

# TITLE IX

FROM THE UE TOOLBOX

## Checklist for Conducting Student Sexual Assault Investigations

This checklist focuses on recommended practices for investigating an alleged sexual assault of a student. It is based on materials created by Jody Shipper for a workshop of the National Association of College and University Attorneys (NACUA). Shipper, director of the Office of Equity and Diversity, Title IX and Affirmative Action Compliance at the University of Southern California, has conducted more than 1,000 investigations during her career.

[For broader guidance on complying with Title IX and the April 2011 Dear Colleague letter (DCL), including information about harassment generally or sexual assault of nonstudents, see UE's [Checklist for Complying with OCR's "Dear Colleague" Letter on Student Sexual Assault and Sexual Harassment](#), as well as UE's other [Title IX resources](#).]

**A word on terminology.** For ease and consistency of reference only, this checklist uses the term "accuser" to mean the student making the complaint or allegation of sexual assault and the term "accused" to mean the person—who may or may not be a student—against whom the complaint or allegation is made. "Parties" refers to the accuser and the accused.

### Determining Need to Investigate

Title IX investigations must occur when a college knows or should know about alleged misconduct. Some events that put an institution on notice are obvious, such as a student filing a formal complaint or grievance or making a report to campus security of sexual assault. Some less obvious but common triggers for an investigation include:

- A student filing a report of sexual assault with local police, who alert the institution
- Parents calling an administrator to complain that their child was sexually assaulted
- An article in the local paper detailing campus assaults of which the institution was unaware
- An administrator receiving an anonymous voicemail, email, or written message alleging sexual assault
- A student advisor or residential advisor overhearing a student saying that she "might" have been sexually assaulted at a campus party and doesn't know what to do

Alerting Others to Assault Allegations	Yes/No/Not Applicable	Further Steps
<i>Institutions may learn about allegations of student sexual assault through different reporting channels. Regardless of where an allegation originates on campus, is it promptly shared with:</i>		
<ul style="list-style-type: none"> <li>■ The institution's Title IX coordinator?</li> </ul>		
<ul style="list-style-type: none"> <li>■ The appropriate dean or administrator for allegations against staff or faculty?</li> </ul>		
<ul style="list-style-type: none"> <li>■ Student affairs or other personnel to provide support to affected students?</li> </ul>		
<ul style="list-style-type: none"> <li>■ Campus police or security?</li> </ul>		
<ul style="list-style-type: none"> <li>■ Local police, in a case of potential criminal misconduct?</li> </ul>		

Choosing the Investigator	Yes/No/Not Applicable	Further Steps
<i>An institution must assign an appropriate investigator for every student complaint or allegation of sexual assault. For each matter, is the investigator:</i>		
<ul style="list-style-type: none"> <li>■ Fair, trusted, and independent?</li> </ul>		
<ul style="list-style-type: none"> <li>■ Objective with no stake in the outcome of the investigation?</li> </ul>		
<ul style="list-style-type: none"> <li>■ Impartial, with no supervisory authority over any party?</li> </ul>		
<ul style="list-style-type: none"> <li>■ Trained or experienced in investigating allegations of sexual assault?</li> </ul>		
<ul style="list-style-type: none"> <li>■ Knowledgeable about Title IX and institutional policy?</li> </ul>		
<ul style="list-style-type: none"> <li>■ Knowledgeable about overlaps between Title IX, Title VII, and any other applicable laws or regulations?</li> </ul>		
<ul style="list-style-type: none"> <li>■ Able to discuss difficult topics such as sexual practices and intimate physical details without awkwardness and with compassion?</li> </ul>		
<ul style="list-style-type: none"> <li>■ Knowledgeable about services and resources available to individuals affected by sexual assault?</li> </ul>		
<ul style="list-style-type: none"> <li>■ A strong interviewer?</li> </ul>		
<ul style="list-style-type: none"> <li>■ Able to communicate well with all types of students and all levels of employees?</li> </ul>		
<ul style="list-style-type: none"> <li>■ Prepared to respect the rights under collective bargaining agreements of unionized employees who are parties or witnesses?</li> </ul>		
<ul style="list-style-type: none"> <li>■ Able to testify competently and hold up in the witness chair?</li> </ul>		
<ul style="list-style-type: none"> <li>■ Able to fairly investigate allegations against prominent individuals, such as a well-known student athlete or beloved faculty member?</li> </ul>		

