



Complex Investigations and Report Writing

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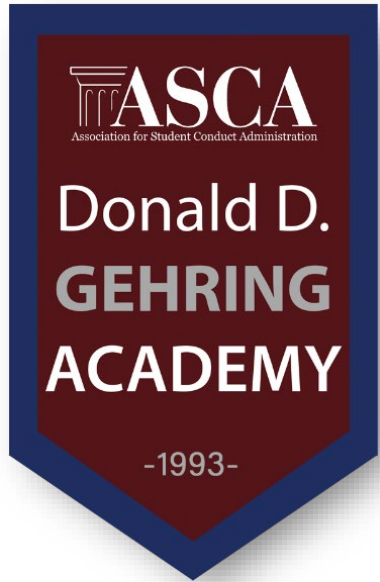
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Complex Investigations and Report Writing



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Schedule

Please note all times in Eastern (US)

Time	Topic
11:00am-11:30am	Introductions
11:30am-1:00pm	Overview: Top 10 Considerations for Complex Investigations and Report Writing <ul style="list-style-type: none"> (1) Report Intake (interim action/supportive measures) (2) Communication and Collaboration
	Activity: Intake and next steps
1:00pm-1:45pm	Meal Break
1:45pm-3:30pm	<ul style="list-style-type: none"> (3) Tools and templates (4) Planning (5) Questioning
	Activity: Investigations
3:30pm-3:45pm	Break
3:45pm-5:30pm	<ul style="list-style-type: none"> (6) Documenting Investigative Interviews (7) Preparing to write (8) Writing the report (9) Collecting feedback and disseminating the report (10) Assessing credibility
	Activity: Credibility Assessment
5:30pm-6:00pm	Question & Answer; Closing

Introductions - Alex

- Alex Schwartz
 - Director of Student Conduct & Community Standards at the University of Toledo
 - Student org, sexual misconduct, discrimination, and other types of investigations
 - Third year as track facilitator

Introductions - Jessica

- Jessica Galanos
 - Partner, Bricker Graydon LLP
 - Advises clients on higher ed legal issues; serves as an external investigator and hearing officer, interim administrator
 - Former Assistant Director and Deputy Title IX Coordinator

Expectations

Community expectations:

- What is said here, stays here, but what is learned here can leave here
- Being brave, push self out of comfort zone; put yourself out there
- Take space, make space
- Be sensitive of the potential impact of your words & actions
- Give grace to others
- Be present as you are able
- Take care of yourselves

For questions throughout the day, use the chat, raise your “hand”, or message either of us privately

Tell us about you

In the chat, tell us....

- What institution you're at
- What your position is
- What you are hoping for out of today
- Any other community expectations
- Any other burning items

Learning Outcomes

- Participants will be able to identify and apply the most pertinent considerations for investigations and report writing. (CSAEd™ Domain: Foundations of the Profession)
- Participants will be able to create assessment plans and completion schedules for a variety of complex investigations. (CSAEd™ Domain: Assessment)
- Participants will be able to apply collaboration, questioning, and documentation skills to complex investigations. (CSAEd™ Domain: Foundations of the Profession)
- Participants will have a working knowledge of investigation report-writing and dissemination practices. (CSAEd™ Domain: Foundations of the Profession)

ASCA Knowledge & Skills

- Administration
 - 1.3 Organizational Culture
 - 1.5 Crisis & Risk Management
 - 1.8 Equity & Intentional Inclusion
- Assessment
 - 2.3 Breakdown Data & Critically Analyze
 - 2.5 Equity & Intentional Inclusion
- Case Resolution Management
 - 3.1 Record Management
 - 3.2 Policy Application
 - 3.3 Outcomes
 - 3.4 Case Resolution Pathways
 - 3.5 Caseload Management
 - 3.6 Communication Skills
 - 3.7 Equity & Intentional Inclusion
- Education
 - 4.3 Communication Skills
- Equity & Intentional Inclusion
 - 5.1 Individual Awareness & Action
- Internal & External Partnerships
 - 6.1 Relationship Building
 - 6.2 Collaboration & Execution
 - 6.3 Equity & Intentional Inclusion
- Investigations
 - 7.1 Gathering Information
 - 7.2 Evaluating Information
 - 7.3 Disseminating Information
 - 7.4 Equity & Intentional Inclusion
- Law & Policy
 - 8.2 Compliance/Application

