

How to Complete an Effective Investigation

February 4, 2021

Topics covered today

- Planning an investigation
- Interviews and tips
- Key policy factors to consider
- Evaluating the evidence
- Putting the report together
- Example

Planning the investigation

- Familiarize yourself with the complaint and action to-date
- Familiarize yourself with relevant policies
- Make a plan
 - Use Investigation Checklist
 - Think about who to interview (in what order, do you need each witness, etc.)
 - Think about the evidence you have already
 - Think about communications and notice periods
- Use the Title IX Coordinator for assistance in planning

Interview questions

- Plan interview questions in advance
 - Think about the complaint and alleged policy violations and direct questions to those issues
- Look at sample questions (ATIXA samples)

Interview Tips – Sexual Harassment/Assault

- Consider safety concerns and the need for a threat assessment.
- Timing of evidence collection and medical treatment is an important consideration for a reporting party. If evidence was collected or a medical exam was conducted, investigators may need access to those records, if the reporting party consents. In some cases, the reporting party will be able to obtain a copy. Some agencies may be willing to provide a redacted version in place of one with identifying information. In a preponderance setting, medical evidence can be of limited value because sex is usually admitted, but said to be consensual. When sex is contested, or a blood/urine screening or photos or descriptions of injuries are needed, forensic and medical evidence may be more useful.
- Be sure you understand the language that parties use to describe behavior. For example, “talking” means hooking up to many students; “hooking-up” can mean everything from kissing to having sex; “hitting it from behind” refers to sex in the doggy-style position, “to nut” means to climax, etc. If you are unsure of the meaning of a phrase used by a student, ask for clarification.
- The credibility of the parties may be an important consideration in your analysis, as often there will be no witnesses.
- When alcohol and other drugs (AOD) are used by one or both parties, details about consumption will be highly relevant in your analysis. What others observed about the parties’ demeanor and behavior will be as well. While many AOD-related cases hinge on the question of incapacity, the majority hinge on the question of whether the responding party should have known of that incapacity (i.e., Would a reasonable person, sober and using good judgment, have known that the reporting party was too drunk/drugged to make a rational, reasonable decision about sex?).
- Consider whether investigators should visit the location of the alleged misconduct to gain a clear picture of the setting (e.g., Does the door lock? Is there light coming in from outside? Would neighbors hear conversation or a commotion?).
- Text messages, voice mails, phone calls, photos, videos, and social media messages may be important for your investigation. Parties or witnesses may have these stored or backed up on devices. Your campus IT personnel, data forensics firms, and/or a private investigator may be able to help you retrieve electronic evidence.
- Many large parties use designated sober individuals to manage the parties. Identify and interview these individuals if relevant to the inquiry.
- It is not unusual for the level of involvement of a reporting party to wane over the course of the investigation. Use victim advocates or advisors to facilitate communication with a reporting party who has gone off the radar.
- Use trauma-informed interview techniques to make it easier for the reporting party to share difficult details, minimize blaming, and contextualize unexpected or uncharacteristic responses.
- Account for the roles that race, class, privilege, sexual orientation, and other factors play in sexual violence allegations. Not all situations deserve to be treated the same, and demographic factors may matter a lot.
- Add a sexual harassment analysis, as sexual violence is legally also a form of harassment.

Interview Tips – Domestic/Dating Violence

- Consider safety concerns and the need for a threat assessment. By its nature, intimate partner violence (IPV) always involves some other violation of the code of conduct.
- In many case of relationship violence, there will be cross allegations and concerns about possible retaliation. Consider how your investigation will address this.
- Consider carefully how the imposition of initial actions may tip the responding party to the investigation and/or recklessly endanger the reporting party. More on this can be found in the [2015 ATIXA Whitepaper](#).
- In some cases, the reporting party will have shared concerns with a therapist or counselor. Investigators should consider how they or the reporting party may access those records, if the reporting party consents.
- Many relationship violence cases cross jurisdictions, occurring both on and off of campus and crossing municipal boundaries. Investigators may need to access information such as police reports from multiple agencies.
- Many relationship violence cases unfold over a long period of time; thus, the creation of a timeline of events will be helpful. Often, the reporting party is best able to provide this documentation.
- Text messages, voice mails, phone calls, photos, videos, and social media messages may be important for your investigation. Parties or witnesses may have these stored or backed up on devices.
- It is not unusual for a reporting party to recant a previously credible statement. Investigators will need to strategize how to handle this situation when it occurs.
- Returning to an abusive partner is a common practice, and does not negate the validity of an allegation.
- In some cases, violence breeds responsive violence or forceful self-defense. Investigators will have to account for this. Legitimate self-defense is not IPV, but responsive violence may be.
- Relationship violence occurring between parties on campus can significantly impact social networks. It can be helpful to convey why witnesses are expected to participate in the institution's process when they are hesitant to do so.
- Don't forget to add sexual harassment analysis, as IPV can legally also be a form of harassment.

