

**STUDY GUIDE :
PRELIMINARY INQUIRY**

20-Minutes-to...
Trained

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20-Minutes-to...*Trained*: Preliminary Inquiry Learning Outcomes

- Participants will be able to define “preliminary inquiry” and understand what inquiries are made at this stage of the process.
- Participants will understand the difference between a little “i” and big “I” investigation.
- Participants will recognize that a preliminary inquiry will include “gatekeeping.” A report must include facts to provide reasonable cause to believe a violation of policy has occurred.
- Participants will be able to understand that where a pattern, predation, threat, weapon, or violence exists, more investigation is likely required.
- Participants will be introduced to informal resolution examples that may be appropriate where the conduct is not severe.
- Participants will be able to recognize that safety is always a key element of a preliminary inquiry.
- Participants will understand the importance of creating a timeframe for investigation and sharing their expectations of how long a report might take to resolve with the parties.



20-Minutes-to...*Trained*: Preliminary Inquiry Discussion Questions

- When a report comes in, what are the first steps that should be taken?
- What facts or circumstances might lead a matter to move from a little “i” to a big “I” investigation?
- How can the Title IX Coordinator determine safety issues? What other departments might need to be involved if there are safety issues?
- What is the purpose of gatekeeping? How does gatekeeping generate integrity and transparency in the process? How does it communicate to others what is and what is not a Title IX?
- When is informal resolution appropriate? When is it not?



20-Minutes-to...*Trained*: Preliminary Inquiry Case Studies

Sarah, Janelle, and Nev

Sarah, an administrative assistant at Braeburn Community College, approaches her supervisor, Nev, asking if she can speak with her confidentially about one of her co-workers. Nev agrees, and they meet one-on-one in Nev's office. Sarah starts by saying that she does not want to get anyone in trouble and that she is only trying to help. She reveals that the matter is very sensitive and involves one of her co-workers, Janelle. Nev immediately asks what is going on.

Sarah says she thinks that Janelle is being physically abused by her partner, Robert. Sarah tells Nev that Janelle seems noticeably withdrawn. Recently, Janelle came to work late, had red puffy eyes, and looked as though she had been crying. When Sarah and others asked Janelle if she was OK, she simply nodded and said she was fine, and that she was just dealing with some personal issues. Sarah shares that she saw Janelle walking with a limp last week and, when asked about it, Janelle told people that she twisted her knee after slipping on some ice in her driveway. Later that same day, Sarah overheard Janelle on the phone saying, "But I'm scared of what he would do if I tried to leave him."

Sarah shares with Nev that a month ago, Janelle missed a few days of work and returned to work wearing a sling. Janelle claimed that she had sprained her shoulder while working in the yard. Just yesterday, Janelle showed up over an hour late to work and had some swelling around her eye and her bottom lip. When asked, Janelle said that she got up to the bathroom last night in the dark and walked right into the edge of her open closet door. Sarah says that she also heard Janelle crying in the bathroom yesterday. Sarah notes that she has hesitated to raise any concerns or suspicions previously, but she now worries that Janelle's situation is escalating and that someone needs to step in. Nev thanks Sarah for coming in, for her candor, and her concern. Sarah returns to her desk.

Concerned, Nev pulls Janelle's employee file. Nev knows that Janelle has been making more mistakes lately, and has missed an unusual amount of time, but feels that Janelle is a good employee who interacts well with students, faculty, and administrators. Whatever is going on, it is really beginning to impact Janelle's attendance at work. Janelle has taken 10 sick days in the last six weeks, which is more than she used the previous six months combined. Janelle only has one sick day remaining. While normally punctual, Janelle has also been late five times in the last month.

Nev had already planned to address the tardiness issue in her one-on-one with Janelle tomorrow, but given this new information, Nev is unsure of what approach to take. She is also unsure of whether she should share Sarah's concerns with anyone else.

Gwen and Mark

You are an Investigator at Tessera College. It's the second week of school and one of the resident assistants in Cedar Hall, an all-freshman residence hall, refers Gwen, a student, to meet with you. Gwen comes to your office and shares her story and recent experiences on your campus.

She is an in-state freshman who lives in Cedar Hall with her roommate, Holly. She loves Tessera College so far, but she has been having some strange things happen that she's worried about, and she doesn't know who to talk to. She told Campus Public Safety about her concerns, but they said they couldn't really do anything.

The first week of school, Gwen was studying in Fleming Library on campus. She went to check out a reading that was on reserve at the front desk of the library for one of her classes, Introduction to Economics. The next day, she got an email sent to her campus email address that said: "Hey Gwen, its Mark from the library. I took Econ when I was a freshman, so if you need any help just let me know."

Gwen was surprised to get this email, but she didn't want to be rude, so she wrote back, "Thanks, but I think I got it so far lol!" She didn't recognize the name on the email account, Mark Noy, but she assumed that it was the guy who worked at the library. Mark wrote back and said, "Cool. How do you like Tessera so far? One of my buddies is having a party after the game Saturday; you should come. It'll be a blast." They emailed back and forth a few times, and Mark sent her pictures of himself, but Gwen eventually stopped responding because she started to get a little creeped out.