Top Ten Considerations for Complex Investigation and Report Writing

- (1) Report Intake (interim action/supportive measures)
- (2) Communication and Collaboration
- (3) Tools and templates
- (4) Planning
- (5) Questioning
- (6) Documenting Investigative Interviews
- (7) Preparing to write
- (8) Writing the report
- (9) Collecting feedback and disseminating the report
- (10) Assessing credibility

Report Intake

Report Intake - Overview

- Typically the first step in the process
- May look different depending on the type of report
 - Title IX?
 - Title VI?
 - Hazing?
 - Academic Dishonesty?
 - Other?
- Three main components:
 - (1) Gathering & Assessing Information
 - (2) Supportive Measures/Interim Measures
 - (3) Process

Report Intake - Gathering & Assessing Information (1 of 2)

- Remember the goal – to determine where this report fits and what might be done about it
- Who is doing an initial assessment?
 - Sometimes it may be a single individual like a Dir of conduct
 - Small team like conduct officer and supervisor, or student org staff
 - BIT - are there immediate safety concerns?
- Think of the basic "W" questions – who, what, where, when, why
- Same level of detail needed for an investigative interview?
- Do you use an assessment tool like the NaBITA rubric?
 - What is the precedent for responding to this type of incident at your institution?
 - Others?

Report intake - Gathering & Assessing Information (2 of 2)

- You are looking for things like:
 - **credibility** - is it anonymous, does it seem malicious, does the description make sense? (Be careful in Title IX matters)
 - **clarity** - can you understand what's being reported, did someone put time and effort into reporting this?
 - **plausibility** - could this actually have happened, i.e. could those people have been there at that time, do the circumstances exist, etc...?
 - **supporting documentation** - is there anything to back it up that makes it more credible?
 - **specific names and details** - is there information that is actionable?
- Data gathering
 - what information can you obtain prior to meetings (ex. camera footage, card swipe records, course schedules, etc.)
 - Meetings with reporting party/witnesses identified in report

Report Intake - Supportive Measures

- What does your policy say?
- Create a list of supportive measures and use it during every intake
 - Both complainants and respondents
 - Read the full list every meeting
- Don't overpromise
- Must not unreasonably burden the other party
- Confirm the discussion and next steps in a follow up email after each intake meeting
- If a requested supported measure is not available, explain the rationale and document the decision

Report Intake - Interim Measures

The most important questions:

- What makes sense for the **safety** of the members/situation reported?
- Does anything need to happen to address **immediate concerns**?
- Should there be any **change in the status** of the person/group alleged to have violated one or more policies?
- Who can implement interim measures for individuals and/or groups on your campus?
- Logistics (meetings, letters, other documentation of process)
 - Do you send a letter, follow up phone call, meeting?
 - Does the language in your letter clearly explain the potential for or implementation of an interim measure?
 - Is there an appeal process for an interim measure?

Interim Measures - Examples

- No in-person presence on campus (caveats for online participation may vary)
- No operations of organization permitted
- Restrictions on one or more privileges
 - Social probation, restriction from specific building(s) but not full campus, cease of specific activity/event action, new member activity restrictions
- No contact directives
- Removal/Reassignment of campus housing
- Removal/Reassignment to different course section (if available)
- Administrative Leave (paid or unpaid) for student/full time employees

Report Intake - Process Review

- Initial/intake conversations or meetings
- What does this look like for you?
 - Review of Policy language?
 - Step 1, Step 2, Step 3...
 - Flowchart
- How do you describe the investigation?
- How much further to you go in initial meetings?
 - Hearing options, potential outcomes, etc...

