



National Association of College and University Attorneys

Presents:

Writing Investigative Reports

Virtual Seminar

*Presented by the National Association of College and
University Attorneys*

*In cooperation with the American Council on Education (ACE)
& the Student Affairs Administrators in Higher Education
(NASPA)*

Thursday, November 19, 2015

12:00 PM – 2:00 PM Eastern

11:00 AM – 1:00 PM Central

10:00 AM – 12:00 PM Mountain

9:00 AM – 11:00 AM Pacific

Presenters:

Natasha Baker

Hirschfeld Kraemer LLP

Janine P. DuMontelle

Chapman University

Thank you for attending this event.

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NACUA VIRTUAL SEMINAR SERIES

THURSDAY, NOVEMBER 19, 2015

WRITING INVESTIGATIVE REPORTS

ATTENDANCE RECORD

Organization: _____

All participants are asked to sign-in, but if you are an attorney applying for Continuing Legal Education credits (CLEs), you **must** sign this attendance sheet to verify your attendance at this seminar. After completion, please return this form to NACUA (clecredit@nacua.org). ***Total CLE Credits = 120 minutes**

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NACUA VIRTUAL SEMINAR SERIES

THURSDAY, NOVEMBER 19, 2015

WRITING INVESTIGATIVE REPORTS CERTIFICATE OF ATTENDANCE

- **Attorneys from Connecticut, Maryland, Massachusetts, Michigan, South Dakota or the District of Columbia:** These jurisdictions do not have CLE requirements and therefore require no report of attendance or filing.
- **Attorneys from California, Illinois, New Jersey, New York or Tennessee:** Do not return this form to NACUA. Please keep this form for your records to submit directly to your state CLE commission or in case your state bar audits you for CLE compliance. Please also remember to sign the site roster, indicating your attendance, before you leave.
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Upon receipt of this certificate of attendance and your site roster, NACUA will process the credits through the applicable state if approved.

CERTIFICATION

By signing below, I certify that I attended the above activity and request 120 minutes of CLE credits.

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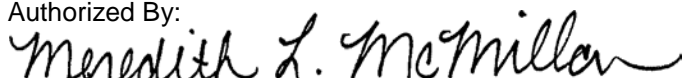
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WRITING INVESTIGATIVE REPORTS

SPEAKER BIOGRAPHIES



Natasha J. Baker is a partner with Hirschfeld Kraemer LLP, in the firm's San Francisco office. Ms. Baker represent institutions of higher education and private employers in legal issues involving California employment law, adjunct faculty labor relations, compliance and student affairs issues, including disability compliance and campus sexual assault prevention and response. She frequently trains institutions on Title IX, Conducting Effective Investigations, and Managing Within the Law. She is the co-founder of Title IX ASAP - Awareness & Sexual Assault Prevention training for campus administrators. She co-chairs the Higher Education Council of the Employment Law Alliance, an international group of law firms with a specialty in higher education. She co-authored an amicus brief to the United States Supreme Court in Fisher vs UT and amicus briefs to National Labor Relations Board on issues affecting institutions of higher education. Ms. Baker is a member of the California Bar and a graduate

of Tufts University (B.S. Physics) and the University of Maine School of Law. She currently serves as an at-large member on the NACUA Board of Directors.



Janine P. DuMontelle, a member of NACUA since 2000, is Vice President and General Counsel for Chapman University (where she established the first in-house counsel office), in Orange, CA. Prior to that, she served as Associate Vice President & University Counsel, Associate Vice President for Finance & Administration and as Director of Human Resources at Chapman. In the past, she also served as the Human Resources Manager for the University of California, Irvine – College of Medicine and as Section Head for Public Safety at the City of Long Beach Civil Service Commission. Janine currently serves as Vice Chair on the Committee on Finance and Audit, Chair of the Committee's Audit Subcommittee and as a member of the Advisory Group on the Business of Higher Education. In the past, she has served as Vice Chair of the Committee on Program for the Annual Conference, as a member of the Committee on Board Operations, the Board Advisory Council on Diversity and

Inclusivity, the Committee on Membership and Member Services and the Editorial Board of The Journal of College and University Law. She has attended and participated in numerous NACUA conferences and workshops and is a member of several national and local bar associations. Janine is a magna cum laude, graduate of Whittier Law School, where she served as Managing Editor of the Law Review. She received her Master's Public Administration, from California State University, Fullerton and her Bachelor of Science, degree from Southern Illinois University, Carbondale.

WRITING INVESTIGATIVE REPORTS

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NACUA NOVEMBER 2015
VIRTUAL SEMINAR

Panelists



Natasha Baker
Partner
Hirschfeld Kraemer LLP



Janine P. DuMontelle
*Vice President and
General Counsel*
Chapman University

Agenda

- Understand the importance of the report
- Review a hypothetical scenario to provide context
- Examine components of an investigative report
- Craft excerpts of each section of a hypothetical investigative report using information from the hypothetical scenario
- Two 15-minute Q&A sessions

The Importance of a Good Investigation Report

- Demonstrate the care and attention given to the factual findings and weighing of the evidence.
- Reach a reasoned, good faith conclusion.
- Document the process.
- Judges are much less likely to disturb factual findings.

A good report begins **before** you start the investigation

- Obtain investigation training (today's focus is on report writing only.)
- Start with an open mind
- Develop your investigation strategy
- Review the allegations and ensure you are clear on what is being alleged
- Determine which of your institutional policies apply (i.e. which version, which policy)

As you begin . . .

- Type or write up your notes as you interview or soon after your interview
- Create a chronology
- Organize and file your documents as you go along

Hypothetical Scenario

- Highlights of the factual pattern.
- What is this case about?
- What facts are important?
- What facts are not important?
- What facts are in dispute?
- What facts are not in dispute?