Preparing to Investigate	Yes/No/Not Applicable	Further Steps
<b>Developing a Plan</b>		
<i>Has the investigator created an initial plan for the investigation, including:</i>		
<ul style="list-style-type: none"> <li>■ A definition of the investigation’s scope (for example, by fully understanding the scope of the allegations at the start, it may not be necessary to interview every potential witness)?</li> </ul>		
<ul style="list-style-type: none"> <li>■ A preliminary timeline of events according to the original complaint or allegation?</li> </ul>		
<ul style="list-style-type: none"> <li>■ What testimony and other evidence are necessary to confirm or rebut the accuser’s story?</li> </ul>		
<ul style="list-style-type: none"> <li>■ An initial witness list?</li> </ul>		
<ul style="list-style-type: none"> <li>■ The order in which to interview the accused and witnesses?</li> </ul>		
<b>Gathering Materials</b>		
<i>Before conducting interviews, has the investigator gathered as much relevant material as possible, including but not limited to:</i>		
<ul style="list-style-type: none"> <li>■ Applicable written policies and procedures?</li> </ul>		
<ul style="list-style-type: none"> <li>■ Campus police or security reports?</li> </ul>		
<ul style="list-style-type: none"> <li>■ Local police reports?</li> </ul>		
<ul style="list-style-type: none"> <li>■ Security videotapes?</li> </ul>		
<ul style="list-style-type: none"> <li>■ Photos or videos from other sources, such as cellphones?</li> </ul>		
<ul style="list-style-type: none"> <li>■ Voice mail messages, text messages, or recordings of calls to campus police or the security office?</li> </ul>		
<ul style="list-style-type: none"> <li>■ Entry/exit logs for the residence hall, fraternity, or other campus buildings involved?</li> </ul>		
<ul style="list-style-type: none"> <li>■ Personnel files and work logs if an employee is involved?</li> </ul>		
<ul style="list-style-type: none"> <li>■ Information from any prior investigations involving the same parties?</li> </ul>		
<ul style="list-style-type: none"> <li>■ Whether searches of campus buildings or individuals’ personal property are needed?</li> </ul>		
<ul style="list-style-type: none"> <li>• If so, has the investigator consulted with legal counsel or asked individuals for permission to search their offices, residence hall rooms, or personal property?</li> </ul>		
<b>Interview Locations</b>		
<ul style="list-style-type: none"> <li>■ Will the investigator interview the parties and critical witnesses in person whenever possible?</li> </ul>		
<ul style="list-style-type: none"> <li>■ Will the interviewer ensure that interviews are held in private places where the interviewees will feel safe and comfortable?</li> </ul>		
<ul style="list-style-type: none"> <li>■ Has the interviewer thought strategically about interview locations that are likely to encourage interviewees to divulge information, such as a neutral location or the interviewee’s “turf”?</li> </ul>		

Preparing to Investigate	Yes/No/Not Applicable	Further Steps
<b>Special Accommodations</b>		
<i>Is the investigator prepared to:</i>		
<ul style="list-style-type: none"> <li>Provide a translator for parties or witnesses who do not speak or understand sufficient English?</li> </ul>		
<ul style="list-style-type: none"> <li>Provide interpreters or assistive devices for parties or witnesses who are disabled?</li> </ul>		
<ul style="list-style-type: none"> <li>Determine if a minor wants or should have a parent or guardian present for the interview?</li> </ul>		
<b>Potentially Reluctant Interviewees</b>		
<i>Has the investigator:</i>		
<ul style="list-style-type: none"> <li>Anticipated questions that parties or witnesses might ask and prepared responses?</li> </ul>		
<ul style="list-style-type: none"> <li>Considered how, based on the institution's policies, to handle requests from the accuser or the accused to have others present during their interviews, such as a parent, therapist, friend, or attorney?</li> </ul>		
<ul style="list-style-type: none"> <li>Consulted the institution's policy regarding duty of employees and students to participate in investigations?</li> </ul>		
<ul style="list-style-type: none"> <li>Thought out strategies for handling witnesses who are not the institution's employees or students and therefore not required to cooperate?</li> </ul>		

