



THIS SESSION'S TOPICS:

- Foundations of Good Policy Writing
- Report/Determination Outline
- Analysis and Conclusions

FOUNDATIONS OF GOOD POLICY WRITING

ABC's

- Be accurate
- Be brief
- Be clear

BE ACCURATE

The evidence you include in your investigation report or determination should be supported by the record.

How to ensure accuracy:

- Cite specifically to the place in the record or the point in the hearing that supports that information.
- Don't make assumptions.
- Don't start with a conclusion. Analyze the evidence to develop the conclusion.

BE BRIEF

- Don't take a whole paragraph to say something you can say in one sentence.
- Avoid flowery language.
- Include only relevant evidence.

Ask: Is this evidence relevant to an element of an allegation or a credibility determination?

BE BRIEF

- Keep it simple.
- Don't be wordy.

Warren Buffett is often cited for his high-quality writing in investment letters. His average sentence length is 13.5 words, with 4.9 letters per word average.

BE CLEAR

- Embrace plain language.
 - *Under University Policy XXX vs. pursuant to University Policy XXX.*
 - *Thus far vs. heretofore*
- Define difficult concepts.
 - *Under University Policy XXX, incapacitation means...*
- Use the Oxford comma.

BE CLEAR

- Use consistent references for policy, references to the record, etc.
- Be organized.

CONSIDER YOUR AUDIENCE

Investigators: Your audience for an investigation report includes the parties, process advisors, and decision-makers.

Decision-makers: Your audience for a determination includes the parties, process advisors, and appellate authorities.

CONSIDER YOUR AUDIENCE

A person should not have to be an expert in Title IX matters to understand what the report or determination is saying.

REPORT/DETERMINATION OUTLINE

INVESTIGATION REPORT OUTLINE

- Introduction
- Procedural History
- Background
- Summary of the Investigation/Relevant Evidence
- Analysis

INVESTIGATION REPORT OUTLINE

The investigation report should include analysis only if your institution's policy is for the investigator to include recommendation(s) on whether that evidence shows that Respondent violated the policy as alleged.

If this is the case, decision-makers must make a determination apart from the recommendation, but the structure of the analysis in an investigation report can be a helpful guide to a decision-maker.

WRITTEN DETERMINATION OUTLINE

- Introduction
- Procedural History
- Background
- Relevant Evidence
- Analysis including Relevant Fact
- Conclusions
- Sanction(s) if there is a finding that Respondent violated policy
- Remedies
- Appeal Procedures

INTRODUCTION

The introduction should include:

- Parties' names and case number
- Date
- A concise overview, high-level summary of the case intended to help orient the reader and provide context including the parties' roles in the investigation and their relationship to the institution.
- No contact orders and other relevant orders

INTRODUCTION

Ex.

August 10, 2022

Complainant: Alex Smith

Respondent: Taylor Jones

Complainant is an undergraduate student who lives in on-campus housing. Respondent is also an undergraduate student in on-campus housing. In addition to being neighbors in the same dorm building, prior to the alleged incidents Complainant and Respondent spent time together as friends and went on a few dates. Complainant filed a formal complaint alleging that Respondent fondled Complainant on two separate occasions, one in Complainant's dorm room and once a few days later in Respondent's dorm room.

The Title IX Coordinator issued a mutual no contact order on June 15, 2022, which is still in effect.

PROCEDURAL HISTORY

The procedural history should cover:

- Formal Complaint
- Notice of Allegations
- Interviews
- Site visits
- Methods used to gather evidence, and
- Responses or other submissions made by the parties.

It can be narrative, a list, or a combination of both.

PROCEDURAL HISTORY

Ex. Complainant filed a formal complaint on January 7, 2021 alleging that Respondent raped him on June 15, 2020 and stalked him from June 15, 2020 until January 15, 2021, the date the Title IX Coordinator issued the Notice of Allegations.

Ex. In addition to interviews, the investigator sought evidence from both parties, all witnesses, and both parties' resident advisors. The investigator also sought security camera footage from campus security, but no security footage was available.