Communication and Collaboration

Communication & Collaboration (1 of 4)

- Who needs to know? - All of this depends on your institution type, size, culture, etc...
 - President - how serious is it, will it hit the news, will their office get calls?
 - VPSA - what is the culture around this at your institution, do they have involvement in the assessment and interim measures process, do they need to know that this will impact your other work?
 - Dean of Students
 - Director
 - Marketing & Communications - will this hit the news?
 - Legal
 - National Offices of an organization
 - Relevant campus partners - FSL, Campus Activities, Res Life, Counseling, PD, others?

Communication & Collaboration (2 of 4)

- Who doesn't need to know?
 - Students who aren't involved in the situation
 - Advisors for other organizations
 - Other employees who aren't involved
 - Your friends and family
 - Students' friends and family
 - Alumni of the organization
 - Anybody on the previous situation that you haven't deemed relevant in the situation
 - Appeal officers

Communication & Collaboration (3 of 4)

- How to deal with nosy people
 - FERPA is my favorite F-word
 - Be direct - “I cannot provide you that information.”
 - Provide the resources that are available, typically public records request, and let the people who handle those take care of it
 - Let others involved in the process know that there are people being nosy
 - Use the features available to you to protect information such as limiting access to cases in your database

Communication & Collaboration (4 of 4)

- Communicating with internal and external partners/groups
 - Make sure you are the right person to do it. Does it need to come from someone higher up, marketing and communications, legal etc?
 - Is it something that should be put in writing, or maybe not
 - Don't promise things you can't deliver for example timelines and outcomes
 - Tailor your communication to the partner/group
 - Be mindful of record retention. Do you keep records of your conversations? What do those look like?

Activity - Intake & Next Steps

We will be breaking out into pre-assigned small groups

1. Review your case study
2. Work through an intake assessment
3. Are taking any interim action or are there any supportive measures needed?
4. What is your communication plan?
5. Return to large group and report out

For Title IX and sexual misconduct matters - do you know whether this is a Title IX case? Can you describe which process will be used for adjudication?

Tools and Templates

Tools & Templates

- Draft letters
 - This will make everything easier
- Organization system
 - Folders and files in your drive
 - Maxient or other case management software
 - Paper files
- Accessible contact information
 - Student org leaders, nationals, departmental contacts
- Forms
 - FERPA, Investigation Participation, Advisor/Support Person
- Report templates

Planning for the Investigation

Planning - Overview

- Typically, the burden is on the institution to gather evidence
- Start with your scope
 - Will come from the Notice of Investigation
 - Pay attention to the elements (will come back to this later)
- Type of Investigation
- Interview Prep

Planning - Type of Investigation

- Independent
 - Each relevant investigative group investigates separately and issues outcomes and/or sanctions separately
- Concurrent (common with legal proceedings)
 - law enforcement investigation or other court proceedings
- Cooperative
 - separate investigations, but agree to share information.
- Joint
 - coordinated investigation as partners with second investigator, sharing information openly and coming to outcomes and sanctions which both agree and support (if applicable based on policies being adjudicated)

Consideration: Is amnesty a factor?

Planning - Meeting Preparations (1 of 3)

- Who do you need to interview and in what order?
- How do you schedule those interviews
- What meetings are you required to have as outlined by your process?
- Have you developed talking points/scripts to ensure consistent content delivery?
 - This is something you can likely embed/develop in your conduct management system
 - “Investigator Spiel”
 - Do you have forms or templates?

Planning - Meeting Preparations (2 of 3)

- Sample components of “Investigator Spiel”
 - Role of the investigator
 - What happens to the information that is shared
 - Anonymity? Privacy?
 - Inclusion in report that is shared with others?
Who and under what circumstances?
 - Prohibition against retaliation
 - Amnesty (if applicable)

Planning - Meeting Preparations (3 of 3)

- Consider your environment where interviews will occur
 - In person: consider images/cleanliness/warmth/temperature of space(s)
 - Virtually: consider your background, noise level of your surroundings
 - Other things you consider or have been told to do?
- Will you record interviews? Or take notes?
 - What can happen with your notes or the recordings?
- Consider how you will
 - Build rapport
 - Answer questions about the full case/investigation if asked
 - Approach anonymity and/or confidentiality

