Title IX Coordinator and Investigator Training Class

Presented by DSA Associates:

Cathy Cocks

Beth Devonshire

Adrienne Murray

Ann Todd

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Title IX Coordinator
Overview of Course Schedule

Understanding the Law

- Title IX
- Post 2020 Guidance and Case Law
- Title VII
- The Clery Act for Title IX Coordinators
- Title IX Personnel

Title IX and Related Policies

- Sexual Harassment on Campus
- Quid Pro Quo
- Hostile Environment+
- The VAWA Offenses
- Policy and Procedural Considerations

Notice and Intake Stages

- Trauma Informed
- Intake
- Notice
- Party Rights
- Supportive Measures
- Emergency Removal and Administrative Leave
- Consolidation
- Dismissal

Investigation and Resolution Stages

- Informal Resolution
- Investigation Stage
- Formal Resolution: Hearing
- Appeals

Organizational Integrity and Training

- Organizational Integrity
- Training of Title IX Personnel

Prevention and Education

- Community Education and Prevention

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Adrienne Meador Murray, Vice President, Equity Compliance and Civil Rights Services



In January 2014, Adrienne Meador Murray joined D. Stafford & Associates where she currently serves as the Vice President, Equity Compliance and Civil Rights Services after having been affiliated with D. Stafford & Associates as a part-time Associate since 2012 and the National Association of Clery Compliance Officers & Professionals (NACCOP) where she currently serves as Director of Training and Compliance Activities. Murray began her career in municipal law enforcement as a civilian employee with the City of Richmond Police Department (Virginia). She graduated from the Virginia Commonwealth University Police Training Academy and began her career as a sworn police officer for the University of Richmond (UR) Police Department (Virginia). At UR, Murray progressed through the ranks from a night shift patrol officer to Operations Lieutenant (overseeing criminal investigations, crime prevention and patrol) over the span of a decade before becoming the Chief of Police at Davidson College in North Carolina. Most recently, Murray served as Chief of Police at Trinity Washington University (in Washington, D.C.).

As the Executive Director, Equity Compliance and Civil Rights Services for DSA, Murray builds on her 17-year career in law enforcement in which she became a nationally recognized expert in the field of best practice postsecondary institutional response to the sexual victimization of college women in the United States and in Canada. She is also a trained civil rights investigator and is well respected throughout the country for her ability to aid institutions in understating how to do best practice criminal and civil rights investigations concurrently. She is well known for her work in having provided support, advocacy and criminal investigative services for victims of sexual assault, stalking and intimate partner violence and is a sought-out speaker and investigator. She has expertise in the construction of best practice law enforcement standard operating procedures and training police officers to respond in best practice and trauma-informed ways to victims of sexual assault and intimate partner violence. In her current role, Murray coordinates curriculum development and instruction for national classes, including basic and advanced sexual misconduct investigation classes; an investigation of dating violence, domestic violence and stalking class; and a Title IX Coordinator/Investigator class offered through D. Stafford & Associates. To date, Murray has trained more than 3,500 criminal and civil rights investigators throughout the U.S.

Drawing on her experiences as a trained criminal and civil rights investigator, Murray also oversees independent investigations of complex sexual misconduct cases; conducts audits of Title IX/VAWA

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Compliance; drafts institutional sexual misconduct policies and procedures; and conducts campus-based trainings pertaining to the resolution of sexual misconduct offenses on college and university campuses. Murray frequently presents at regional and national conferences on topics such as the *Sexual Victimization of College Women*, *Understanding Consent and Incapacitation*, and *Responding to Sexual Assault on Campus: Clery Act and Title IX Implications*. Murray also conducts provincially specific sexual misconduct trainings throughout Canada.

Murray is a graduate of the University of Richmond, where she received her Bachelor's Degree in Applied Studies in Human Resource Management and of New England College, where she received her Master's Degree in Campus Public Safety Administration. Murray is also a graduate of the 235th session of the prestigious FBI National Academy where she was awarded a graduate certificate in Criminal Justice from the University of Virginia. She has authored numerous journal articles.