Investigative Strategies	Yes/No/Not Applicable	Further Steps
<i>Does the investigator:</i>		
<ul style="list-style-type: none"> <li>Ask for names of all potential witnesses?</li> </ul>		
<ul style="list-style-type: none"> <li>For each interview, request any documentation in the person's possession as well as suggestions of other helpful documents, such as medical records, diary entries, calendars, Facebook posts, emails, and phone messages, records, or texts?</li> </ul>		
<ul style="list-style-type: none"> <li>Ask for signature and date if an individual offers a written statement?</li> </ul>		
<ul style="list-style-type: none"> <li>Conduct an interview even if the person provides a written statement?</li> </ul>		
<ul style="list-style-type: none"> <li>Limit the scope of the interview to policy violations and avoid turning it into a background check or a character assessment of any party?</li> </ul>		

Investigative Strategies	Yes/No/Not Applicable	Further Steps
<ul style="list-style-type: none"> <li>■ Use the interview to assess credibility of parties and witnesses, taking into account:                             <ul style="list-style-type: none"> <li>• The individual's general demeanor (for example, does the person appear to be honest and cooperative versus evasive, argumentative, or hostile)?</li> <li>• The person's opportunity and capacity to observe the event?</li> <li>• Any prior inconsistent statements about this matter?</li> <li>• Contradiction or consistency with other evidence?</li> <li>• Whether the individual has a motive to lie?</li> <li>• Improbability of the person's account of events?</li> <li>• Whether the person has lied before about other matters?</li> </ul> </li> </ul>		

Interview Techniques	Yes/No/Not Applicable	Further Steps
<b>Beginning the Interview</b>		
<i>Does the investigator:</i>		
<ul style="list-style-type: none"> <li>■ Begin each interview by explaining the importance of maintaining confidentiality and the institution's prohibition on retaliation?</li> </ul>		
<ul style="list-style-type: none"> <li>■ Provide a brief explanation of the institution's investigatory process?</li> </ul>		
<ul style="list-style-type: none"> <li>■ Ask the interviewee to sign an acknowledgment of what he or she was told at the outset, or otherwise document the information provided to the interviewee regarding the investigative process?</li> </ul>		
<ul style="list-style-type: none"> <li>■ Ask both parties if there is any reason they feel the investigator cannot be fair and objective?</li> </ul>		
<ul style="list-style-type: none"> <li>■ Advise interviewees of the anticipated time frame for completing the investigation?</li> </ul>		
<ul style="list-style-type: none"> <li>■ Explain what, if any, information might be shared with others (for example, a supervisor might need to know that a complaint was filed, but not details about the testimony or evidence provided by witnesses)?</li> </ul>		
<b>Asking Questions and Use of Language</b>		
<i>Does the investigator:</i>		
<ul style="list-style-type: none"> <li>■ Build a rapport with the person being interviewed?</li> </ul>		
<ul style="list-style-type: none"> <li>■ Ask open-ended questions and allow sufficient time for responses?</li> </ul>		
<ul style="list-style-type: none"> <li>■ Avoid leading or conclusive questions?</li> </ul>		
<ul style="list-style-type: none"> <li>■ Avoid compound questions by breaking queries into smaller segments?</li> </ul>		