Questioning

Questioning

- Start with your scope
 - Should be documented in the Notice of Investigation
 - Confirm the correct policies are cited - anything missing?
- Question Development
 - Open-ended
 - Clarifying questions
 - Specific to information/evidence
 - Okay to repeat/reword
 - Avoid
 - Leading/guiding questions

Questioning Based on the Elements (1 of 2)

Break down the provisions to elements in order to draft questions

- For example: (Title IX Hostile Environment SH)
 - Unwelcome conduct
 - on the basis of sex
 - that a reasonable person would determine to be:
 - So severe, pervasive, and objectively offensive that
 - it effectively denies a person equal access to the recipients education program or activity
- For example: Hazing
 - “endangers the mental or physical health or safety of a student, for the purpose of initiation, admission into, affiliation with, or as a condition of continued membership, regardless of one's willingness to participate”

Questioning Based on the Elements (2 of 2)

Unwelcome conduct

- How did that make you feel?
- One of the elements in the definition of Title IX Sexual Harassment looks at whether the conduct is “welcome” or “unwelcome.” Can you tell me whether the conduct was “welcome” to you?

On the basis of sex

- Tell me about your relationship with this person?
- Do you believe they were romantically interested in you?
- Did you consider this to be a sexual advance?

That a reasonable person would determine to be: So severe, pervasive, and objectively offensive that

- How many times did this happen?
- Were others around at the time? Did they observe this behavior? Was this material shared with others?

It effectively denies a person equal access to the recipient’s education program or activity.

- How did this impact you? Did you miss any class because of this? Did you continue to participate in this RSO?

Questioning - Relationships

Example questions:

- What year are you? Where are you from originally? What is your major? Where do you live on campus?
- What is your title/position here? How long have you worked here?
- How do you know the individuals involved?
- Who did you meet first, Complainant or Respondent? How? When?
- Relationships with other key people in the case (to help assess potential bias)

Questioning - Timeline

Examples:

- “What do you remember regarding this situation?”
 - Give them a starting point or let them choose
 - “And then what happened? And what happened next?”
 - Let them deliver a monologue
- Think in terms of a timeline for your report
 - What section headings will help you tell the story chronologically?
 - Are you clear as to which parts of their monologue fit under which section?

Questioning - Follow-Up, Sensory, & Environment

- Go back to each incident on your timeline and flesh out the details.
- If the witness was alleged to have done or said something in particular, check to see if that's accurate
- Cover every element that the individual could have information about
 - Remember: is impact an element in my case?
- What do you remember hearing, smelling, tasting, feeling?
- Where was the other person's hand, leg, body weight, etc.?
- Where did this occur?

Questioning - Paraphrasing

Helps to build rapport and make the person feel heard

Helps confirm the accuracy of the investigator's notes

Examples:

- “So, what I heard you saying is...”
- “Let me make sure I understand...”
- “It sounds like... do I have that right?”

Questioning - Strategic Questions

- “Would it surprise you to learn...”
- “Witness X said.... Do you agree?”
- “Here you said X, but today, you said Not X. Can you help me reconcile those things?”
- “Witness X said this and Witness Y said that. Can you help me understand why they might have different information?”
- “Let’s look at this [evidence] together so I can get a better understanding...”

Questioning - Final Questions

- Is there anything you thought I would ask you about that we haven't discussed?
- Is there anything else you'd like to tell me?
- Is there anything else you think I should know?
- Is there anyone you think I should talk to about this?
- Do you have any documentary evidence that you're willing share?
- Do you have any questions for me?

Activity - Investigations

We will be breaking out into pre-assigned small groups

1. What is your basic investigation plan?
2. Who do you want to meet with?
3. What do you need to prepare before the meetings?
4. What are some of the questions you have?
5. Return to large group and report out

WHAT DO YOU CALL AN
ALLIGATOR IN A VEST?



AN INVESTIGATOR.