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Catherine Cocks, M.A.
Consultant, Student Affairs, Title IX, and Equity Compliance Services



Ms. Cocks has been a higher education professional for over thirty years. Her work with D. Stafford & Associates focuses on Title IX investigations and training; assessment of student affairs policies, practices and services; and behavioral threat assessment. Cathy was the Director of Community Standards for the University of Connecticut for 14 years where she managed the student conduct process, which included managing all Title IX cases involving student respondents and chaired the University's student threat assessment team. Prior to that, she held several positions within Residential Life at the University of Connecticut and Roger Williams University.

She is a faculty member for the Association for Student Conduct Administration's (ASCA) Donald D. Gehring Academy teaching on subjects such as ethics, governance, threat assessment, media relations, and higher education trends. She was an affiliated faculty member for many years in the University of Connecticut's Higher Education and Student Affairs Master's program teaching "The Law, Ethics, and Decision-Making in Student Affairs."

Cathy has co-authored the "Philosophy of Student Conduct" chapter in the 2nd edition of "Student Conduct Practice" (2020) and was a member of the writing team for CAS Standards' Cross-functional Framework for Identifying and Responding to Behavioral Concerns.

Cathy is a Past President of ASCA. She has also served as a Circuit representative, co-chair of the Public Policy and Legislative Issues Committee, and as a member of the ASCA Expectations of Members Task Force. Cathy has served in a variety of leadership roles in NASPA Region I.

She was the 2015 recipient of ASCA's Donald D. Gehring Award. She is a past recipient of the NASPA Region I Mid-Level Student Affairs Professional Award and the NASPA Region I Continuous Service Award.

She earned her Master's degree in Higher Education Administration from the University of Connecticut and Bachelor's degree in Communications/Media from Fitchburg State University.

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Beth Devonshire, Consultant
Equity Compliance and
Title IX/Civil Rights Training



Beth Devonshire, J.D. is an experienced student affairs professional with expertise in student conduct, Title IX, threat assessment teams, policy development, trainings for various constituencies, and the impact legislative and legal decisions have on higher education. From 2006-2018, Ms. Devonshire worked as the Associate Dean of Students at UMass Boston, the Director of Community Standards at Bridgewater State University, and the Director of Community Standards at Stonehill College. In these roles, Ms. Devonshire was charged with oversight of the student conduct systems, membership in CARE/BIT teams, serving as the Deputy Title IX Coordinator, and drafting policies and procedures related to students. Prior to her work in higher education, Beth served as a law clerk for the Justices of the Superior Court in Massachusetts and in multiple roles at the Massachusetts State House.

Ms. Devonshire has been an Associate with D. Stafford & Associates (DSA) since 2012 and she joined as a full-time consultant in August of 2018. In this role, Beth works with institutions on issues involving Title IX, Clery Act, threat assessment, and other compliance related issues; and advises on policy and procedures, conducts trainings, participates in investigations, reviews enforcement practices of campus law enforcement, and serves in interim roles. Ms. Devonshire also speaks on a variety of other topics including legislative and legal issues impacting higher education including FERPA, Clery, and Alcohol and other Drug Prevention.

Ms. Devonshire is a faculty member in New England College's Doctorate of Education Program and the Higher Education Administration program at Bridgewater State University. Additionally, Ms. Devonshire serves on the Public Policy Division for NASPA, and is also the former Massachusetts Public Policy Liaison for MA NASPA. Beth also served as the Director of the Legislative Committee for the Association for Student Conduct Administrators (ASCA) for two years.

Ms. Devonshire is a member of the Massachusetts Bar. She is a graduate of Stonehill College with a degree in English and Secondary Education and holds a J.D. from Suffolk University School of Law. She is also a trained mediator.