The Essential Element of a Report

Follow your policy. In general, a report should include:

1. Allegations/Complaint
2. Procedural History
3. Applicable Policies/Procedures
4. Information Considered During the Investigation
5. Evidentiary Standard
6. Undisputed Facts
7. Factual Findings (resolving disputed facts, credibility assessment, etc.)
8. Analysis and Conclusion
9. Recommendations/Sanctions (depending on your role)

Step One: Summary of Allegations

Step One: Summary of Allegations

- Not required to be in writing for Title IX. Check policy.
- Submitted by people unfamiliar with the process
- Often mislabeled and unfocused
- Isolate the allegations that if true, are a violation of the policy
- Focus on who, what, where, when, how

Step One: Summary of Allegations

- Be clear about what was alleged
- One of the common difficulties investigators have with reports is due to the lack of clarity about the allegation
- Frame allegation within the context of the policy

ALLEGATIONS

On (date) (time) (location):

- Blake planned to provide and did provide alcohol to Jaeden and pressured her to drink it to cause incapacitation of Jaeden in order to gain a sexual advantage in violation of Student Conduct Code section # Sexual Exploitation

On (date) (time) (location):

- Blake required Jaeden to perform oral sex on him against her will by holding Jaeden's head down so that she could not stop performing oral sex in violation of the Student Conduct Code Section #
- Blake and Jaeden engaged in oral sex after Jaeden had been drinking excessively and did not have the capacity to consent in violation of the Student Conduct Code Section #
- Blake and Jaeden engaged in vaginal intercourse after Jaeden had been drinking excessively and did not have the capacity to consent in violation of the Student Conduct Code Section #
- Blake physically harmed Jaeden in during a dating encounter when he applied pressure to Jaeden's arms bruising them in violation of the Student Conduct Code Section #

Step Two: Procedural History

Step Two: Procedural History

- How/when did the case come in?
- What did the institution do? When?
- Timing of Investigation:
 - When/where/how witnesses interviewed
 - Footnote witnesses unavailable or unnecessary
- Reasons for delay?
- What role does the investigation play in the process? Prior to hearing panel?

PROCEDURAL HISTORY

The matter was originally reported to (name), Residence Hall Advisor, on (date) (time) by Mackenzie who is the roommate of Jaeden. A “no contact” order was issued on date (see attachment A). Jaeden was interviewed on (date) and initially declined to actively participate in the investigation and later that day changed her mind and agreed to participate. Jaeden requested and was provided with accommodations. Blake has been charged violation of the following sections of the Student Conduct Code:

- Sexual Exploitation of Jaeden
- Sexual Misconduct for conduct engaged in with Jaeden
- Dating Violence for conduct engaged in with Jaeden

[EXPLAIN TIMING OF INVESTIGATION & REASONS FOR ANY DELAY]

Step Three: Applicable Policies & Procedures

Step Three: Applicable Policies/Procedures

- List the applicable policies and procedures
- What version/year is applicable? More than one?
- Use full copies as attachments

Step Three: Applicable Policies/Procedures

- The policies related to Title IX violations and violations of Harassment and Discrimination Policies are obvious but don't forget to look at others, for example:
 - Faculty Manual or Staff Handbooks
 - Retaliation if it appears separately
 - Violations related to use of computing technology or hazing

APPLICABLE POLICIES AND PROCEDURES

College's Harassment and Discrimination Policy
 Student Conduct Code Sections #, #, #

Sexual Exploitation (you can excerpt the policy and attach the full policy for each)

Sexual Misconduct

Dating Violence

**Step Four:
 Information Considered**

Step Four: Information Considered

- These procedures can seriously reroute someone's life
- It is important to show you did not fail to obtain or consider critical evidence



Step Four: Information Considered

- It is generally better to be over inclusive
- Summary of what you collected/reviewed.
- You will not remember this if called to testify. Put it in here.

Step Four: Information Considered

- This is where checklist is handy:
 - Complainant/Respondent correspondence with University
 - Summary of interviews, by person and date
 - Text messages, tweets, SnapChats
 - Emails between parties and between parties and witnesses
 - Video from surveillance cameras
 - Card key data
 - Parking structure data
 - Phone logs
 - Police reports
 - Medical reports

Step Four: Information Considered

- It is important that the report reflect all material and relevant information that was received from the parties that was considered
 - Identify who it was submitted by or whether obtained from the University by the investigator
 - Depending on the volume it can be listed in the report **or**
 - The list might be included in an attachment **or**
 - A combination such as listing all those interviewed and including other things in an attachment

INFORMATION CONSIDERED DURING THE INVESTIGATION***Interviews with the following individuals:***

Jaeden, Complainant 1, (date(s))
Casey, Complainant 2 (date(s))
Mackenzie (date(s)), Reporting witness,
Ethan (date), witness identified by complainant
Members of the swim team on the balcony witnesses identified by Respondent (names and dates)
Others present at the party (names and dates)
Witnesses from the tailgate (names and date)
Name, Resident Advisor
Drunk student passed out
Student who took Instagram photo Blake the Snake, Looking for His Next Drunk Girl #dirtyboy

Documents or and other information reviewed:

Instagram photo
Text messages between Jaeden and Blake (and possibly others)
(security video from campus apartment building where party took place, security video from tailgate party, other photos gathered from witnesses)

Witnesses proposed but not interviewed and why

Step Five: Evidentiary Standard

Step Five Evidentiary Standard

- Follow stated policy.
- For Title IX: Preponderance of the Evidence
NOT beyond a reasonable doubt
 - More likely than not
 - 50 percent plus a feather

EVIDENTIARY STANDARD

In order to determine that a student has violated the Student Code of Conduct, the standard of proof required is a preponderance of evidence, i.e., the evidence demonstrates that it is more likely than not that the conduct occurred. [CITE POLICY SECTION IF APPROPRIATE]

Step Six: Undisputed Facts

Step Six: Undisputed Facts

- What material and relevant facts are undisputed?
- How do we know these facts?
- Why are we including these facts?
- Are they really material and relevant?
- Are they really UNDISPUTED?

Step Six: Undisputed Facts

- Use the witnesses' words.
- Easiest way to make an undisputed fact disputed is to mischaracterize it by trying to summarize.
- Examples:
 - Both Jaeden and Blake agreed that they **met at the party** around 10 p.m. on Saturday.
 - Did they meet for the first time at the party or do you mean they both arrived? Did they intend to meet there?
 - Was it a party? Or just a few friends hanging out? Who said party? You or them?
 - Both Jaeden and Blake agreed that they each arrived around 10 p.m. on Saturday at the off-campus house.

