



2023 Annual Conference

June 27 – 30, 2023

07G

Investigation Insights: Tips, Tricks, and Techniques in Institutional Investigations

NACUA members may reproduce and distribute copies of materials to other NACUA members and to persons employed by NACUA member institutions if they provide appropriate attribution, including any credits, acknowledgments, copyright notice, or other such information contained in the materials.

All materials available as part of this program express the viewpoints of the authors or presenters and not of NACUA. The content is not approved or endorsed by NACUA. The content should not be considered to be or used as legal advice. Legal questions should be directed to institutional legal counsel.

**INVESTIGATION INSIGHTS: TIPS, TRICKS, AND TECHNIQUES IN
INSTITUTIONAL INVESTIGATIONS**

June 27 – 30, 2023

Alexandra Mitropoulos
Senior Counsel
Hirsch Roberts Weinstein LLP

Kylie Stryffeler
Attorney
Bricker Graydon

- I. Title IX Investigation Checklist**
- II. Investigation Checklist**
- III. Essential Questions for Investigations**
- IV. Sample Investigation Emails**

TITLE IX INVESTIGATION CHECKLIST
(2020 Regulations)

Alexandra A. Mitropoulos & Kylie Stryffeler

Action	Date Completed
○ Report to Title IX Office Received	
○ Intake meeting with Complainant and discuss supportive measures	
○ Identify relevant and applicable policies and obtain copies for the file	
○ Receive Signed Formal Complaint	
○ Assess for Administrative Leave or Emergency Removal	
○ Issue simultaneous Notices of Investigation	
○ Offer informational meeting with Respondent regarding process and supportive measures	
○ Initial Investigative Interview with Complainant	
○ Identify and request any evidence at risk of spoliation (swipe records, security videos, etc.)	
○ Summarize Complainant interview and send to Complainant for review and approval (if policy provides for review)	
○ Assess whether Complainant made new allegations and evaluate whether Notice needs to be amended.	
○ Identify Witnesses and obtain contact information	
○ Identify other relevant evidence and make requests	
○ Interview Respondent	
○ Summarize Respondent interview and send to Respondent for review and approval	
○ Send Witness outreach	
○ Interview Witnesses	
○ Summarize Witness interviews and send to Witnesses for review and approval	
○ Follow-up interviews with parties and key witnesses, if necessary	
○ Compile All Evidence Collected During Investigation into Evidence Packet	
○ Distribute Evidence to Parties for review and written response	
○ Draft Investigative Report and Compile Relevant Evidence into Evidence Packet	
○ Distribute Draft Investigation Report and Evidence to parties for review and written response (if policy provides for review)	

Title IX Investigative Checklist

RE: Matter of Complainant and Respondent

<input type="checkbox"/> Review feedback and conduct additional investigation, if necessary and if policy provides	
<input type="checkbox"/> Finalize Investigation Report and Evidence Packet	
<input type="checkbox"/> Distribute Final Investigation Report and Evidence to Parties	
<input type="checkbox"/> Refer to Hearing	

INVESTIGATION CHECKLIST

Kylie Stryffeler and Alexandra A. Mitropoulos

Action	Date Completed
○ Report to Responsible Office Received	
○ Intake meeting with Complainant and discuss supportive measures	
○ Identify relevant and applicable policies and obtain copies for the file	
○ Assess for Administrative Leave or Emergency Removal	
○ Issue simultaneous Notices of Investigation	
○ Offer informational meeting with Respondent regarding process and supportive measures	
○ Identify and request any evidence at risk of spoliation (swipe records, security videos, etc.)	
○ Initial Investigative Interview with Complainant	
○ Summarize Complainant interview and send to Complainant for review and approval (if review is part of process)	
○ Assess whether Complainant made new allegations and evaluate whether Notice needs to be amended.	
○ Identify Witnesses and obtain contact information	
○ Identify other relevant evidence and make requests	
○ Interview Respondent	
○ Summarize Respondent interview and send to Respondent for review and approval (if review is part of process)	
○ Send Witness outreach	
○ Interview Witnesses	
○ Summarize Witness interviews and send to Witnesses for review and approval (if review is part of process)	
○ Follow-up interviews with parties or key witnesses, if necessary	
○ Draft Investigation Report & Compile Relevant Evidence into Evidence Packet	
○ Distribute Draft Investigation Report and Evidence to parties for review and written response	
○ Review feedback and conduct additional investigation, if necessary	
○ Finalize Investigation Report and Evidence Packet	
○ Distribute Final Investigation Report and Evidence to Parties	