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Ann Todd
Consultant, Equity Compliance and Civil Rights Investigations



Ann Todd, Esq is a seasoned civil rights investigator in higher education for D. Stafford & Associates (DSA). Ms. Todd is a graduate of Davidson College with a degree in psychology and holds a JD from the University of Nebraska. Prior to joining DSA, she practiced law in Charlotte, NC, specializing in employment and civil rights and worked for a number of non-profit organizations. She returned to her alma mater (Davidson College) in 2008 and worked there through March of 2016 serving as the Assistant Director of Human Resources with the responsibility of managing employee relations and the learning and development function while also serving as the deputy Title IX Coordinator.

Ms. Todd joined the DSA in 2015 and currently serves as the Consultant, Equity Compliance and Civil Rights Investigations. She is the Senior Investigator for the DSA Title IX Investigation Team. She conducts external investigations on behalf of colleges and universities, specializing in investigating student allegations of sex discrimination, sexual assault, intimate partner violence, and stalking. Additionally, she brings a strong Human Resources background to investigating a range of employee misconduct—from performance issues to discrimination.

In addition to conducting investigations, Ms. Todd is a frequent speaker and consultant on Title IX investigations, conducting 20-30 courses every year on best practices for investigating sex discrimination and sex crimes on campus. She works with schools to draft policies and processes that provide equity and fairness to

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all parties involved and is adept at facilitating discussions with institutions to ensure the end product represents the values of the campus community.

Ms. Todd is licensed private investigator and a member of the NC Bar. She is a Certified Clery Compliance Officer through the National Association of Clery Compliance Officers and Professionals (NACCOP) and she is also a certified 360 facilitator through the Center for Creative Leadership. Ms. Todd lives in Davidson, NC where she volunteers on a number of local and town boards.

INVESTIGATION CLASS ACRONYMS

ASR: Annual Security Report (often used as a reference to the Annual Security Report and/or the Annual Security and Fire Safety Report) that must be published by each institution of higher education.

CSA: Campus Security Authority—Individuals on each campus who have been identified by the Department of Education as persons who are required to report crimes that they become aware of to the Reporting Structure at each institution.

DCL: Dear Colleague Letter—this is a formal name of the method of communication from the Department of Education to college campuses. It is like naming their official "memo" to campuses.

FERPA: Family Educational Rights and Privacy Act—governs the confidentiality of student records.

FNE: Forensic Nurse Examiners

GO: General Order—some departments describe their operating procedures as general orders

HEOA: Higher Education Opportunity Act—the broader law that contains the Clery Act language and the fire safety and missing person language that is in the law but not contained within the "Clery Act" portion of the law.

HIPAA: Health Insurance and Privacy and Portability Act—governs privacy of medical records.

MOU: Memorandum of Understanding—an official agreement developed between agencies.

NIBRS: National Incident-Based Reporting System. 1 of 2 crime reporting systems developed by the FBI, but not the system that you are required to use for Clery Reporting—the only portion of this system that is used for Clery Act purposes are the 4 forcible and 2 non-forcible sex offense definitions.

OCR: Office of Civil Rights—the unit of the Department of Education that oversees Title IX Compliance.

PD: Police Department

PS: Public Safety

PNG: Persona-non-Grata—process used by some campuses not keep students from entering certain areas of the campus or the entire campus (administrative process) versus legal bar notice or trespass warning.

SACC: Sexual Assault Crisis Center, also known as Women's Center.

SANE: Sexual Assault Nurse Examiner

SART: Sexual Assault Response Team

SOP: Standard Operating Procedures—some departments describe their operating procedures as Standard Operating Procedures. Some call them General Orders, etc…

SWA: Senior Women's Administrator (Athletics)

TWN: Timely Warning Notice

UCR: Uniformed Crime Report. This is 1 of 2 crime statistics reporting systems developed by the FBI. Institutions are required to use UCR Standards for counting and classifying crimes for reporting the Clery statistics.