UNDISPUTED FACTS

- It's Saturday night in October.
- Jaeden, a transfer student and Mackenzie, her roommate are both seniors.
- Mackenzie just started dating a swimmer, Ethan, who has invited them to a big party that's going down after the tailgating. They are excited to attend this type of party. They've never been to a party like this and spend a long time deciding what to wear and drinking while getting ready.
- Jaeden has felt anxious this year about her weight and did not eat very much during the tailgating. She wears a new sundress that makes her look super skinny.
- Mackenzie and Jaeden take selfies while walking over and post them on Instagram. Another student, Blake, repeatedly texts Jaeden to see where they are at. He got her number from Ethan and had never texted her previously.
- The party is at an on campus apartment. Every time Walk the Moon's song "Shut Up and Dance" plays, the party-goers are supposed to drink when they hear the word "dance."

UNDISPUTED FACTS (Cont.)

- She looks for her phone and texts Mackenzie "where are you???" Mackenzie responds "WTH where are you? I tried to take you home but you were wasted and wanted to stay with Blake."
- There are no other complaints or disciplinary proceedings against Blake or the men's swim team or the students in the apartment where this occurred.
- There is an Instagram photo of Blake from Saturday night licking a beer pong table. The photo was posted by another senior and the caption reads "Blake the Snake, Looking for His Next Drunk Girl #dirtyboy."

Step Seven: Factual Findings (Resolution of Disputed Facts)

Step Seven: Factual Findings

- SHOW YOUR WORK.
- For disputed key facts, go point by point:
 - What do you think happened?
 - Why?
 - On what evidence do you base this?
 - If a witness, why was he or she more credible than someone else?
 - Corroborating evidence?
 - Inconsistencies?
- If you have critical corroborating evidence, cite it.

Step Seven: Factual Findings

Resolving Credibility

- Is there corroborating evidence?
- Are there inconsistencies?
- Insufficient explanation of inconsistencies?
- Consider the logic of person's narrative.
- Consider the impact of trauma.

Show your credibility assessment.

Step Seven: Factual Findings

- Use the language of the witnesses – not your language.
- Be detailed and precise.
- Often helps to group this by allegation/issue.
 - I. Factual Findings With Respect to Sexual Misconduct
 - II. Factual Findings With Respect to Retaliation

SAMPLE FACTUAL FINDINGS PERTAINING TO SEXUAL EXPLOITATION

SEXUAL EXPLOITATION

With respect to Jaeden's capacity to consent, I find the following facts:

- *Specify any facts pertaining to earlier alcohol, food, medicine taken by Jaeden.*
- Jaeden reported that she had been drinking since 9:30 p.m. She reported that she had 2 shots of vodka with Mackenzie around 9:30 p.m. at Mackenzie's house before leaving the room. This was confirmed by Mackenzie who recalled that she was almost out of vodka so she remembered that there were only 4 shots left by that night. I find Jaeden's report to be credible and corroborated by Mackenzie's specific recollection.
- *(Name the witnesses.)* corroborated Jaeden's report that Blake provided her with a 20 oz red solo cup of beer 30 minutes after she arrived at *(give house location or address and location they were at – in the hall, in the yard, etc.)* and told her to finish it, pressured her to play beer pong, and filled up the cups in the second game of beer pong with fireball (a cinnamon flavored whiskey). I find Jaeden to be credible on the point that she felt pressured to drink. This was corroborated by several witnesses, including....*name*
- The parties both admit that they began playing beer pong at 10:30 p.m. There is a photo from 10:40 that supports this

- By the end of the second beer pong game, at approximately 11:00 p.m., Jaeden had consumed the 20 oz beer Blake had her finish before the beer pong games began and 5 full 20 oz beers during the first beer pong game and 4 half full 20 oz cups filled with Fireball during the second beer pong game.
- After the second beer pong game, after it was confirmed by (*name the witnesses*) that Blake gave Jaeden another full 20 oz cup of Fireball and began to “make out” with her. Both parties admit this.
- The parties both went into a bedroom. I did not find Blake’s statement credible that he said “they should go into a room instead of making out on the roof deck because he is respectful of all women and didn’t want her to do anything she would regret later.” This statement was inconsistent with his general manner of speaking and occurred after a prompting and note from his attorney.

Questions & Answers On Part One

Step Eight: Analysis of Undisputed Facts and Factual Findings/Conclusion

Step Eight: Analysis/Conclusion

- NOT for those who are only fact-finders.
- Put it all together.
- Looking for violations of policy NOT law
- Take factual findings and analyze them under the applicable policy
- Go allegation by allegation
- Explain your reasoning

Application of Step Eight: Analysis/Conclusion

Two major areas of dispute:

- Consent
 - How was it communicated?
 - Do the facts support consent as defined in your policy?
- Intoxication v. Incapacitation
 - Consumption
 - Conscious
 - Coordinated
 - Communications
 - Corroboration

ANALYSIS

SEXUAL EXPLOITATION – It is alleged that Blake planned to provide and did provide alcohol to Jaeden and pressured her to drink it to cause incapacitation of Jaeden in order to gain a sexual advantage in violation of Student Conduct Code section # Sexual Exploitation

ANALYSIS (Cont.)

Sexual exploitation includes, but is not limited to, causing or attempting to cause incapacitation of another to another person to gain sexual advantage. As set forth above, *(name the witnesses.)* corroborated Jaeden's report that Blake provided her with a 20 oz red solo cup of beer 30 minutes after she arrived at *(give house location or address and location they were at – in the hall, in the yard, etc.)* and told her to finish it, pressured her to play beer pong, and filled up the cups in the second game of beer pong with fireball (a cinnamon flavored whiskey). Several members of the swim team reported that Blake was an established beer pong champion. Blake knew that Jaeden was inexperienced at beer pong and given his superior skill level and experience it was very likely he would win at the game. According to the rule of beer pong Jaeden would have to drink a large quantity of alcohol in the process of the game if she was losing. The person who loses the game has to drink the cups of alcohol that are laid out. By the end of the second beer pong game Jaeden had consumed the 20 oz beer Blake had her finish before the beer pong games began and 5 full 20 oz beers during the first beer pong game and 4 half full 20 oz cups filled with Fireball during the second beer pong game. After the second beer pong game, after it was confirmed by *(name the witnesses)* that Blake gave Jaeden another full 20 oz cup of Fireball and began to "make out" with her.