BACKGROUND

The background should provide some brief context of Plaintiff's and Complainant's relationship and events leading up to the alleged incident(s), if relevant.

BACKGROUND

Ex. Complainant and Respondent both live in on-campus housing. There is no dispute that they were friends for a few years after which they started dating and that they had been dating for five months at the time of the formal complaint.

SUMMARY OF THE INVESTIGATION/RELEVANT EVIDENCE

This section should:

- Summarize the investigation; and
- Outline and summarize all the **relevant evidence** gathered during the investigation including the narratives provided by both parties and any witnesses interviewed during the investigation.

RELEVANT EVIDENCE

As a reminder, **relevant evidence** is evidence or information that makes something more or less likely to be true.

And evidence may be relevant to:

- An allegation (or an element of the allegation); and/or
- A credibility determination

EXCULPATORY AND INCULPATORY EVIDENCE

Relevant evidence includes both **exculpatory** (evidence that proves respondent is not responsible) and **inculpatory** (evidence that proves respondent is responsible) and both types of evidence must be included in the investigation and considered in the determination.

SUMMARY OF THE INVESTIGATION/RELEVANT EVIDENCE

Focus on relevant evidence. You will be inclined to include all the information (and it will be a lot!) but going beyond relevant evidence will make your report unnecessarily long and unwieldy and will contribute to your audience's confusion.

However, in some circumstances, a bit of context may be helpful to orient your audience.

SUMMARY OF THE INVESTIGATION/RELEVANT EVIDENCE

- Use headings throughout this section to help orient your audience.
- You can interweave the summary of the investigation and relevant evidence for better flow.

SUMMARY OF THE INVESTIGATION/RELEVANT EVIDENCE

Heading

Complainant's statement of what happened

Respondent's statement of what happened

Statements of witnesses with relevant
evidence

Other evidence

SUMMARY OF THE INVESTIGATION/RELEVANT EVIDENCE

Ex.

Parties' communications before the incident

In his July 1, 2021 interview with the investigator, Complainant stated...

In her July 9, 2021 interview with the investigator, Respondent stated...

Witness A stated...

Witness B stated...

Complainant provided text messages he received from Respondent which stated...

ANALYSIS AND CONCLUSIONS

STANDARD OF EVIDENCE

A respondent is not responsible unless there is a **preponderance of evidence** that respondent committed the alleged policy violation. In other words, the evidence must show that it is **more likely than not**, or more than 50 percent in favor, that the respondent engaged in sexual harassment.

STANDARD OF EVIDENCE

Preponderance of evidence is the lens through which all alleged policy violations should be viewed.

ANALYSIS

This section should include the definitions of the alleged policy violation(s), including the procedural elements to be applied for each, and connect the relevant evidence to the policy violation.

A decision-maker should use this section to making findings of fact and conclusions of policy. Investigators can make recommended conclusions of policy here if institutional policy allows.

IRAC

The IRAC method is a formula for analyzing violations of law or policy.

Issue – what you are deciding

Rule – the violation defined by policy

Analysis – applying the facts to the policy definition

Conclusion – after analysis the conclusion as to whether the evidence supports the policy violation or that particular element of the policy

ISSUE

The issue is a restatement of the allegation.

Ex. Whether there is/is not a preponderance of evidence that Respondent stalked Complainant in violation of College policy.

ANALYSIS EXAMPLE

Ex. Analysis with Issue and Rule

I. Analysis

To find that Respondent violated institution's sexual harassment policy which regard to rape and/or stalking, the decision-maker must find there is a preponderance of evidence supporting the allegation. In other words, the evidence must show that it is more likely than not that Respondent committed the alleged violation.

A. Stalking

I. (ISSUE) Whether there is a preponderance of evidence that Respondent stalked Complainant in violation of institution policy XXX.

(RULE) Respondent is alleged to have stalked Complainant. Under institution policy XXX, stalking is a course of conduct; directed at a specific person; that would cause a reasonable person to fear for their safety or the safety of others or to suffer substantial emotional distress.