VAWA: Violence Against Women Act

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TITLE IX

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ISSUANCE OF CERTIFICATES FOR COMPLETION OF DSA/NACCOP CLASSES

To receive a certificate for classes held by D. Stafford & Associates, LLC or the National Association of Clery Compliance Officers and Professionals (NACCOP), attendees must attend the majority of the class. This includes in-person classes and virtual classes. DSA and NACCOP understands that attendees may need to miss class for a legitimate reason for longer periods of time or may need to leave the room during a class for a few minutes to take a phone call or attend to other business. That said, our general rule of thumb for our 4 and 5 day classes is that if an attendee misses more than 1 hour of class time, they will not be issued a certificate of completion for the class. If the class is a 1, 2 or 3 day class, the amount of time that can be missed may be less, as classes of those lengths are more condensed.

For virtual classes, because we can't see all of the attendees all of the time like we can in an in-person class (based on the attendee controlling whether they have their camera turned on or not), the criteria for receipt of a certificate is determined based on missed class time (no more than 1 hour or less, depending on the length of the class) and participation in the Attendance Polls that will be launched throughout each day of class. Attendance polls are left up for approximately 5 minutes and the instructor notifies the attendees that a poll is being launched before doing so, to ensure that everyone who is there can/will respond to the poll. If there is an issue with responding to the attendance poll, the attendee would need to **immediately notify the Administrative Support person** in the course via the chat function in the zoom platform. That way we can immediately resolve any issues and give the attendee credit for being in attendance for the poll. Notifying us hours or days after having an issue with not being able to complete the attendance poll will not allow us to give the attendee credit for being in class during the poll.

Our classes qualify for credit toward a Master's Degree at New England College (and regardless if you decide to seek credit or not, but accreditation requirements mandate that we follow the same standards for all class attendees), so we have strict attendance standards that we follow for issuance of a certificate, which equates to verification that the participant attended the complete class. For DSA and NACCOP, issuance of a Certificate of Completion is verification of that fact.

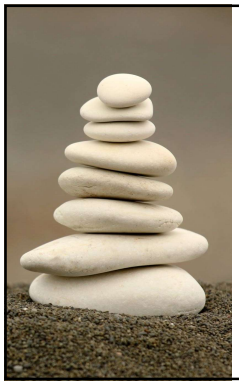
If the attendee missed class for a legitimate reason, that doesn't mean that an attendee wasn't there for much of the class and that they didn't benefit from that attendance. It just means that based on the missed time and/or attendance polls (in virtual classes only), we aren't able to issue you a certificate of completion.

If an attendee has to miss time in class, the instructions attendees receive before the class provide instructions for notifying the Administrative Support person about the time that will be missed **IN ADVANCE**, so we can jointly identify what blocks of instruction will be missed, and the DSA/NACCOP team will then work with the attendee to see if we can get them in a future class module to make up that material, which would result in us being able to issue the attendee a certificate. We provide this service and opportunity at no additional cost, as we want each attendee to finish the class and get a certificate of completion. Effective communication by each attendee is the key to this option.

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Title IX Coordinator

1



Agenda

- Introduction
- Understanding the Law
- Title IX and Related Policies
- Intake and Notice Stage
- Investigation and Resolution Stages
- Prevention and Education

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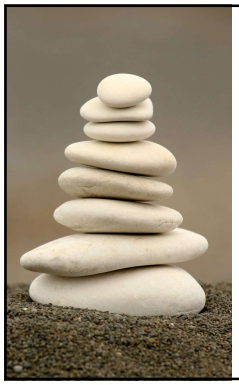


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Understanding the Law

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Agenda

- Title IX
- Post 2020 Case Law & Guidance
- Title IX Personnel
- Title VII
- The Clery Act for Title IX Coordinators

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TITLE IX

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Interpreting Laws


Law


Regulations


Substantive guidance


Case law

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Federal Statute - Prohibition

20 USCA § 1681 Sex (a) Prohibition against discrimination

No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance, except that:

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34 C.F.R. Part 106 – Nondiscrimination on the Basis of Sex in Educational Program or Activities Receiving Financial Assistance (pre-2020)