ANALYSIS (Cont.)

(Name witnesses) reported that Blake has engaged in a pattern of identifying someone who he intends to get drunk and then have sex with. *(give examples of reports from factual findings)* Blake then goes about challenging them to beer pong as way to get them very drunk. Blake can be fairly assured the person will get drunk do to his superior beer pong talent. These same witnesses also reported that Blake's pattern also includes targeting people who will be impressed with him as a popular member of the swim team. *(add supporting facts from the witness interviews and factual findings)* When Blake found out Jaeden was coming to the off campus house he asked Ethan for her telephone number and began asking her to connect with him after she arrived at the house. Blake mentioned to the student who took the Instagram picture that he had someone in mind for that night and "planned to get lucky". This same student took the picture of Blake licking the beer pong table with Jaeden in the background and posted the "Blake the Snake" picture. In order to flatter and impress Jaeden, Blake told Jaeden she looked hot. Even though Jaeden told Blake she had arrived at the house "buzzed" from the tailgate he pressured her to drink more alcohol. After Jaeden had consumed a large quantity of alcohol at his urging Blake then started to make sexual advances towards Jaeden, separated her from the view of others by taking her into a bedroom when she was unsteady on her feet and engaged in further sexual activity with her. Starting with the text messages, and continuing by providing Jaeden with a drink, encouraging her to finish it, challenging her to beer pong, switch the content of the beer pong cups from beer to Fireball along with the comments he made to others support that Blake intended to target Jaeden for sex and caused Jaeden to become incapacitated to gain sexual advantage over her.

ANALYSIS/CONCLUSION**SEXUAL EXPLOITATION OF JAEDEN BY BLAKE**

Based upon a preponderance of evidence, I find that the allegation that Blake planned to and did provide Jaeden with alcohol and pressured her to drink alcohol to gain a sexual advantage is substantiated, and this finding establishes a violation of the Section # of the Student Conduct Code related to sexual exploitation.

ANALYSIS**SEXUAL MISCONDUCT****VAGINAL INTERCOURSE**

It is alleged that Blake and Jaeden engaged in vaginal intercourse after Jaeden had been drinking excessively and did not have the capacity to consent in violation of the Student Conduct Code Section #.

ANALYSIS (Cont.)

Sexual misconduct includes any sexual or romantic behavior that is attempted or completed that goes beyond the boundaries of consent. Consent means affirmative, conscious, voluntary agreement by both partners to engage in sexual activity. Affirmative consent must be continuously present throughout the interaction, for all sexual activity and may be revoked at any time. It is the responsibility of each party to ensure that s/he has the affirmative consent of the other party to engage in sexual activity. Consent cannot be inferred from silence or the absence of "no" or lack of protest or resistance, cannot be obtained from someone who is asleep or otherwise mentally or physically incapacitated and this condition was known or reasonably should have been known to the other individual(s) involved in the designated incident. Incapacitation is defined as the state where someone cannot make rational, reasonable decisions because they lack the capacity to give a knowing consent. A person can be incapacitated by intoxicants such as alcohol.

ANALYSIS (Cont.)

Blake's account of the verbal agreement by Jaeden to vaginal intercourse was not found to be credible. While it is possible that Jaeden removed her clothes herself, it is not reasonable for Blake to rely upon that action as consent to vaginal intercourse given Jaeden's level of intoxication.

ANALYSIS (Cont.)

Jaeden reported to Blake that she was “recovering” from tailgating when he first offered her a drink. It was found that Jaeden was in Blake’s presence at the party from 30 minutes after her arrival at the party. During that time he observed her drink 6, 20 oz beers (one he gave to her before starting beer pong and urged her to finish and 5 she drank as a result of playing the first round of beer pong). He also observed her drink 4, 20 oz. cups of Fireball that he filled halfway or 40 total ounces of Fireball during the second beer pong game. He then provided her with a 5th 20 oz. cup of Fireball after the second beer pong game concluded. It is unclear how much of the 5th cup she drank. Blake admitted that he and Jaeden first began kissing, touching and had vaginal intercourse after the second beer pong game ended. This means Jaeden had consumed 120 ounces of beer and at least 40 ounces of Fireball before any sexual contact occurred between Blake and Jaeden. Given that Blake either handed Jaeden the cups of alcohol or filled up the cups of alcohol he observed her to drink he should have reasonably know how much alcohol she consumed. Given the amount of alcohol Jaeden consumed Blake knew or should have known she was intoxicated. Further, it was found that Jaeden was observed to be unsteady on her feet as Blake had his arm around her and guiding her into the bedroom at the party where the sexual activity occurred.

ANALYSIS (Cont.)

While Blake cannot be aware of how much alcohol that Jaeden consumed earlier in the day at the tailgate or that she had not eaten much, he was aware of the amount of alcohol she consumed while they were together. He was also aware that she was unsteady on her feet and needed to be assisted to walk. It was found that Jaeden had very slurred speech to the point some of her words were undistinguishable and her responses to basic questions did not make sense. It was further found that Jaeden was confused about where she was at prior to moving into the bedroom with Blake. Given the amount of alcohol Jaeden consumed over the period of time they were together Blake, her size, her lack of coordination along with impaired speech and mental confusion, Blake should have reasonably known Jaeden was so intoxicated that she did not have the capacity to provide affirmative consent to any sexual acts.

ANALYSIS/CONCLUSIONS:

Based upon a preponderance of evidence, I find that the allegation that Blake engaged in vaginal intercourse after Jaeden had been drinking excessively and did not have the capacity to consent is substantiated, and this finding establishes a violation of the Section # of the Student Conduct Code related to Sexual Misconduct.

Step Nine: Recommendations & Sanctions

Step Nine: Recommendations & Sanctions

- Know your role. Do not include or opine unless required to do so by policy.
- It is important to take an action sufficient to abate the behavior and improve the learning environment
- Consistent with other actions taken by the institution for similar conduct

SANCTIONS

Given the severe nature of the violations, you are sanctioned as follows:

Suspension

You are hereby suspended from College from the date of this letter to (Date). During that time, you are not permitted to enter any College property or attend any College events. *(note whether or not this will appear on the transcripts)*

Re-Enrollment Requirements

If you re-enroll at College after (date) you must not enroll in any course sections or be assigned to any projects in which the complainant is concurrently enrolled or at any time or be proximate Complainant while you continue to be enrolled. Should you be enrolled in a course, assigned to a project, or otherwise proximate to Complainant, you must immediately notify the Dean of Students such that you can be removed from the course or project.