ANALYSIS

The analysis is where you apply the evidence to the rule.

As you analyze each policy violation, go back to the relevant evidence section and pull out the facts that relate to each element of the relevant policy.

Ex. For stalking

- What evidence relates to a course of conduct (or lack thereof)?
- What evidence relates to the conduct being specifically directed at Complainant (or not being specifically directed at them)?
- Are there any facts that would cause a person to feel fear or to suffer substantial emotional distress (e.g., showing up in place repeatedly, threats, lurking, etc.)?

IRAC FOR MULTIPLE ELEMENTS

- Issue
- Rule broken down by elements
 - Element 1
 - Rule element 1
 - Analysis of relevant facts
 - Conclusion on element 1
 - Element 2
 - Rule element 2
 - Analysis of relevant facts
 - Conclusion of element two
- Conclusion on full issue

ANALYSIS EXAMPLE

Ex. Analysis Broken Down by Elements

A. *Stalking*

I. *(ISSUE) Whether there is a preponderance of evidence that Respondent stalked Complainant in violation of institution policy XXX.*

(RULE) Respondent is alleged to have stalked Complainant. Under institution policy XXX, stalking is a course of conduct; directed at a specific person, that would cause a reasonable person to fear for their safety or the safety of others or to suffer substantial emotional distress.

i. (ISSUE ELEMENT 1) Course of conduct

(RULE ELEMENT 1) To establish stalking under institution policy, there must be a course of conduct, (ANALYSIS) In her interview, Complainant stated that Respondent frequent called, sent his texts, and showed up at his place of work. Respondent admits contacting Complainant but denies that it was frequent. However, text messages and phone logs provided by Complainant show that Respondent contacted him via phone 10 times and via text over 20 times over the course of a week.

(CONCLUSIONS) Therefore, there is a preponderance of evidence that Respondent engaged in a course of conduct.

ANALYSIS EXAMPLE

ii. (ISSUE ELEMENT 2) Directed at a specific person

(RULE ELEMENT 2) To find stalking, a course of conduct must be directed at a specific person. College Policy XXX.

(ANALYSIS ELEMENT 2) Claimant stated... Respondent stated... Other evidence shows.

(CONCLUSION ELEMENT 2) Therefore, there is not a preponderance of evidence that Respondent's conduct was directed at Complainant.

iii. (ISSUE ELEMENT 3) Cause a reasonable person to fear for their safety or the safety of others or to suffer substantial emotional distress.

(RULE ELEMENT 2)

(ANALYSIS ON ELEMENT 3)

(CONCLUSION ELEMENT 3)

Because all three elements have not been met, there is not a preponderance of evidence that Respondent engaged in stalking.

OTHER CONSIDERATIONS

- Consent is analyzed as an element of the relevant sexual assault allegation, e.g., rape, fondling, etc.
- When relevant, incapacitation and force are analyzed under consent.

OTHER CONSIDERATIONS

- Credibility should be analyzed under the relevant element.

Ex. Respondent denied that she contacted Complainant repeatedly after Complainant asked her to stop contacting him. However, contrary to Respondent's claims, text messages between the parties confirmed Complainant asked Respondent to stop contacting him on June 27 and phone logs verify that Respondent called Complainant 15 times after that date.

OTHER CONSIDERATIONS

- Don't reach a conclusion until you have looked at all the evidence and information.
- You can use did/did not or is/is not as placeholders in your outline, but make sure to go back and finalize them before issuing your report or determination.
- Decisions can be split, i.e., you can find a preponderance of evidence regarding one allegation and not the other.

CONCLUSIONS

This section simply restates the conclusion as to each allegation:

I. There is/is not a preponderance of evidence that Respondent raped Complainant in violation of institution policy XXX.

II. Therefore, there is/is not a preponderance of evidence that Respondent stalked Claimant in violation of institution policy XXX.



QUESTIONS?