- Subpart A: Introduction (106.1 - 106.9)
- Subpart B: Coverage (106.11 – 106.17)
- Subpart C: Admission and Recruitment (106.22 – 106.23)
- Subpart D: Education Programs/Activities (Including athletics - 106.31-106.43)
- Subpart E: Employment (106.51- 106.61)
- Subpart F: Procedures (106.71)

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Regulation Overview

- Preamble
- Process For Sexual Harassment ONLY
- Technical Assistance

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Remedial Action

- Fix it
- No monetary damages

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Designation of Coordinator


Title IX Coordinator


Notification of parties


Contact information


Reporting information

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Dissemination of Policy


Notification


Publications

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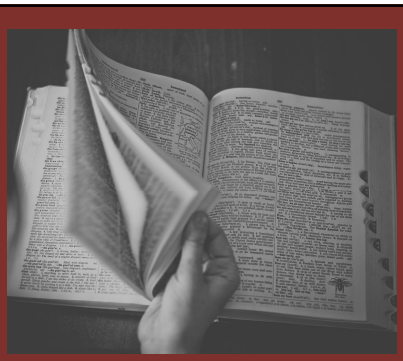
§106.12 Religious Institution

- Submit in writing
- Specific tenant
- Not required
- Raise any time

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Definitions



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Definitions: Parties/Witnesses



- Complainant
- Respondent
- Witnesses

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Definitions: Title IX Personnel



- Title IX Coordinator
- Investigator
- Decision-Maker
- Informal Resolution Facilitator

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Definitions: Advisor of Choice

Parties

Meetings/ Proceedings

No limitations

Rules of Participation

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Definitions: Key Terms



- Actual Knowledge
- Formal Complaint
- Supportive Measures

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Definitions - Sexual Harassment

Sexual harassment means conduct on the basis of sex that satisfies one or more of the following:

1. *An employee of the recipient conditioning the provision of an aid, benefit, or service of the recipient on an individual's participation in unwelcome sexual conduct;*
2. *Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the recipient's education program or activity;*
3. *"Sexual assault" as defined in 20 U.S.C. 1092(f)(6)(A)(v), "dating violence" as defined in 34 U.S.C. 12291(a)(10), "domestic violence" as defined in 34 U.S.C. 12291(a)(8), or "stalking" as defined in 34 U.S.C. 12291(a)(30).*

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Definitions - Consent

The Assistant Secretary will not require recipients to adopt a particular definition of consent with respect to sexual assault.

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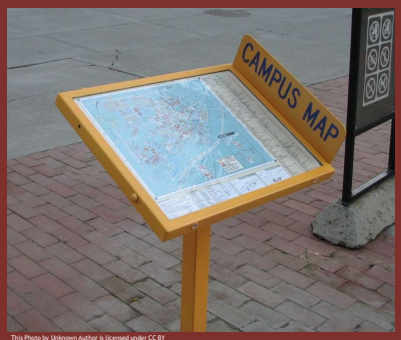
Retaliation

- Cannot intimidate, threaten, coerce, or discriminate others
- MAY use the same grievance procedure (But don't have to)
- First Amendment considerations

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Program & Activity



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Title IX Sexual Harassment Jurisdiction



Location
Educational program or activities and in the United States



Parties

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Jurisdiction of Location:

SCOPE OF PROGRAM AND ACTIVITY

- *The term "program or activity" and the term "program" mean all of the operations of -*
  - *a college, university, or other postsecondary institution, or a public system of higher education…*
  - *any part of which is extended Federal financial assistance, except that such term does not include any operation of an entity which is controlled by a religious organization if the application of section 1681 of this title to such operation would not be consistent with the religious tenets of such organization.*

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Jurisdiction of Parties



"At the time of filing a formal complaint…the complainant must be participating in or attempting to participate in the education program or activity"



The institution must exercise control over the Respondent

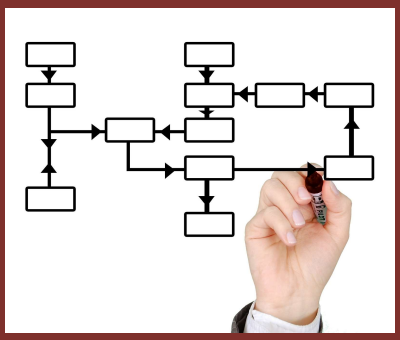


All regulations apply to students and employees

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Process



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Formal Complaint

Signed formal complaint

Complainant or Title IX Coordinator

Complainant MUST be participating in the education activity at the time of filing