Deferred Expulsion

Upon reenrollment, you will also be placed on a permanent deferred expulsion status for the remainder of the time that you are enrolled at College. Should you be found responsible for any additional policy violations following your return to enrollment or during the period of your suspension, you will be expelled from the University.

No Contact Order

The no contact order between you and the Complainant, which was previously imposed, will remain in effect during the term of suspension, and if you elect to re-enroll, for the remainder of the time that you are enrolled at College. You are ordered to cease and desist from all contact with the complainant. No contact includes, but is not limited to, approaching, speaking, sending e-mails, calling on the phone, texting, sending messages via Facebook or any other social networking site, sending instant messages, sending messages or notes through others, sending written letters or notes, sending anonymous notes or other items, pounding on door or walls, or talking through doors or walls with the Complainant.

Dating Violence Course

Prior to reenrollment, you will be required to take a dating violence course (and pay any associated cost) through the (enter provider) and submit a copy of the course completion certificate to (enter where), which will be verified through the company. You must pay all costs associated with this course. The respondent will find information about how to enroll in this course at [http\(link\)](#)

Meet with a University Official

During the semester that you return, you will be required to meet with (name) the (title), or another individual designated by the Dean of Student Affairs Office to participate in ongoing educational sessions related to this matter for a period to be designated by (name and title).

Reflective Research Paper

Prior to the end of the first semester that you reenroll, after the completion of the dating violence class, meeting with (name and title), and you must write a 10-page paper about relationship abuse/interpersonal violence. This paper must be academically-based, thoughtful, self-authored, and well-considered and may not exclusively focus on your own personal feelings of victimization, but must also significantly address the ways in which your behaviors negatively affected the Complainant and others. It must include your reflections on your meetings with (name and title) and the course through the (provider). The required 10 pages in length shall be double-spaced in 12-pt. Times New Roman with 1-inch margins and must follow appropriate academic formatting. Please cite any sources on a separate page that will not count toward the 10-page minimum. Email the paper to (name and location/email) prior to the end of the first semester of your re-enrollment.

STEP TEN: APPEALS PROCESS

Appeals Process

- Follow your process.
 - What are the grounds for an appeal?
 - Does your report eliminate any basis for an appeal?
- Know the process in advance so you know where your report may end up.
 - i.e. do the parties receive a summary or the full report in order to appeal?

Other Considerations

Including Evidence in An Appendix

- Policies (version)
- Witness lists/summaries (if applicable)
- Correspondence
 - Tweets/texts/social media messages
 - Photos/Instagram/SnapChats
- ASK: Why am I including this?
- Should substantiate a KEY point.
- DO NOT use as a substitute for analysis of the evidence.
- Copy of appeal policy

Top Ten Considerations/Take Aways

1. Organize as you go along.
2. Apply the correct version of the policy. They change frequently.
3. Document the institutional process.
4. Apply the correct standard of proof. You are never going to be “sure” or “know exactly what happened.”
5. Recap the evidence considered and note if something wasn’t considered and why. You won’t remember later.

Top Ten Considerations/Take Aways

5. Use the language of the case. The witnesses’ words.
6. Cite evidence and attach for key points. Don’t overdo it. You have to analyze – not the reader.
7. Show your work.
8. Credibility resolutions are difficult but necessary.
9. Write for an audience that knows nothing about this matter. You’ve been immersed. They haven’t.
10. Proofread carefully and check dates – smaller inadvertent errors can undermine the report.

Questions & Answers

On Part Two

Resources on Writing Investigative Reports

Investigations Generally:

[Managing Internal and Governmental Investigations](#), David Fein et al., 2002: discusses considerations when making disclosures public in investigative reports on page 4

[Conducting Internal Investigations](#), Michael Hawkins, 2004: discussion of how to close an investigation and documentation begins on page 6

[Internal Investigations](#), Jeffrey Cooper, 2004: page 4 contains a brief section on communicating the decision

[Investigating Discrimination Complaints: Concluding the Investigation and Communicating the Findings](#), Marcia Mahoney, 2007: a paragraph summarizing the investigative report begins on page 4

[Conducting Internal Investigations](#), Caroline Laguerre-Brown, 2011: a section on report writing begins on page 22

[Conducting the High Profile Campus Investigation](#), Stephen Hirschfeld and Bart Schwartz, 2012 Annual Conference: a short section on investigative reports appears on page 2

[Fair, Square, and Legal: Tips and Techniques for Effective Internal Investigations](#), Allison Boyle et al., 2013: a short paragraph about written reports is on page 11

Specific Types of Investigations:

Criminal Matters

[The Best Defense: Navigating Complex Criminal Matters on Your Campus](#), Jamie S. Gorelick et al., 2008: page 13 contains sections on disclosing information to the government and to the public

Discrimination and Harassment Claims

[Investigating Discrimination and Harassment Claims: How to Stay Out of Hot Water AND Do the Right Thing](#), Stephen J. Hirschfeld, 2007: page 4 discusses the investigative report in such situations

Faculty Misconduct

[Faculty Behaving Badly: How to Effectively Address Faculty Misconduct](#), Stephen J. Hirschfeld, 2010: page 7 discusses how to prepare a report of the institution's findings

Title IX

[Consent, Credibility, and Confidentiality: Tackling Challenging Issues in Title IX Investigations](#), Pamela Heatlie et al., 2014: an Investigative Plan and checklist begins on page 35; the checklist for writing the investigative report is on page 40. Page 41 contains a template for an investigative report.

[Crafting Compliant, Effective, and Efficient Sexual Misconduct Policies and Procedures](#), 2014: a section on the investigator's activities and report begins on page 26

Disclaimer

This presentation is not intended to substitute for legal advice from your own campus counsel.

