on the information provided, [institution] has jurisdiction over this matter."

48

## ■ Important Report Section: *Exhibit List*

- Exhibits should be marked in the order that the document referred to appears in the IR.
- Be sure to include all policies referred to, official notifications, documentary evidence that is referenced, etc.
- Remember, the IR must contain all relevant evidence.

49

## ■ Important Report Section: *Investigator's Attestation*

- Attestation can be part of the language used on an IR template
- States that the investigator's report is complete, that they have gathered all relevant evidence in accordance with institutional policy

50



51

**Remember these? There's a lot more to it!**

Action	Phase
1. Thoroughly review the complaint; understand what the complaint is about.	
2. Find and print all policies, procedures, and agreements relevant to the issue. Review complaint again and compare policy and process information. Possible issue? Several issues?	
3. Determine what potential type of sexual misconduct is described in the complaint. List the "elements." (Remember the "loco moco?")	
4. Gather all available institutional and public information on relevant parties	
5. Identify witnesses and case strategy. Begin assembling investigative file. Keep an investigator's log.	

ACADEMIC IMPRESSIONS 52

52

## The 5 Investigation Phases

- **Phase I:** Policy & Process Review
- **Phase II:** Investigation Planning
- **Phase III:** Preparation and Execution of Interviews
- **Phase IV:** Reviewing Relevant Information Gathered
- **Phase V:** Closing the Gaps; Follow-Up

53

### ■ Pre-Interview Considerations: *Mind the Details*

- Where the interview takes place is important
- Seating arrangements (e.g., safety, adequate seating, placement, etc.)
- Necessary supplies (e.g., water, tissues, etc.)
- Private, confidential
- Reasonable accommodations for witness? (reader? interpreter?)
- Electronic recording (batteries)? Written documentation (paper, pens)?
- One or two investigators present? Roles?
- Can you think of anything else that should be considered before the interview occurs?

54



## ■ To Record or NOT to Record?

- Be aware of State laws regarding the recording of conversations
- Some institutions do, some don't
- Should be mentioned somewhere; in your Code and/or Policy
- If it is written in a policy or process somewhere, the witnesses should be told in advance
- If it is not written in a policy or process, the investigator should get the permission of the witness before recording
- Recording (if a student) is subject to FERPA; for employees CBA's or personnel records policies/confidentiality

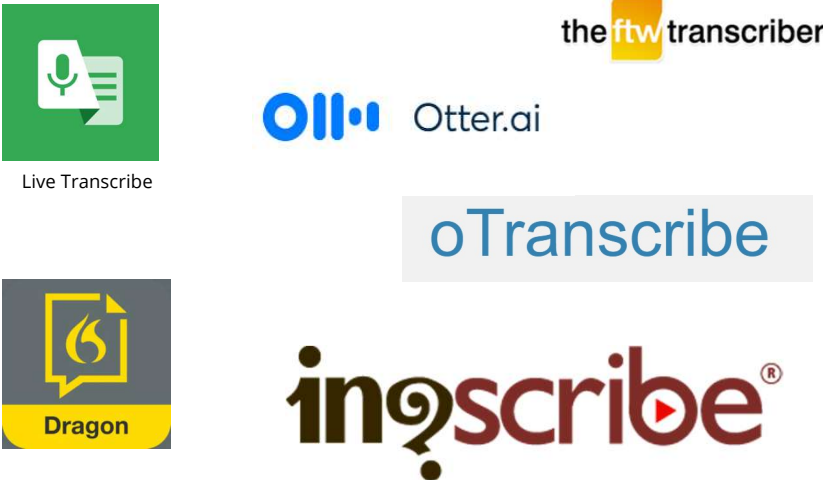
55

## ■ To Record or NOT to Record? (cont.)

- Note-taking requires high level of accuracy (do "direct quotes")
- A witness summary statement would be best if taking notes (investigator summarizes, writes, then provides statement to witness to see if they "got it right", then witness can sign off)
- Recordings may help an appeals officer or DM with determining whether or not "bias" in the interview was a factor
- Would you allow the witness to record at the same time you record?

56

## • Transcription Apps/Software



Live Transcribe

theftw transcriber

Otter.ai

oTranscribe

Dragon

inscribe®

57

57



# QUESTIONS?

ai ACADEMIC IMPRESSIONS

58

58

# *Thank you!*

Please remember to complete the [event evaluation](#).  
Your comments will help us continually improve the  
quality of our programs.