COMMON REPORT WRITING ERRORS IN TITLE IX AND CIVIL RIGHTS INVESTIGATIONS

Presented by
W. Scott Lewis, JD
Partner, TNG, LLC
Scott@NCHERM.org
W. SCOTT LEWIS, J.D.
• Partner, The NCHERM Group, LLC;
• Co-Founder & Advisory Board Member, ATIXA;
• Co-founder & Advisory Board Member, NaBITA;
• scott@ncherm.org

Melinda Martinez, JD – Concordia University Irvine
• Associate Dean for Institutional Compliance
• Director of Student Conduct
• Title IX Deputy Coordinator
• Melinda.martinez@cui.edu
PRESENTERS

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SOFT WRITING

• Soft writing =
  – Not telling it as it is.
  – Not setting up the parties at the beginning to realize this may not end as they hope or want.
  – They need to know all the possibilities BEFORE they read it in the report.
LEAVING OUT CREDIBILITY ASSESSMENTS

• Not including credibility assessments of statements (in part or in whole).
• Include a rationale for the assessment.
• This will keep erroneous rationales (e.g., disliking a party) out of the report.
• Motivation to lie is a rationale for all parties.
• Include descriptions of changed statements, hesitant witnesses/parties, cooperating witnesses/parties, and their statements etc.
LACK OF CITATION

• Cite the reporting individual or source for each piece of evidence referenced throughout the report.

• Be clear about who provided each witness or piece of evidence and discuss potential motive for sharing
NO “CROSS EXAMINATION”

• The investigator is the party’s opportunity to cross examine the other party.

• This should be mentioned in the investigator’s file, especially if the question (and answer) are not included because the investigator did not agree that the question (and answer) was relevant.

• Don't wait for a hearing to allow this through a chair, it can be awkward and may be inappropriate.
IMPROPER OR INCOMPLETE POLICY ANALYSIS

• Any policy that is alleged to have been violated should be broken down into its elements and then analyzed.
• In sexual assault cases, intimidation, quid pro Quo; force/coercion/capacity/consent analysis is imperative.
• Including an analysis – in coercion cases – of frequency, duration, intensity, and/or isolation,
• Always with an explanation/rationale.
• When writing for another decision maker – include analysis for alternative theories.
IMPROPER CONSENT ANALYSIS

• There should be a consent analysis (when proper) for each act as it occurred.

• Understanding that you may need to explain prior patterns of non-verbal consent
  – This is not to be confused with long term sexual history, which should only be considered in narrow circumstances.

• There may also be consensual and non-consensual acts the parties hadn't considered.
HIDING THE REPORT

• The Investigator(s) must share the report prior with the parties prior to consideration.
• The Investigator(s) should allow for appropriate comment.
  – They may not agree but it's the Investigator’s call.
• The party(ies) can appeal later if they disagree.
• If new information arises that requires further investigation and adds relevantly to report then the Investigator(s) keep going until complete.
OTHER CONSIDERATIONS

• Not giving the Adjudicator or Hearing Body enough time to review the report
  – And possibly to comment on it prior to the hearing.

• Including Non-Relevant Information in the report
  – Non-relevant opinions, and non-redacted transcripts

• Not getting to write responses to appeals that call into question the quality or validity of the report.
THANK YOU!
QUESTIONS?