NACUA Webinar
November 19, 2015
Case Study for Writing an Investigation Report

1. It's Saturday night in October. The College has just won a major sporting event. Parties are everywhere on and off campus. Students have been tailgating since dawn.
2. Jaeden, a transfer student and Mackenzie, her roommate are both seniors. They have been diligent students during their first three years but decide that it's time to enjoy life before they have to join "the real world."
3. Mackenzie just started dating a swimmer, Ethan, who has invited them to a big party that's going down after the tailgating. They are excited to attend this type of party. They've never been to a party like this and spend a long time deciding what to wear and drinking while getting ready.
4. Jaeden has felt anxious this year about her weight and did not eat very much during the tailgating. She wears a new sundress that makes her look super skinny.
5. By the time Mackenzie and Jaeden leave for the party, they are both buzzed. They take selfies while walking over and post them on Instagram. Another student, Blake, repeatedly texts Jaeden to see where they are at. He got her number from Ethan and had never texted her previously. Jaeden is flattered by the attention.
6. The party is at an on campus apartment. Every time Walk the Moon's song "Shut Up and Dance" plays, the party-goers are supposed to drink when they hear the word "dance."
7. There is a game of beer pong happening in the hallway. After about 30 minutes, Mackenzie and Jaeden go into the hallway where Ethan and Blake are playing beer pong. Blake is the reigning champion. Blake spots Jaeden and asks her where her drink is. Jaeden is holding her outdoor learning and adventure club water bottle and says that she is recovering from tailgating. Blake tells her about the Shut Up and Dance rule and hands her a drink. Jaeden sips it and continues talking to the group. Blake tells her she has to finish it. Jaeden feels shy and finishes it.
8. By this time, Blake and Ethan are pretty drunk and win the next round of beer pong. Blake turns to Mackenzie and Jaeden and says "you're up." Mackenzie laughs and takes the pong ball. Jaeden, trying to be brave, chugs another drink that Blake had handed her and starts to play.
9. Mackenzie and Jaeden are not very good at beer pong and end up drinking most of the cups on the table. Blake looks at Jaeden and asks her if she wants to make it more interesting. He refills the cups with Fireball and the group plays again, Mackenzie and Jaeden again losing.
10. A large group of swimmers come out into the hallway to get Ethan and Blake for a new game inside. Mackenzie and Ethan go inside with the group. Only a few people remain out in the hall, including one student who appears to be passed out in a corner. Blake takes Jaeden by the arm and says "why don't you stay out here with me? You looked super hot in your selfie that you posted earlier." Jaeden is flattered by the compliment and decides to stay with Blake. Blake pours her another glass of Fireball and they begin kissing.
11. Subsequently, Blake and Jaeden leave and go into a bedroom. They begin kissing and lie down on the bed. Jaeden says that she should leave and Blake responds that she can't flirt with him all night and then just expect to go home. Jaeden performs oral sex on Blake, who holds her head down so she can't stop. (This is the last thing she remembers).
12. Jaeden wakes up in a room that she doesn't recognize. All of her clothes are off and Blake is passed out next to her. She has red marks on her arms and her vagina feels sore. She doesn't remember what happened or how she got to this room.

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13. She looks for her phone and texts Mackenzie "where are you???" Mackenzie responds "WTH where are you? I tried to take you home but you were wasted and wanted to stay with Blake." Jaeden quickly gets dressed and leaves.
14. When Jaeden returns to the room, she tells Mackenzie what just happened. Mackenzie is immediately upset and wants to tell the RA. Jaeden doesn't want anyone to know. She doesn't remember exactly what happened and she doesn't want to get Blake in trouble. She tells Mackenzie that she had a lot to drink and that she is probably to blame as well. Mackenzie agrees to keep it a secret because she knows that Jaeden lacks self-confidence and has very religious parents so Mackenzie doesn't want her to feel uncomfortable.
15. The next day, Mackenzie, who had trouble sleeping since Jaeden told her what happened, told Ethan about what Jaeden told her. Ethan looks upset and says that Blake is known for being kind of sketchy. He said he thought Jaeden knew that and didn't care because it seemed like she was having fun with him. Mackenzie asks what Ethan means about Blake being sketchy and Ethan tells Mackenzie a story about a freshman swim team member that Blake got drunk and had sex with earlier that semester. Mackenzie decides she has to tell the RA about what happened to Jaeden. The next night, Mackenzie convinces Jaeden that she has to tell the RA. During the conversation with the RA, no mention of the freshman swimmer was made. The RA told the Title IX Coordinator who has asked you to commence an investigation.
16. When you meet with her, Jaeden gives a brief overview of the night and says that she does not want to bring a complaint or go to law enforcement because she was drunk too, she doesn't really remember what happened and she doesn't want to get Blake in trouble. She is clearly embarrassed and does not want to talk about it but agrees to proceed with an investigation. She doesn't disclose much beyond the facts stated above.
17. There are no other complaints or disciplinary proceedings against Blake or the men's swim team or the students in the apartment where this occurred.
18. You check Twitter, Instagram and Facebook. There is an Instagram photo of Blake from Saturday night licking a beer pong table. The photo was posted by another senior and the caption reads "Blake the Snake, Looking for His Next Drunk Girl #dirtyboy."
19. While conducting the investigation, you learn the identity of the freshman swimmer, Casey, who may have had a similar problem with Blake.
20. After a lengthy round of negotiations, Blake and his attorney agree to meet with you. At this time, you have information from all involved College personnel, and you have spoken to Jaeden, Mackenzie, Ethan, other members of the swim team and several of the party goers from the night of the incident.
21. They confirmed the amount of alcohol reported by Jaeden and that Jaeden was barely standing up on her own when she left the roof with Blake.
22. However, they uniformly reported that Jaeden seemed to be having fun, that everyone knew that she was interested in Blake and that anything that happened was "definitely consensual." Many students said that everyone knows that you have to have affirmative consent so obviously Blake would have gotten it.
23. You have also spoken to the freshman swimmer, Casey. Casey reported that Blake had pushed him to play beer pong and that he felt pressured to drink with him because he was a popular senior on the swim team. He also passed out and woke up naked next to Blake. He reports Blake saying that "he, Casey, can't flirt with him all night and then just expect to go home." He told his friend from high school via text when it happened but did not tell anyone else. He has

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consented to the investigation but fears retaliation and shunning by the team. Casey has never met Jaeden.