Investigative Checklist
RE: Matter of Complainant and Respondent

ESSENTIAL QUESTIONS FOR INVESTIGATIONS

Alexandra Mitropoulos
Senior Counsel
Hirsch Roberts Weinstein LLP

Kylie Stryffeler
Attorney
Bricker Graydon

Discrimination and Harassment (Including Sexual Harassment & Sexual Misconduct)

Interview Introductions/Procedural Information

- Remind parties of Institutional Policy on Retaliation
- Remind parties that they can request a break at any time to speak to their advisor or take a moment
- Remind parties of resources available to them, including counseling
- Especially if the alleged conduct occurred some time ago, remind parties that “I don’t remember” is an ok response, if true.
- Let parties know that the investigator(s) may request a follow up interview with the party. Let the parties know that this interview may feel different than the initial interview because the investigator(s) at that point may be presenting the party with information that is different or contrary to what the party has told the investigator(s). Let the parties know that at that follow-up interview, just because the investigator(s) present the party with a piece of information, does not mean that the investigators believe it as fact, but rather that they believe it's fair to present the party with that information and provide them with the opportunity to respond.
- If parties have an advisor present, ask advisor if they have any questions and remind the advisor of their role (as informed by the institution’s policy).

Interview Questions

- Start by creating a rapport – ask Complainant/Respondent where they are from, what they are studying, what activities they are involved in on/off campus.

- Move to open ended questions: Complainant/Respondent, one way we like to start investigative interviews is by giving you an opportunity to tell us what you would like us to know about the formal complaint and the conduct that has been reported.
 - Prior to the incident, what was your relationship with the Respondent/Complainant?
 - On the day of the incident, what did you do?
 - When did the conduct happen?
 - What time did it happen?
 - Where did the conduct happen?
 - How many times did the conduct happen?
 - Was the conduct unwelcome?
 - Was there any physical contact?
 - How did you react when the conduct occurred?
 - How did the Respondent/Complainant react to your reaction?
 - Was anyone around when the conduct occurred?
 - Do you have any pictures, snapchats, videos, uber/lyft receipts from the day the conduct occurred?
 - Did you talk to anyone about the conduct?
 - Who?
 - When?
 - Text anyone?
 - Have you heard from the respondent/complainant since the conduct occurred?
- Has this impacted your work/education in any way?

For Cases Involving Discrimination:

- Have any of your colleagues/classmates received more favorable treatment (did you treat the Complainant differently than others)?
 - Do you know how those individuals identify?
 - How did Respondent treat those individuals more favorably?
- Tell me in your words the behavior that made you feel that you were being treated differently.

For Cases Involving Sexual Harassment

- Was the conduct explicitly or implicitly a term of Complainant’s education or employment?
 - Complainant, did you feel like you “had to” do it in order to continue your education/do your job?
- What was the reporting relationship between you and Complainant/Respondent?
 - Do you still have the same reporting relationship?
- Did you/Complainant ever say they did not want to engage in the conduct?
 - What did you/Complainant say?
 - Did you/Complainant say it to Respondent or to someone else?
 - Did you/Respondent take any action as a result of that “no”?
 - What was that action?
- Did the conduct create a hostile environment?
 - Tell me in your own words what made the environment hostile.
- Did the conduct include any of the following:
 - Sexual advances?
 - Sexual epithets?
 - Comments or questions about sexual history?
 - Comments or questions about sexual preferences?
 - Comments or questions about sexual experiences?
 - Leering?
 - Whistling?
 - Touching?
 - Displaying sexual explicit images?