One night, Gwen was at a party with a guy named Carter, whom she has been seeing for a few weeks. Gwen, remembering her evening studying in the library, noticed that Mark was at the party. Doing her best to avoid Mark, Gwen circled the party, saying "hello" to friends and catching up with acquaintances she had not seen in a while. As the evening progressed, a few people expressed concern about Mark. Friends told her that Mark went up to Carter and started asking questions about her. The next day, Gwen received a friend request from Mark on Facebook, but she hasn't responded. She doesn't want to be friends with him, but she doesn't want to seem like a jerk either.

Gwen, leaving Math with her roommate Holly, saw Mark standing outside the Math building by himself, staring at her. She sort of waved but kept walking. There have been some other weird things happening, and Gwen is starting to get a little nervous. She keeps finding notes on her car, which she parks on campus; they just have hearts and arrows on them. Someone wrote, "Gwen u r so hot" on the whiteboard outside her room, and drew the same hearts and arrows she had been seeing on her car. Last week, she got a text on her cell from a blocked number that said, "Gwen I luv you." She freaked out and wrote back "Who is this?? Leave me the fuck alone." The person texted back, "Fuck you, you ugly bitch."

Gwen shares with you that she doesn't want to make a big deal about her situation. She simply wants it to stop. Although she can't prove it, she feels like it must be Mark. She has been avoiding Fleming Library and has been having friends walk her to and from her car at night. Other than Public Safety, her RA is the first person to hear of these concerns.



20-Minutes-to...*Trained*: Preliminary Inquiry Case Studies Question & Answer

Sarah, Janelle, and Nev

For Discussion:

- What Title IX issues, if any, are present? What information is needed to determine whether there is Title IX jurisdiction?
 - Janelle may be experiencing Intimate Partner violence (IPV).
 - It is unclear whether the institution has disciplinary jurisdiction. It should be determined whether Janelle's partner is an employee or a student.
 - If IPV has occurred, has any violence occurred on campus or the institution's educational programs? If not, are there any "downstream" effects?
- What should Nev do at this juncture?
 - Nev should share this report with the Title IX Coordinator.
 - Nev may be the best person to get additional information at this juncture. He could share that colleagues are concerned for Janelle, discuss Janelle's right to file a Title IX complaint, her right to go to law enforcement, and point her to support resources.
- If Janelle admitted her partner was abusing her and her partner is also an employee of the institution, what steps should be taken?
 - A safety assessment should be made, and campus public safety should be notified.
 - The Title IX Coordinator should reach out to offer support and ask Janelle to meet with them.
 - It should be determined whether Janelle would like to move forward with a formal investigation.

Gwen and Mark

For Discussion:

- Now that Gwen has shared her story, what first steps should be taken?
 - A first step will be addressing Gwen's feeling of being unsafe on campus and discuss supportive measures.
 - While Gwen has already contacted campus public safety, the Title IX Coordinator should contact them and ensure they are aware of all of Gwen's reports. They should also assist in providing any initial investigative support that might be helpful (such as surveillance footage, key swipes, etc.).

- What policy violations might have occurred? Is there enough information currently to make a “reasonable cause” determination?
 - There is probably not enough information at this time to determine that a policy violation may have occurred.
 - Further inquiry must be made to determine if all these incidents were related and are conduct that violates institutional policy.
- Is there enough information to preliminarily question Mark? If so, what questions are appropriate?
 - There is probably enough information here to preliminarily question Mark.
 - Questions for Mark could include:
 - How does he know Gwen and how has he interacted with her over this semester?
 - How did he obtain Gwen’s email address?
 - Has Gwen communicated that he should leave her alone? If so, why has he not complied?
 - Is he willing to comply with a no contact order?
- If Gwen and Mark agreed, would this be an appropriate fact pattern for an informal resolution?
 - Gwen does not appear to want any interaction with Mark. If an informal resolution could be implemented without their interaction, it could be appropriate.
 - If Mark took any retaliatory action against Gwen after she reported, or if he violated the no contact order, informal resolution would not be appropriate.



ATIXA One Policy, One Process Model Preliminary Inquiry

N.B.: All text offered in [brackets] throughout this document is optional language. All gray highlighted text must be customized by the end-user or deleted if not needed. Please find and replace the word “Institution” throughout with the name of your college or university.

As used in this document, the term “reporting party” refers to the person impacted by the alleged discrimination. The term “responding party” refers to the person who has allegedly engaged in discrimination. The term “report” and “allegation” are used interchangeably and denote information provided to the Institution regarding conduct that may have violated this policy.

4. Preliminary Inquiry

Following receipt of notice or an alleged violation of the Institution’s harassment or non-discrimination policies, the EEO/Title IX Coordinator¹ engages in a preliminary inquiry to determine if there is reasonable cause to believe the nondiscrimination policy has been violated. The preliminary inquiry is typically 1-5 days in duration.