Interview Techniques	Yes/No/Not Applicable	Further Steps
<ul style="list-style-type: none"> <li>■ Assure that questions allow the interviewee to address critical issues?</li> </ul>		
<ul style="list-style-type: none"> <li>■ Avoid editorializing, commenting, or interrupting?</li> </ul>		
<ul style="list-style-type: none"> <li>■ Ask the person being interviewed to define and provide specific examples of terms he or she uses, such as “assault” or “retaliation”?</li> </ul>		
<ul style="list-style-type: none"> <li>■ Not hesitate to request clarification of slang or unfamiliar words interviewees use?</li> </ul>		
<ul style="list-style-type: none"> <li>■ Avoid using legalistic words or police terminology?</li> </ul>		
<ul style="list-style-type: none"> <li>■ Be cautious about using slang unless it is clear that the investigator and the person being interviewed have the same understanding of the words?</li> </ul>		
<ul style="list-style-type: none"> <li>■ Avoid interrupting the flow of the narrative and encourage the person to keep talking, allowing critical details to emerge?</li> </ul>		
<ul style="list-style-type: none"> <li>■ Avoid provocative words and phrases, such as “victim,” “moving on,” or “closure”?</li> </ul>		
<ul style="list-style-type: none"> <li>■ Establish a chronology by having the interviewee commit to the order of events and create a timeline?</li> </ul>		
<b>Documenting the Interviews</b>		
<i>Does the investigator ensure that interviews are documented accurately by:</i>		
<ul style="list-style-type: none"> <li>■ Taking careful notes?</li> </ul>		
<ul style="list-style-type: none"> <li>■ Reviewing notes with the interviewee to confirm accuracy?</li> </ul>		
<ul style="list-style-type: none"> <li>■ Using an assistant if the investigator cannot take notes and ask questions at the same time?</li> </ul>		
<ul style="list-style-type: none"> <li>■ Deciding whether any interviews should be recorded (video and/or audio) and, if so, seeking consent of the person being interviewed?</li> </ul>		
<ul style="list-style-type: none"> <li>■ Considering whether to transcribe the interview notes?</li> </ul>		
<b>Concluding the Interview</b>		
<i>Does the investigator:</i>		
<ul style="list-style-type: none"> <li>■ Ask “What else?” multiple times during the interview, and finish with “Is there anything else you want me to know?”</li> </ul>		
<ul style="list-style-type: none"> <li>■ Thank the individual for cooperating?</li> </ul>		
<ul style="list-style-type: none"> <li>■ Invite the person to return to the investigator with any additional information he or she remembers?</li> </ul>		
<ul style="list-style-type: none"> <li>■ Remind the interviewee about the need for confidentiality?</li> </ul>		

Interviewing the Accuser	Yes/No/Not Applicable	Further Steps
<p>When interviewing a student who has made a complaint or allegation of sexual assault, the investigator needs to strike a difficult balance between sensitivity and obtaining the information necessary to sustain or disprove the claim. The investigator should assure the accuser that the allegation is being taken seriously and will be handled properly, and that information obtained in the investigation will be disclosed on a “need to know” basis only. After the interview, the investigator should advise that he or she will keep the accuser generally apprised of the investigation’s status.</p>		
<p><i>Does the investigator ask the accuser basic questions, including:</i></p>		
<ul style="list-style-type: none"> <li>■ What happened?</li> </ul>		
<ul style="list-style-type: none"> <li>■ When did it happen?</li> </ul>		
<ul style="list-style-type: none"> <li>■ Where did it happen?</li> </ul>		
<ul style="list-style-type: none"> <li>■ Was anyone else present? If so, who and for how long?</li> </ul>		
<ul style="list-style-type: none"> <li>■ Have you spoken to anyone in the school administration about this? If so, to whom and when?</li> </ul>		
<ul style="list-style-type: none"> <li>■ Have you spoken to anyone else at all? If so, to whom and when?</li> </ul>		
<ul style="list-style-type: none"> <li>■ Have you provided a written statement to anyone? If so, do you have a copy?</li> </ul>		
<ul style="list-style-type: none"> <li>■ Have you posted anything about this online, including on Facebook or in blogs or comments?</li> </ul>		
<ul style="list-style-type: none"> <li>■ Have you created or kept any notes, diary entries, or other written records that have anything to do with the allegation?</li> </ul>		
<ul style="list-style-type: none"> <li>■ Do you know of any other students who may have a similar complaint or concern?</li> </ul>		
<ul style="list-style-type: none"> <li>■ How do you know the accused individual?</li> </ul>		
<ul style="list-style-type: none"> <li>■ Have you had any interactions with the accused, apart from those being discussed today?</li> </ul>		
<ul style="list-style-type: none"> <li>■ Did the accused use or threaten to use force?</li> </ul>		
<ul style="list-style-type: none"> <li>■ Were either you or the accused drinking alcohol or using other drugs?</li> </ul>		
<ul style="list-style-type: none"> <li>■ How have you been affected by this, and what have you done about it?</li> </ul>		
<ul style="list-style-type: none"> <li>■ What action or remedy from the institution do you seek by bringing this complaint?</li> </ul>		
<ul style="list-style-type: none"> <li>■ Why have you delayed reporting?</li> </ul>		