For Cases Involving Sexual Misconduct

- Did the behavior include sexual contact of any kind?
 - What was the sexual contact?
- Did the behavior include sexual penetration of any kind?
- Was consent given at any point?

- When was it withdrawn?
- How did you/Complainant indicate that it was withdrawn?
- What was your/Respondents reaction when consent was withdrawn?

For Cases Involving Incapacitation:

(NOTE: For incapacitation cases, ask these questions for every “part” of the night. For example, the Complainant attended a pregame, a party, and then an after party before the alleged incident, the investigator(s) should ask questions about the impact of alcohol/drugs on the Complainant at each of those stages.)

- Did you observe the Complainant drinking (how much were you drinking)?
- What were they (you) drinking?
- Had they had (did you have) anything to eat to your knowledge?
- Taking any drugs in addition to alcohol, including prescriptions to your knowledge?
- Did you observe any change in the Complainant’s behavior?
- Complainant, did you at any point black out?
 - Do you have any blurry/fuzzy memories?
 - Any memories that have come back to you since the alleged incident?
- Was the Complainant having trouble walking? Talking? Slurring speech? Sick?
- On a scale from one to ten where one is completely sober and ten is black out drunk, where would you put Complainant during your interaction with them?

For Cases Involving Relationship Violence

- When did the relationship start?
- When did the relationship end?
- How did the relationship end?
- How would you describe the relationship?
- Was the relationship ever physically violent?
 - What happened?
 - How often?
- Was the relationship ever emotionally abusive?
 - What happened?

- How often?
- Did Respondent ever manipulate you into doing things you didn't want to?
- Did Respondent try to keep you away from your friends? Family?
- Did you tell anyone about what was happening?
 - Take pictures?
- Did anyone say anything to you about their concerns about the relationship?

For Cases Involving Stalking

- Complainant, did you fear for your personal safety at any point?
 - Concerns about physical safety?
 - Concerns about emotional safety?
- Complainant, did the behavior cause you to become emotionally distressed?
- Complainant, did you need to seek medical or counseling support as a result of the behavior?
- Was the behavior directed at the Complainant or via third parties, such as Complainants friends?
- Was the behavior over the internet? In person? Through friends/family? In class?

For Cases Involving Sexual Exploitation

- (if recordings/pictures are involved)
 - Was the initial taking of the recording/pictures consensual?
 - Who took the recording/pictures?
 - Were the recordings/pictures taken at the request of the other party?
 - How did you know the recordings/pictures had been distributed?
 - Who were the recordings/pictures distributed to?
 - Did all parties know the recordings/pictures would be distributed?

For Cases Involving Coercion

- Complainant, did the Respondent attempt to physically or verbally manipulate you into sexual activity?
 - Intimidate you?

- Isolate or confine you?
- Make you feel physically threatened?

Close Out Questions

- Is there anything else about this incident you want us to know or that you thought we would ask you but we haven't?
- Who are the key witnesses you think are important for us to talk to?

Witness Interviews

Interview Introductions/Procedural Information

- Remind the witness of institution's policy against retaliation
- Especially if the alleged conduct occurred some time ago, remind the witness that "I don't remember" is an ok response, if true.
- Tell the witness that they can feel free to let anyone know that they've spoken to the investigator(s), but request that they keep the content of the conversation private.

Interview Questions

- Start by creating a rapport – ask the witness where they are from, what they are studying, what activities they are involved in on/off campus.
- Continue with open ended questions: Witness, as you may know, we are investigating a case involving Complainant and Respondent, we want to give you an opportunity to tell us what you know about that case, if anything, and then we can ask some follow-up questions. Start where you are comfortable.
- What is your relationship with the Complainant and Respondent?
- What conduct did you personally observe between Complainant and Respondent?
 - Where?
 - When?
 - What did you do when you saw that conduct?
 - How did Complainant respond to that conduct?
- Have you talked to Complainant/Respondent/Others about this case?
 - When did you talk to Complainant/Respondent/Others?