Documenting Investigative Interviews

Documenting Investigative Interviews - Methods

- Recording
 - Pros/Cons
 - Does your policy permit?
- Summarizing/Note-taking and sharing for feedback
 - Pros/Cons
 - Immediate sharing or sharing later
- Summarizing/Note-taking without sharing for feedback
 - Pros/Cons

Documenting Investigative Interviews - Keys

- Interview summaries are not literature. They are summaries of the information gathered.
- Virtually every sentence should start with, “[Name] stated” or “[Name] recalled.” This tells us that the information is from the person who was interviewed and is not a finding by the investigator.
- Use direct quotes whenever possible and appropriate.
- Don’t use adjectives or adverbs unless they are direct quotes from the witness. Ask for clarification...
 - Can you explain what you mean by they were being creepy?
 - How many is a few drinks?
- Avoid pronouns, as they can make a sentence ambiguous.

Documenting Investigative Interviews - What about Investigator Questions?

- Background/Monologue – Your questions are probably not particularly helpful to include.
- Follow-Up Questions – Your questions are probably very helpful to include, as they set the stage for what the interviewee understood the scope of the question to be.
 - “When asked whether...”
 - “When asked to clarify...”
- Final Questions – These can be very important to include, as they show whether evidence/witnesses were requested, whether the person had more information to add, etc.

Preparing to Write

Preparing to Write

- For Title IX, review the Notice again
 - Does it need to be amended?
 - Will amending the notice require further investigation?
- Create a plan
 - Set a timeline
 - Get everything together (notes, recordings, other relevant documents)
 - Block off writing time
- Use a template
 - If you don't have them, create them! It will make everything so much easier
 - Have a template for each type of investigation report
 - This will help you plan out your writing and ensure nothing important gets missed
 - We have provided some you can adapt for your use :)

Preparing to Write - Purpose & Process

Before you start, answer these:

- Who is writing it?
 - Investigator
 - Dedicated report writer
- What is the purpose of the report?
 - Summary and dissemination of information
 - Determination of charges
- Who is going to receive it?
 - Complainant and Respondent
 - Hearing Officer
 - Advisors
 - Supervisor

Writing the Report

Writing the Report - Basic Information (1 of 2)

- Identify with just factual information:
 - Complainant
 - Respondent
 - Investigator
 - Witnesses
 - Perhaps organize by fact v. expert witnesses or by party whom requested the witness

Writing the Report - Basic Information (2 of 2)

- Basic description of allegations, policies under consideration
- How did the complaint make its way to an investigation?
- Witnesses Interviewed
- Witnesses Not Interviewed (and why)
- The procedure followed, step-by-step
- Any procedural anomalies that need explained?

Writing the Report - Organization & Structure

- Natural and neutral organization suggestions:
 - Chronological order
 - By topic or allegation
 - Perhaps by chronology within each topic or allegation
 - By chronology of how the information came in to the investigation
 - By witness summary
- May depend on the type of case
 - Are you assessing credibility?
 - Are there particular sections required by your policy?
 - Does the evidence require certain analyses?
 - Screenshots
 - Surveillance footage
 - Files and metadata

Writing the Report - Sample Structure

- Summary of information
 - Focus on the fundamentals (timeline, what happened, who, etc)
 - Write in chronological order, even if that's not how it was discussed in the interview
 - Leave out the unnecessary stuff
 - Include screenshots where it's helpful to the reader
- Analysis
- Credibility assessment
- Recommendations
 - Do you do this?

Writing the Report - Attachments/Exhibits

- Attachments/Exhibits
 - The incident report(s)
 - Police reports if relevant
 - Anything you have that is mentioned in the body of the report (i.e photos, text messages, emails, etc...)
 - How are you managing video or audio files?
 - Refer to the attachment in the body of the report
 - Title each attachment (i.e. Attachment A, Attachment B, etc...)
 - Do you include the full notes?
 - Do you include all correspondence?