Interviewing the Accused	Yes/No/Not Applicable	Further Steps
<p><i>An individual accused of a sexual assault is entitled to a full and fair opportunity to defend against the allegations. As with the accuser, the investigator should commit to keeping the accused individual generally apprised of the investigation's status. These are some additional best practices for interviewing the accused:</i></p>		
<ul style="list-style-type: none"> <li>■ Is the investigator straightforward and unbiased when interviewing the accused individual, no matter what conduct is alleged?</li> </ul>		
<ul style="list-style-type: none"> <li>■ Does the investigator let the accused fully tell his or her side of the story?</li> </ul>		
<ul style="list-style-type: none"> <li>■ If the accused denies the conduct, does the investigator ask the accused what motive the accuser—and any witnesses who support the accuser's story—may have had to make the allegation?</li> </ul>		
<ul style="list-style-type: none"> <li>■ Does the investigator state that no conclusions will be drawn until the investigation is complete?</li> </ul>		
<ul style="list-style-type: none"> <li>■ Is the investigator careful to reiterate to the accused that the institution will not tolerate retaliation against the accuser or witnesses who support the accuser's story?</li> </ul>		

Interim Remedial Measures	Yes/No/Not Applicable	Further Steps
<p>In any case of alleged student sexual assault, interim remedial measures may be required, even before the investigation is completed. These are not permanent sanctions and can be reconsidered once the investigation concludes, or even as the investigation proceeds.</p>		
<p><i>For each matter, has the institution considered interim remedial actions, including:</i></p>		
<ul style="list-style-type: none"> <li>■ Providing medical and psychological services to the accuser?</li> </ul>		
<ul style="list-style-type: none"> <li>■ Providing safety escorts to the accuser?</li> </ul>		
<ul style="list-style-type: none"> <li>■ Informing the accused individual that he or she was accused of specific conduct that violates the institution's policy and instructing the accused not to engage in that conduct?</li> </ul>		
<ul style="list-style-type: none"> <li>■ Issuing a no-contact order to the parties?</li> </ul>		
<ul style="list-style-type: none"> <li>■ Changing academic or living arrangements if requested, limiting any burden on the accuser in the process?</li> </ul>		