- What did they tell you?
- What did you tell them?
- Did you learn anything new in subsequent conversations with them?
- Do you have any pictures, snapchats, videos, uber/lyft receipts from the day the conduct occurred?

For Cases Involving Discrimination:

- Have you observed Complainant being treated differently than you or other colleagues/classmates?
 - Do you know how those individuals identify?
 - How did Respondent treat those individuals more favorably?

For Cases Involving Sexual Harassment

- What was the reporting relationship between Complainant/Respondent?
 - What did you observe of their relationship?
 - Are you part of this reporting structure?
 - Do they still remain in the same reporting relationship
- Did you ever come to learn that the conduct explicitly or implicitly made a term of Complainant's education or employment?
 - Did you observe this yourself?
 - Did you hear about it from someone else?
 - Who did you hear it from?
- Are you aware of any instance where Complainant said they did not want to engage in the conduct?
 - Did you observe this yourself?
 - Did you hear about it from someone else?
 - Who did you hear it from?
- Did Respondent take any action as a result of that "no"?
 - What was that action?
 - Did you observe this yourself?
 - Did you hear about it from someone else?

- Who did you hear it from?
- Are you aware of whether the conduct create a hostile environment?
- Are you aware of whether the conduct included any of the following:
 - Sexual advances?
 - Sexual epithets?
 - Comments or questions about sexual history?
 - Comments or questions about sexual preferences?
 - Comments or questions about sexual experiences?
 - Leering?
 - Whistling?
 - Touching?
 - Displaying sexual explicit images?
- Did you observe it yourself?
- Did you hear about it from someone else?
- Who did you hear it from?

For Cases Involving Sexual Misconduct

- Are you aware of whether the behavior included sexual contact of any kind?
 - What was the sexual contact?
 - Did you observe it yourself?
 - Did you hear about it from someone else?
 - Who did you hear it from?
- Are you aware of whether the behavior included sexual penetration of any kind?
 - Did you observe it yourself?
 - Did you hear about it from someone else?
 - Who did you hear it from?
- Are you aware of whether consent given at any point?
 - Did you observe it yourself?
 - Did you hear about it from someone else?
 - Who did you hear it from?
- Are you aware of whether consent was withdrawn at any point?

- Did you observe it yourself?
- Did you hear about it from someone else?
- Who did you hear it from?

For Cases Involving Incapacitation:

(NOTE: For incapacitation cases, ask these questions for every “part” of the night. For example, the Complainant attended a pregame, a party, and then an after party before the alleged incident, the investigator(s) should ask questions about the impact of alcohol/drugs on the Complainant at each of those stages.)

- Did you observe the Complainant drinking?
- What were they drinking?
- Had they had anything to eat to your knowledge?
- Taking any drugs in addition to alcohol, including prescriptions to your knowledge?
- Did you notice any change in the Complainants behavior at any point?
 - What was that change?
- Have you ever been with the Complainant when they have blacked out before?
 - Was there behavior similar in this circumstance?
 - What indicated to you that Complainant may have been blacked out?
- Was the Complainant having trouble walking? Talking? Slurring speech? Sick?
- On a scale from one to ten where one is completely sober and ten is black out drunk, where would you put Complainant during your interaction with them?
 - Respondent?
 - Where were you on this scale?

For Cases Involving Relationship Violence

- When did you first hear about the relationship between Complainant and Respondent?
- When did you hear about the relationship ending?
- What is your understanding of how it ended?
- How would you describe the relationship?
- Do you know if the relationship was ever physically violent?
 - What happened?

- Did you observe it?
 - Were you told later?
 - How did you hear about it?
 - Do you know how often this happened?
 - Did you see any bruising, scratches, marks?
- Did you know if the relationship ever emotionally abusive?
 - What happened?
 - Did you observe it?
 - Were you told later?
 - How did you hear about it?
 - How often?
- Did Respondent ever manipulate Complainant into doing things they didn't want to?
- Did Respondent try to keep Complainant away from their friends? Family?
- Did you ever raise concerns about the relationship to anyone?