24. During the interview, Blake asks if Casey is the complainant. Blake discloses that Casey is obsessed with him and that he texts him constantly. He produces six weeks of text messages from Casey. The text messages indicate that Casey is extremely interested in pursuing a relationship with Blake and is upset that he has not reciprocated this interest.
25. During the interview, Blake admits that he had sex with Jaeden and says that it was consensual. He describes her as “kinda drunk” but that she was only leaning on him as they left the roof deck because she was super into him and definitely wanting him right there.
26. He told her they should go into a room instead of making out on the roof deck because he is respectful of all women and didn’t want her to do anything she would regret later.
27. Blake denies stating that “she can’t flirt with him all night and then just expect to go home.” He would never say that.
28. He reports that they started kissing on the bed, that Jaeden offered to give him oral sex, that he consented. He also reports that after the oral sex, he asked her if it was ok to take off her pants and that she ripped them down. He took this to mean that she was interested.
29. He then pulled her onto the bed and asked her “if she would like to engage in consensual sexual activity” and she said “yes.” When you ask if those were his exact words, Blake pauses, his attorney sends him a note, and then he again responds “yes.”
30. According to Blake, they had sex and then both fell asleep. When he woke up, she was gone.

THE ARCHITECTURE OF AN INVESTIGATIVE REPORT

November 19, 2015

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I. HEADER

- a. Date
- b. Name and title of the person to whom the report is addressed
- c. Confidentiality header?

II. SUMMARY OF ALLEGATIONS/COMPLAINT

- a. Content
 - i. Who—Who are the parties?
 - ii. What—What are the parties alleging?
 - iii. When—When did the alleged misconduct occur?
 - iv. Where—Where did the alleged misconduct occur?
 - v. How—How was the alleged misconduct said to have occurred?
- b. Frame allegations in the context of the applicable policy

III. PROCEDURAL HISTORY

- a. Purpose: The report should explain the timing of the investigation and reasons for any delay.
- b. Content
 - i. How/when did the case come in?
 - ii. What has the institution done so far? When did the institution take this action?
 - iii. What is the timeline for the investigation?
 - iv. Explain any reasons for delay.
 - v. What role does the investigation play in the overall process?

IV. APPLICABLE POLICIES AND PROCEDURES

- a. Content**
 - i.** List applicable university policies and procedures
 - ii.** If more than one policy exists, identify what version/year is applicable
 - iii.** Attach full copies of the applicable policies and procedures to the report
- b. Sources**
 - i.** University Policies
 - ii.** University Procedures
 - iii.** System Policies
 - iv.** Faculty Manuals
 - v.** Staff Handbooks
 - vi.** Student Codes of Conduct
 - vii.** Computer and Technology Use Policies
 - viii.** Retaliation Policies

V. INFORMATION CONSIDERED DURING THE INVESTIGATION

- a. Content**
 - i.** This section of the report summarizes all of the content that is collected and reviewed in the course of the investigation.
- b. Sources of Information (Examples of potential sources of information)**
 - i.** Complainant/Respondent correspondence with university
 - ii.** Summary of interviews with parties and witnesses, organized by person and date
 - iii.** Tweets, Snap Chats, Instagram, or other social media
 - iv.** Photographs
 - v.** Emails or texts between parties
 - vi.** Emails or texts between parties and witnesses
 - vii.** Video footage from surveillance cameras
 - viii.** Card key data
 - ix.** Parking structure data
 - x.** Phone logs
 - xi.** Police Reports
 - xii.** Medical Records

VI. EVIDENTIARY STANDARD

- a. Content: The report should set forth the evidentiary standard, as stated in the applicable policy or procedural document.

VII. UNDISPUTED FACTS

- a. Content
 - i. This section of the policy details the undisputed material facts.
- b. Tips
 - i. Include only relevant and material facts that lead to the conclusion
 - ii. Use party/witness words
 - iii. Chronological order as an organizing principle

VIII. FACTUAL FINDINGS

- a. Content: This section of the report resolves disputes of fact.
- b. Tips
 - i. Show your work!
 - ii. Focus on disputed, key facts.
 - iii. Be detailed and precise.
 - iv. For each disputed key fact, be able to articulate the following:
 - 1. Describe what most likely happened.
 - 2. Why?
 - 3. On what evidence are you basing this conclusion?
 - 4. If your conclusion was based on credibility evidence alone, why do you believe that one person is more credible than another? Was there any corroborating evidence? Inconsistencies?
 - v. Credibility Assessments
 - 1. Is there corroborating evidence (e.g. a key card time stamp to confirm a party's disputed recollection of the time of the event)?
 - 2. Are there any inconsistencies in testimony? If yes, was the inconsistency resolved through other testimony or was it immaterial or irrelevant?
 - 3. Consider the logic of the person's narrative.
 - 4. Consider the impact of trauma.

IX. ANALYSIS AND CONCLUSIONS

- a. Content: This section pulls everything together. You will examine the undisputed facts and any resolved factual disputes to ascertain whether or not the evidence gives rise to a policy violation.
- b. Tips:
 - i. Organize by alleged policy violation.
 - ii. Go allegation by allegation.
 - iii. Explain your reasoning.
 - iv. Make sure the findings are consistent with policy definitions.

X. RECOMMENDATIONS/SANCTIONS (IF APPLICABLE)

- a. Content: If the investigator finds a party responsible for a policy violation, this section of the report sets forth recommendations and/or sanctions.
 - i. *Note: Whether or not you are called upon to make recommendations or impose sanctions will depend on your role as it is defined in the policy. Do not include this section unless you are required to do by policy.*
- b. Tips
 - i. Applicable sanctions may be set forth in university policy/procedural documents.
 - ii. Sanctions should be proportionate to the offense.
 - iii. Sanctions should be sufficient to abate the behavior, to provide a safe, nondiscriminatory the learning environment, and to prevent the conduct from re-occurring.
 - iv. Sanctions should be consistent with other sanctions for similar misconduct.

XI. APPEALS PROCESS (If one is available)

- a. Content: This section of the report sets forth the process for the appeal
 - i. To whom do parties direct appeals?
 - ii. How does a party appeal?
 - iii. Is there a deadline for an appeal?
 - iv. On what grounds may a party appeal? (Alternatively, you may wish to cross reference the Appeals' Policy.)
 - v. What is the standard for appeal?