Writing the Report - Good Habits

- Report writing can get very tedious, setting up good practices can really help
 - Block off writing time
 - Consider a location change
 - Limited chunks of time
 - Sample breakdown: 45 mins writing, 15 mins break
 - No more than a few hours in a day
 - Review and editing
 - Consider doing this per section
 - Print and markup?
 - Use track changes

Writing the Report - Finalizing

- Does anyone else review your report before dissemination?
 - If co-investigated, have the other investigator review
 - Can be helpful to have a different set of eyes to catch spelling/grammar and make sure it makes sense.
- Who gets the report next?
 - Hearing officer
 - Respondent & Complainant
 - Advisors
 - Nationals
 - Others?
- Where is the report kept?

Writing the Report - Common Mistakes

- Inconsistent terminology
- Word choice
- Empathy
- Tone
- Failing to cite sources of information
- Confusing quotation marks
- Typos (can call attention to detail into question)
- Don't forget to write as if the reader has no knowledge of the case

Collecting Feedback and Disseminating the Report

Collecting Feedback and Disseminating the Report - Optional

Opportunities for feedback (depending on your process)

- After interviews
 - Will depend on your interview process
 - Be consistent
 - Within individual cases (“What we do for one, we do for the other”)
 - Across your caseload
- Draft Report
 - Will depend on your policy
 - Be consistent
 - Within individual cases (“What we do for one, we do for the other”)
 - Across your caseload

Collecting Feedback and Disseminating the Report

Eliciting:

- Allow for track changes?
- Send as PDFs?
- Watermarks?
- Lock download
- What kind of access does your institution allow?
- Timeline expectation

Receiving:

- Track changes (preserve the full document as a pdf)
- Edits via text message
- A separate document or email with edits
- What will students and others actually do?

Collecting Feedback and Disseminating the Report - Capturing Feedback (1 of 1)

- Just change the interview summary/PIR?
 - Be careful
 - Depends on the feedback
 - Minor clarifications v.
 - Additional or revised information v.
 - A different account entirely
 - Document your edits and reasons therefor within the summary or report
 - If the party made an edit that changes the meaning/interpretation, consider language like, “Respondent noted in report feedback that...”. This could also come into play with credibility assessment.

Collecting Feedback and Disseminating the Report - Capturing Feedback (2 of 2)

- Track changes
 - See prior slide for caveats
 - Save red-line version as a pdf?
 - Incorporate by reference
- Text message
 - Take a Screenshot and save to the file
 - Incorporate by reference

Collecting Feedback and Disseminating the Report - Capturing Feedback (3 of 3)

- A separate document or email
 - Save document or email as a pdf
 - Incorporate into your version via footnotes?
 - Make sure to incorporate by reference – so add a note to the summary or report – don't just attach it without referencing
 - Don't let this separate document get lost in your file! It may be critically important at the hearing or in drafting an outcome letter.

Assessing Credibility

Assessing Credibility - Considerations

- This starts at intake (but be careful with Title IX cases)
- How are you making note of credibility during investigation?
 - *Again, be careful with Title IX cases - the investigator does not assess credibility
- What questions are you asking during the investigation to gauge credibility?
- Additional items like screenshots, documents, etc also need to be assessed for credibility
- What are you using for reference?
 - For example with alcohol consumption

Assessing Credibility - Factors

- Factors to consider
 - **Inherent plausibility:** Is the testimony believable on its face? Does it make sense?
 - **Motive to falsify:** Did the person have a reason to lie?
 - **Corroboration:** Is there witness testimony (such as testimony by eyewitnesses, people who saw the person soon after the alleged incidents, or people who discussed the incidents with him or her at around the time that they occurred) or physical evidence (such as written documentation) that corroborates the party's testimony?
 - **Past record:** Did the respondent have a history of similar behavior in the past?
 - **Demeanor:** CAUTION!

Assessing Credibility - Writing

- What is your structure?
 - By each party
 - By topic
 - Other?
- Consider how this will “land” when the parties read it
- Other ways to express credibility?
 - Reliable/unreliable
 - Consistent/inconsistent

Activity: Credibility Assessment

We will be breaking out into pre-assigned small groups

1. Review the summaries we have provided
2. What/who stands out as being most credible/reliable?
3. Why is it credible/reliable?
4. What/who stands out as being least credible/reliable?
5. Why is it least credible/reliable?
6. Report out to group

Questions?