Interview Tips – Stalking

- Consider safety concerns and the need for a threat assessment.
- Recognize that many stalking cases involve proclamations of love/interest rather than threats of violence; however, the terrorizing effect is often no less real for the victims.
- Investigators may need to access the institution's email system or network or retrieve video surveillance or building access records during the investigation.
- Many stalking cases occur over a long period of time; thus, the creation of a timeline of events will be helpful. Often, the reporting party is best able to provide this documentation. Too many coincidences evidenced in a timeline will start to appear implausible and, when taken as a whole, could reflect stalking.
- In many cases, stalking begins with low-level conduct that does not cause initial alarm. Often, the reporting party will have kept a record of this seemingly innocuous behavior.
- Lurking, a form of steady-state stalking, or stalking that does not exacerbate or become more dangerous over time, tends not to escalate, and usually wanes over time. But other forms of stalking almost always escalate, potentially to the point of violence. Lurking often feels like stalking to victims, and while lurkers can be fixated on their subject, they mean no harm. Many allegations related to lurking result from individuals on the autism spectrum who do not read the social cues of the disinterest of their subject.
- The federal definition of "stalking" is incredibly broad, encompassing even benign lurking behaviors by individuals who may not read social cues accurately (such as those on the autism spectrum). Sanction those individuals accordingly. Use the standard of "stalking 2" for menacing cases where harm is intended.
- Many stalking cases cross jurisdictions, occurring both on and off campus and crossing municipal boundaries. Investigators may need to access information such as police reports from multiple agencies.
- In some cases, the responding party has engaged in a course of conduct directed not only at the reporting party, but also at that person's family members, friends, or romantic partners. Investigators will need to strategize how to contact and collect information from those individuals.
- Stalking cases often involve the use of sophisticated technology such as tracking devices, apps, keystroke recorders, and other ways to obtain passwords. If this isn't an investigator's area of expertise, seeking assistance is a good idea.
- Text messages, voice mails, phone calls, photos, videos, and social media messages may be important for your investigation. Parties or witnesses may have these stored or backed up on devices.
- Don't forget to add sexual harassment analysis, as sex-based stalking is legally also a form of harassment.

Key policy factors to consider

- 5 days notice for Complainant and Respondent to prepare for interviews
- Advisor may be present, but does not participate
- If a party doesn't participate/share information they can't bring it up at hearing
- Limited questions about prior sexual history
- No access to privileged evidence without written consent
- 10 days for parties to review and comment on report
- Keep confidential investigation file
- Must update parties as to timeline
- Any parties using expert witnesses must include them in investigation
- CAN impose restrictions on disclosure
- MAY redact info not relevant

Evaluating the evidence

- Focus on each claim/incident/charge
- Evaluate elements of definition necessary
- Track evidence proving/disproving

CLAIMS	ELEMENTS	EVIDENCE PROVING/DISPROVING
SEXUAL ASSAULT	NO CONSENT	
	ACT/ATTEMPTED SEXUAL ACT	
	FORCE, THREAT, COERCION	

DEFENSE	ELEMENTS	EVIDENCE PROVING/DISPROVING
CONSENT	MENTAL CAPACITY	
	VOLUNTARY/FREE WILL	
	EXPRESS OR IMPLIED	
	NOT WITHDRAWN	
	SPECIFIC OR GENERAL SCOPE OF SEXUAL ACTIVITY	
	AGE OF MAJORITY	

Putting the report together

- Prepare
 - Review incident and investigation timelines
 - Review all evidence
- Put the pieces together
 - Summary of allegations
 - Applicable policies
 - History of investigation
 - Parties and witnesses
 - Relevant evidence collected
 - Material facts not in dispute
 - Material facts in dispute
- NO determination or credibility or findings of responsibility

Investigation Planning Case Study

- Read the case
- Discuss a plan