XII. ATTACHMENTS

- a. Full Policies and Procedures
- b. Witness Lists/Summaries
- c. Correspondence
 - i. Key Emails/texts
 - ii. Tweets//social media messages
 - iii. Phone logs
- d. Photos/Instagram/SnapChats
- e. List of any physical evidence not attached
- f. Building logs
- g. Police Reports
- h. Incident Reports

Purdue University, Checklist for Conducting OIE
Investigations (adopted from United Educator's
checklist), 2014

Originally provided as materials for the following NACUA Annual Conference Session:

Monica Bloom, Pamela Heatlie, Sarah Rankin, and Scott Roberts, "Consent, Credibility, and Confidentiality: Tackling Challenging Issues in Title IX Investigations" (NACUA Annual Conference, June 2014).

Inquiry Meetings	Yes/No/Not Applicable	Further Steps
Explain policies and procedures		
Explain Informal, Formal, and University-Initiated (if applicable)		
Advise potential complainants of all relevant filing deadlines		
Provide a copy of Fostering Respect		
Follow-up within 2 weeks		
Send out closing letter if no complaint filed		

Special Considerations for Sexual Assault Investigations	Yes/No/Not Applicable	Further Steps
Notify Title IX Coordinator within 1 day of receiving report		
Notify OSRR personnel to coordinate outreach/support to affected student		
Consider whether there are any remedial measures necessary		
Confirm and document Clery Report (and submit report if not previously submitted)		
Confirm whether complaining party wishes to file a complaint or have University initiate		
University-initiated: Prepare narrative document and submit to OIE Director within 1 business day of completing intake meeting. Include recommendation about whether no contact directive is appropriate.		
Provide complaining party with a copy of Know Your Rights and document		
Advise complaining party when matter will be initiated by the University		
Consider whether there is a certain order in which parties and witnesses should be interviewed		

Preparing to Investigate	Yes/No/Not Applicable	Further Steps
<i>Developing a Plan</i>		
Define the investigation scope (e.g., fully understand the scope of the allegations at the outset) based on the complainant meeting and written complaint		
Develop a preliminary timeline of events based on the complaint or incident report		
Develop an initial witness list		
Consider what testimony or other information is necessary to confirm or rebut the allegations		
Consider whether there is a certain order in which parties and witnesses should be interviewed		
<i>Gathering Materials</i>		
Applicable policies and procedures		
Campus police or security reports		
Local police reports		
Security videotapes		
Photos or videos from parties or witnesses		
Voice mails, text messages, social media postings, phone recordings		
Personnel files, performance reviews, and other employment-related documentation		
Information from any prior investigations involving the same parties		
Searches of computers, office space, residence halls; e-mails from network		
<i>If so, consult with legal counsel</i>		
<i>Interview Locations</i>		
Can interviews take place in person?		
<i>If not, consider Skype or Face Time</i>		
Secure private, comfortable meeting locations in neutral territory		
<i>Potentially Reluctant Interviewees</i>		
Anticipate procedural questions and be prepared with answers		
Be prepared to answer inquiries about having attorneys, parents, therapists, etc. present		
Explain general time frame for process		
Explain importance of confidentiality and prohibition on retaliation (zero tolerance)		
Explain how information shared with you will be used		
Provide party/witness opportunity to ask questions before beginning questioning		

<i>Conducting the Interview</i>		
Ask broad, open-ended questions		
Ask specific questions only as needed to clarify items that are unclear		
Assure that all critical issues are raised and parties given opportunity to respond		
Clarify slang or unfamiliar terms		
Avoid interrupting the flow of narrative and encourage person to keep talking		
Establish timeline with interviewee		
<i>Credibility Determinations</i>		
<i>Use the interview to assess credibility of the parties and witnesses, taking into account:</i>		
Individual's general demeanor (e.g., is the individual appear open and honest v. evasive, argumentative, hostile)		
Person's opportunity and capacity to observe the event		
Contradiction or consistency with other information		
Whether there is reason to lie		
Improbability of account (i.e., does it make sense?)		
Any prior inconsistent statements		
<i>Concluding the Interview</i>		
Ask "anything else" until the person says no		
Ask for names of all potential witnesses		
Request any documentation the interviewee may have		
Remind interviewee next steps and relevant timeline(s)		
Thank interviewee for cooperating		
Invite interviewee to follow up with additional information		
Remind interviewee about need for confidentiality		
<i>Documenting the Interview</i>		
Take careful notes		
After the meeting, review the notes and ensure accuracy of meeting		

Special Considerations for Interviewing Alleged Sexual Assault Victim	Yes/No/Not Applicable	Further Steps
<i>Basic Questions</i>		
What happened?		
When did it happen?		
Where did it happen?		
Was anyone else there? If so, who and for how long?		
Have you spoken to others about this? To whom and when?		
Have you provided written statement to anyone?		
Have you posted anything about this online, including FB, Twitter, blogs?		
Have you created or kept notes, diary entries, or other writings about the incident?		
Do you know of others who might have similar concerns?		
How do you know respondent?		
Have you had any contact with respondent since the incident? If so, when and nature of contact?		
Were either of you drinking or taking drugs?		
How have you been impacted by this?		
What outcome would you like to see?		
(If delayed report) What prompted you to report?		
Have/will you report to police?		

Documenting and Completing the Investigation	Yes/No/Not Applicable	Further Steps
<i>Analyzing the Evidence</i>		
Review and confirm you have obtained copies of all relevant documents		
Review interview notes and determine whether follow-up is necessary with any parties or witnesses		
Review all written documentation, including notes, photos, e-mails, etc.		
Consider the following items to evaluate credibility:		
Is there corroborating evidence that supports either party's account?		
Did anyone make statements that later proved untrue? (If yes, consider following up with the interviewee to give opportunity to address.)		
Did either party's account or chronology differ significantly from witness accounts?		
Did either party's account conflict with written/photo/video evidence?		
Did either party appear particularly forthcoming or particularly evasive?		
<i>Preparing Report</i>		
Address all allegations		
Specifically address credibility of the parties		
Focus on factual observations and conclusions, not speculation		
Make recommendations as to sanctions, if any		