For Cases Involving Stalking

- Did you ever observe the Complainant fearing for their safety?
 - Did you have concerns about physical safety?
 - Did you have concerns about emotional safety?
- Did you ever observe Complainant emotionally distressed as a result of the behavior?
- Was the behavior directed at the Complainant or via third parties, such as Complainants friends?
- Was the behavior over the internet? In person? Through friends/family? In class?

For Cases Involving Sexual Exploitation

- (if recordings/pictures are involved)
 - Did you ever receive the recordings/pictures?
 - How did you know they had been distributed?

For Cases Involving Coercion

- Are you aware of any instances where the Respondent attempted to physically or verbally manipulate Complainant into sexual activity?
 - Did you observe it?
 - Did you hear about it after?
 - Who did you hear it from?
- Are you aware of any instances where the Respondent attempted to physically or verbally intimidated Complainant into sexual activity?
 - Did you observe it?
 - Did you hear about it after?
 - Who did you hear it from?
- Are you aware of any instances where the Respondent attempted to physically or verbally isolated or confined Complainant, resulting in sexual activity?
 - Did you observe it?
 - Did you hear about it after?
 - Who did you hear it from?
- Are you aware of any instances where the Respondent attempted to physically or verbally physically threatened Complainant, resulting in sexual activity?
 - Did you observe it?
 - Did you hear about it after?
 - Who did you hear it from?

Close Out Questions

- Is there anyone else you think is important for us to talk to?
- Is there anything we have not asked you about that you think we should know or thought we thought you would ask you about?

Retaliation

- Have you experienced any conduct that made you uncomfortable/an adverse action since you reported?
- What conduct have you experienced?

- When did that occur?
 - Is it documented in any way?
 - Texts?
 - Snapchats?
 - Emails?
- What did Respondent/Complainant say or do?
- Was anyone else around?
- Can you help me understand why you think this is connected to your report/participation in the investigation?

SAMPLE INVESTIGATION EMAILS

Alexandra Mitropoulos
Senior Counsel
Hirsch Roberts Weinstein LLP

Kylie Stryffeler
Attorney
Bricker Graydon

1. Initial Email to Complainant

Hello,

My name is [Insert Name]. I am the investigator assigned to investigate your formal complaint. It is nice to meet you. My first step in the process is to schedule an interview with you via Zoom so that I can learn more about what you shared in your formal complaint. **I would plan for about [insert estimated time] for the interview.** I know there is a lot in your complaint to discuss, so if we need to schedule a second session, we can do that.

You have the right to have an advisor of your choosing to accompany you to your interview and to assist you in this process. If you have any questions about advisors, please contact [Title IX Coordinator/other employee in responsible office] copied here.

I am available the following dates and times: [Insert 3-4 available times]. Please pick a time that works for you. If none of the times presently available work for you, please let me know, I would be happy to make alternative scheduling arrangements.

If you have any text messages, emails, photos, or other communications that are relevant to your complaint, it would be helpful if you would send them to me before we meet so that I can ask you questions about them. However, this is not a requirement, so if you don't have time to do that, there will be time after the interview for you to gather the information.

As a reminder, retaliation is strictly prohibited. If you experience retaliatory behaviour, please let me or [TIXC/other employee in responsible office] know immediately.

If you have any questions before we meet, please don't hesitate to ask. I look forward to speaking with you.

Sincerely,

[Investigator Name]

2. Initial Email to Respondent

Hello,

My name is [Insert Name]. It is nice to meet you. I have been asked to investigate a formal complaint filed with the University by [Complainant name].

