

## Overseeing or Conducting Investigations

### MODULE FOUR

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NACUA Online Course



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## DCL Requirements: In the Beginning

- Immediate and appropriate action to investigate promptly or to determine what occurred.

*But . . .*

- Complainant's consent to conduct an investigation.
- Reasonable steps consistent with complainant's request

*And ...*



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## Clery Information & Interim Measures

- Clery Information – Any report of sexual assault, dating violence, domestic violence or stalking

- Written explanation of student's or employee's rights
  - ✦ Sanctions
  - ✦ Procedures
  - ✦ Preserving evidence
  - ✦ Law enforcement
  - ✦ Confidentiality
  - ✦ Support and assistance

- DCL & Clery

- Interim measures whether or not file a complaint



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### What then?

- Complainant wanting no more action
- Complainant requesting confidentiality or identity not disclosed
  - Limited ability to act
  - No retaliation
- Still must evaluate request
  - Only proceed in very limited circumstances
- Inform potential complainant of decision
  - Information as needed to fulfill Title IX duties



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### Next Steps

- Confer with counsel
- Protect the complainant
- Separate criminal complaint
- And did I mention retaliation?



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### The Investigation

- Confusion between an investigation and a grievance procedure
- An investigation may occur as part of
  - An initial assessment
  - A student conduct procedure
  - A student-to-student grievance procedure
  - A Title IX complaint procedure
- An investigation *must* occur even if it's unlikely there will be institutional action



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### Elements of a Good Investigation

- Thorough & impartial
- Interview all necessary parties
- Gather and analyze all relevant evidence
- Assess the strength of the evidence
- Rational and defensible result that fairly reflects what occurred



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### Before You Begin Steps to Take Now

- How does it fit in the process?
- Who is decision-maker?
- What standard must the evidence meet?
- Authority



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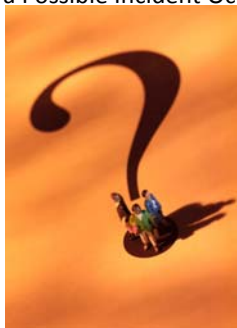
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*Will there be*  
Conflicts of  
interest?  
Criminal  
Investigation?

Once a Possible Incident Occurs



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Access to Records  
Develop a Plan

### More Preparation



A photograph showing a person's hands writing in a notebook with a pen. The person is wearing a red sleeve. The notebook is open, and the person is pointing at the page with their left hand while writing with their right hand.

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### Conducting Investigations: Purposes

- Gather evidence
- Make credibility determinations
- Recommend appropriate action - charges to be brought or action to be taken
  - Respond to the complaint
  - Protect complainant or preserve the legitimacy of the process
  - Prevent future harassment
  - Implement or update current policies
- Make sure evidence is fully developed to support the ultimate decision

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### Investigatory Skills

- How to ask questions
- Dealing with difficult subjects
- How to convince the reluctant witness
- How to distinguish relevant from irrelevant
- How to make credibility assessments
- How to be concerned but neutral
- How to document the investigation

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**The Interview**

Preparation  
Be Clear  
About  
Expectations



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**The Interview (continued)**

- Getting accurate information
- Questioning
- Observing the interviewee
- Other witnesses
- Concluding the interview



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**The Initial Meeting with the Complainant**

- Setting the foundation and explaining the process, discussing outcomes
- Identifying the issues, gathering information and witness names
- Explaining the complainant's and alleged perpetrator's rights and responsibilities.
- Instilling confidence in the process and the players



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Setting the foundation and explaining the process

Identifying the issues and gathering information and witness names

Explaining the alleged perpetrator's and the complainant's rights and responsibilities.

Instilling confidence in the process and the players

## The Initial Meeting with the Respondent



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## Other Considerations

- Searches
- Involvement of Parents and Lawyers
- Witness Behavior
- Media and Other Attention



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Demeanor

Logic and consistency

Motive

Corroborating evidence

## Assessing Credibility



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Facts

Document credibility determinations

Have confidence in your judgment

More likely than not

### Developing the Report



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### Ending the Investigation

- Completed report
- Secured any evidence
- Taking next steps



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