This inquiry may also help the EEO/Title IX Coordinator determine if the allegations involve violence, threat, pattern, predation, minors, and/or the use of a weapon, in the event that the reporting party has asked for no action to be taken.

In any situation in which violence, threat, pattern, predation, minors, and/or the use of a weapon is **not** evidenced, the EEO/Title IX Coordinator may respect a reporting party’s request not to pursue the matter through the formal resolution process and will investigate informally only so far as necessary to determine appropriate remedies or refer the matter for alternate resolution options.²

If the EEO/Title IX Coordinator determines that Title IX is not applicable to allegations of sexual misconduct, but the Institution still intends to apply these policies and procedures to resolve the misconduct allegations, the EEO/Title IX Coordinator will document that it has been determined that Title IX is inapplicable but that Institutional policies and procedures will nevertheless be applied.

Compelling Formal Proceedings

The Institution reserves the right to initiate formal resolution proceedings without a report or participation by the reporting party when deemed necessary by the EEO/Title IX Coordinator, usually to protect the

¹ If circumstances require, the President or EEO/Title IX Coordinator may designate another person to oversee the process below should an allegation be made about the Coordinator or the Coordinator be otherwise unavailable or unable to fulfill their duties.

² In cases where the responding party is an employee, Institution may be less inclined to abide by the reporting party’s wishes not to proceed.

community in situations that evidence a compelling safety risk. When the Institution has actual knowledge of reports by multiple individuals regarding misconduct by the same responding party, the EEO/Title IX Coordinator will initiate formal proceedings pursuant to this section, regardless of the participation level of one or more of the reporting parties.³

When the Institution proceeds, the reporting party (or their advisor) may have as much or as little involvement in the process as they wish. The reporting party retains all rights of a reporting party under this process irrespective of their level of participation. Typically, when the reporting party chooses not to participate, the advisor is appointed as proxy for the reporting party throughout the process, acting to ensure and protect the rights of the reporting party. When the Title IX Coordinator believes it is necessary to move the process forward but also knows that credibility will be a key consideration in the formal process, the Coordinator must balance the institutional need to move forward without the involvement of the reporting party against the rights of the responding party, who is entitled to a fair process in accordance with these procedures.

When the reporting party wishes to proceed or the Institution determines it will proceed, and the preliminary inquiry shows that reasonable cause exists, the EEO/Title IX Coordinator will direct that the allegation be resolved through one of the following processes, discussed briefly here and in greater detail below:

- Informal Resolution – typically used for less serious offenses and only when the reporting and responding parties agree to informal resolution or the responding party is willing to accept responsibility for a violation. A preliminary inquiry will still typically precede this step.
- Formal Resolution – investigation and a hearing before neutral, impartial decision-makers, subject to appeal [at the discretion of the Institution] and final determination. Remedies to restore those impacted will be implemented upon a finding of policy violation.

Discretion to Terminate the Process at Any Time

The process followed considers the preferences of the parties, but is ultimately determined by the EEO/Title IX Coordinator. If, during the preliminary inquiry or at any point during the formal investigation, the EEO/Title IX Coordinator determines that reasonable cause does not support the conclusion that policy has been violated, the process will end and the parties will be notified.

The reporting party may request that the EEO/Title IX Coordinator review the reasonable cause determination and/or re-open the investigation. This decision lies in the sole discretion of the EEO/Title IX Coordinator, but the request is usually only granted in extraordinary circumstances. Other appeal options do not apply.

³ While ATIXA does not consider this language to reflect best practice, we include this clause in anticipation of OCR's proposed regulation §106.44 (b)(2).



**ATIXA Sample Letter
Determination of Preliminary Inquiry Outcome:
No Reasonable Cause to Proceed**

The university engages in a [preliminary inquiry/initial inquiry/gatekeeping step] to vet all allegations for sufficiency. After conducting a preliminary inquiry in which we [gathered evidence/reviewed documents/interviewed witnesses, etc.], the university has determined that there is no reasonable cause to proceed to a formal resolution of the allegations of sexual misconduct. The allegations [assert conduct that does not fall within the sexual misconduct policy/if true, would not be a violation of the policy on sexual misconduct/lack substantiating facts sufficient to justify initiating a formal resolution]. [insert any reasons/rationale here, if desired]

[The following remedial steps will be taken regardless of whether the allegations proceed...].

[We hope that you do not take this decision to mean that the university does not believe you. Instead, please understand that whether something happened is different than being able to prove that something happened. At this point, there is not enough evidence to advance this process to the next step. While the inquiry is being closed at this time, if evidence is produced that is sufficient to show reasonable cause that the policy on sexual misconduct has been violated, the Title IX Coordinator has the authority to re-open the matter and forward it for formal resolution. Please contact the Title IX Coordinator should you become aware of additional evidence that could provide a stronger basis for the university to proceed].

[University policy permits you to make a request to show cause to the Title IX Coordinator why this matter should be referred for formal resolution at this time. If you wish to meet with the Title IX Coordinator to show cause, please contact...]

Regards,