I am eager to speak with you about this matter, however, my first step in the investigation is to interview the other person, and I have just sent the email requesting to schedule that. This means that I am not quite ready to schedule an interview with you yet. When we do meet, I anticipate that this meeting will take approximately [Approximate length of interview] and will occur via Zoom Video Conference. I will be in touch with you to let you know what is happening in terms of scheduling your interview. You have the right to have an advisor of your choosing to accompany you to your interview and to assist you in this process. If you have any questions about advisors, please contact [Title IX Coordinator/other employee in responsible office] copied here.

In the meantime, if you have any text messages, emails, photos, or other communications that are relevant to the allegations in the formal complaint, feel free to send them to me I will review them before your interview. However, this is not a requirement, so if you don't have time to do that, there will be time after your interview for you to gather the information.

As a reminder, retaliation is strictly prohibited. If you experience retaliatory behaviour, please let me or [TIXC/other employee in responsible office] know immediately.

Sincerely,

[Investigator Name]

3. Email to Respondent regarding interview scheduling

Hello,

I am writing to let you know I have interviewed the other party, which means that I am ready to speak with you. If you are willing to sit for an interview, please let me know if you are available on any of the dates I have identified below. If none of the times below presently work for you, please let me know and I can provide additional availability.

As I previously mentioned, you do not have to do anything to prepare for the interview, but if you want to provide any texts, screenshots, or other evidence before your interview, that may be helpful. There will be time after your interview to do so.

If you have any questions, please do not hesitate to ask.

Best,

[Investigator Name]

4. Follow-up Email to Party if No Response

Hello,

I wanted to follow up on my email dated [Insert date of email] in which I requested that you schedule a time to meet with me regarding an investigation I am conducting and in which you are a party. I have attached a copy of that email here, for your records. If you are willing to speak with me, please let me know of a few times in the next week that you are available.

Best,

[Investigator Name]

5. Witness Interview Request Email

Dear [NAME],

My name is [Investigator Name]. I have been asked to conduct interviews regarding a formal complaint filed by [Complainant] against [Respondent]. **You are not in any trouble.** You have been suggested as someone who may have information relevant to the matter that I am investigating. I would like to meet with you via Zoom for an interview.

If you are willing to speak with me, please let me know. I am presently available at the following times [list 3-4 times]. I would anticipate needing approximately [estimated time] of your time. If the times I have made available are not convenient for you, please email me to set up an alternative date.

As a witness, you are protected from retaliation, so if anyone should make you feel uncomfortable for participating in our investigation, please let me know. I look forward to speaking with you.

If you have any questions, please let me know.

Best,

[Investigator Name]

6. Interview Follow-Up/Draft Summary Review Email

Dear [NAME],

Thank you again for speaking with me on [DATE]. As we discussed during your interview, I have prepared a draft summary of your interview. This summary is not meant to be a verbatim account of our conversation, but it should be an accurate summary of the information you provided, as relevant to the matter under review. Please review the draft and provide any feedback by [DATE and TIME]. You are under no obligation to provide feedback, but if I do not hear from you by [DATE and TIME], I will assume the summary is accurate as written.

If you have any questions, please let me know.

Best,

[Investigator Name]

7. Follow-Up Interview Request Email

Dear [NAME],

As I am wrapping up the investigation, I wanted to arrange a time to speak with you for a brief follow-up interview. As with your previous interview, you are welcome to bring an advisor to this interview.

If you are willing to speak with me, please let me know. I am presently available at the following times [list 3-4 times]. I would anticipate needing approximately [estimated time] of your time. If the times I have made available are not convenient for you, please email me to set up an alternative date.

If you have any questions, please let me know.

Best,

[Investigator Name]

8. Missed Interview Email

Dear [NAME]

I hope you are doing well, and I'm sorry that we were unable to meet today for your scheduled interview. I understand that engaging in this process can be difficult.

As you know, your participation in this process is voluntary, and we want you to be comfortable as we move forward. If you would like to participate in an interview, please send me days and times over the next two weeks that you would be available, and we will do our best to accommodate your schedule.

If you have any questions or are in need of supportive services, please do not hesitate to contact me.

Best,

[Investigator Name]