Documenting and Completing the Investigation	Yes/No/Not Applicable	Further Steps
After the investigator completes the process of conducting interviews and gathering other evidence, he or she should move promptly to consider all the evidence and draw a conclusion about the sexual assault allegation.		
<i>Has the investigator fully documented the investigation, including obtaining copies of:</i>		
<ul style="list-style-type: none"> <li>■ Written policies and procedures?</li> </ul>		
<ul style="list-style-type: none"> <li>■ Campus police or security reports?</li> </ul>		
<ul style="list-style-type: none"> <li>■ Local police reports?</li> </ul>		
<ul style="list-style-type: none"> <li>■ Security videotapes?</li> </ul>		
<ul style="list-style-type: none"> <li>■ Photos or videos from other sources, such as cellphones?</li> </ul>		
<ul style="list-style-type: none"> <li>■ Voice mail messages, text messages or recordings of calls to campus police or the security office?</li> </ul>		
<ul style="list-style-type: none"> <li>■ Entry/exit logs for campus buildings?</li> </ul>		
<ul style="list-style-type: none"> <li>■ Personnel files and work logs, if an employee is involved?</li> </ul>		
<ul style="list-style-type: none"> <li>■ Information from any prior investigations involving the same parties?</li> </ul>		
<ul style="list-style-type: none"> <li>■ The investigator's interview notes, audio/video interview recordings, and written statements from parties or witnesses?</li> </ul>		
<ul style="list-style-type: none"> <li>■ The investigator's notes reflecting judgments about witness credibility and the factual findings?</li> </ul>		
<ul style="list-style-type: none"> <li>■ Any written evidence, such as notes, emails, or text messages?</li> </ul>		
<ul style="list-style-type: none"> <li>■ Does the investigator understand that his or her notes are likely not privileged and would have to be disclosed in the event of litigation?</li> </ul>		
<ul style="list-style-type: none"> <li>■ Has the investigator analyzed all the evidence to determine which pieces are relevant and material to the allegations, and documented this decision?</li> </ul>		
<ul style="list-style-type: none"> <li>■ Has the investigator decided whether any additional or follow-up interviews of parties or witnesses are necessary?</li> </ul>		
<ul style="list-style-type: none"> <li>■ Has the investigator carefully compared the allegations made by the accuser with the findings of the investigation and considered the following:</li> </ul>		
<ul style="list-style-type: none"> <li>• Is there any corroborating evidence that supports the accuser's story?</li> </ul>		
<ul style="list-style-type: none"> <li>• Is there any evidence supporting the accused's story?</li> </ul>		
<ul style="list-style-type: none"> <li>• Did any person the investigator interviewed make statements that later proved to be untrue?</li> </ul>		
<ul style="list-style-type: none"> <li>• Did either party's overall story or chronology of events differ significantly from the accounts of other witnesses?</li> </ul>		
<ul style="list-style-type: none"> <li>• Did either party's story conflict with written evidence gathered?</li> </ul>		
<ul style="list-style-type: none"> <li>• Did either party appear particularly forthcoming or particularly evasive in his or her answers?</li> </ul>		
<ul style="list-style-type: none"> <li>■ Apart from documenting the investigation, will the investigator produce a final written report?</li> </ul>		

Documenting and Completing the Investigation	Yes/No/Not Applicable	Further Steps
<ul style="list-style-type: none"> <li>■ If the investigator produces a written report, does the report:</li> </ul>		
<ul style="list-style-type: none"> <li>• Summarize the interviews and other evidence gathered?</li> </ul>		
<ul style="list-style-type: none"> <li>• Specifically assess the credibility of the accuser, the accused, and any witnesses, including the bases for the investigator's judgments?</li> </ul>		
<ul style="list-style-type: none"> <li>• Contain factual conclusions reached by the investigator, rather than assumptions or speculation?</li> </ul>		
<ul style="list-style-type: none"> <li>• Avoid using legal definitions or terms unless the institution's policies incorporate legal definitions?</li> </ul>		
<ul style="list-style-type: none"> <li>• Avoid referencing the content of any consultations with the institution's legal counsel?</li> </ul>		
<ul style="list-style-type: none"> <li>• If the investigator is expected to make a conclusion as to discipline or remedies, does the investigator do so and demonstrate the nexus between the evidence gathered, the conclusion, and the discipline?</li> </ul>		
<ul style="list-style-type: none"> <li>• Avoid suggesting appropriate discipline or remedy if the institution's policy does not give the investigator that responsibility?</li> </ul>		

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