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Consolidation of a Formal Complaint

- Multiple respondents
- More than one complainant against one or more respondent
- One party against other party

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Emergency Removal and Administrative Leave



Emergency removal



Administrative leave

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Dismissal of Formal Complaints



Must Dismiss

--Behavior does not constitute sexual harassment

--Did not occur in educational program or activity or not in the US



May Dismiss

--Complainant withdraws formal complaint

--Respondent no longer enrolled/employed

--Insufficient evidence

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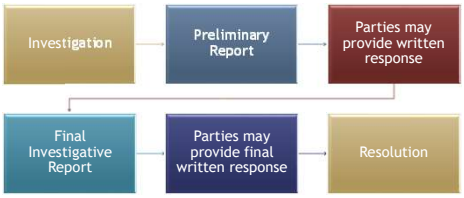
Notice Requirements

Grievance process	Sufficient details and sufficient time to prepare	Identities of the parties, alleged conduct	Date and location of incident
Presumed not responsible	Advisor of choice	False statements	Additional allegations

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Post-Notice Timeline



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Investigations and Evidence Gathering



- Burden of proof on the recipient
- Equal opportunity to present witnesses and facts
- No restrictions on discussing allegations
- Right to inspect evidence and respond
- Right to a final investigative report

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Hearings



Live hearing



Cross-examination

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Evidentiary Standard

Clear and Convincing

- Substantially more likely than not to have occurred
- High probability that a particular fact is true
- Higher than preponderance, but not as high as "beyond a reasonable doubt"

Preponderance of the Evidence

- More likely than not
- 50% and a feather

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TITLE IX RELATED HEARINGS



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Live Hearing Requirements

- "In-person"
- Cross-examination
- Relevancy determination
- Record

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Hearing Attendees

- Decision-maker(s)
- Complainant and advisor
- Respondent and advisor
- Witness(es)
- Others as determined by institution

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Relevant Questions on Cross



- Each party's advisor asks of other party and witnesses *"all relevant questions and follow-up questions, including those challenging credibility"*
- *"Only relevant cross-examination and other questions may be asked of a party or witness"*

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Relevancy Determination

"Before a complainant, respondent, or witness answers a cross-examination or other question, the decision-maker(s) must first determine whether the question is relevant and explain any decision to exclude a question as not relevant."



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Sexual Predisposition and History

"Questions and evidence about the complainant's sexual predisposition or prior sexual behavior are not relevant, unless such questions and evidence about the complainant's prior sexual behavior are offered to prove that someone other than the respondent committed the conduct alleged by the complainant, or if the questions and evidence concern specific incidents of the complainant's prior sexual behavior with respect to the respondent and are offered to prove consent."

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Participation Requirement

In accordance with the court's order, the Department will immediately cease enforcement of the part of § 106.45(b)(6)(i) regarding the prohibition against statements not subject to cross-examination. Postsecondary institutions are no longer subject to this portion of the provision.

Office For Civil Rights, August 24, 2021 Letter to Students, Educators, and other Stakeholders re: Victim Rights Law Center et al. v. Cardona Notice of Language Assistance

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Determination Regarding Responsibility

- Allegations
- Procedural steps
- Findings of fact
- Conclusion/application
- Rationale
- Appeal procedures

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Appeals

MUST have
- Procedure
- New evidence
- Conflict or bias that impacted outcome

Additional grounds permitted

Decision-maker can have no other role

Reasonably prompt time frame

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Appeals

Notification of appeal

Equal opportunity to respond

Written outcome - rationale

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Informal Resolution



Notice



Voluntary



Not allowed for Employee/student

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Recordkeeping (Seven Years)

Case Materials

Training materials

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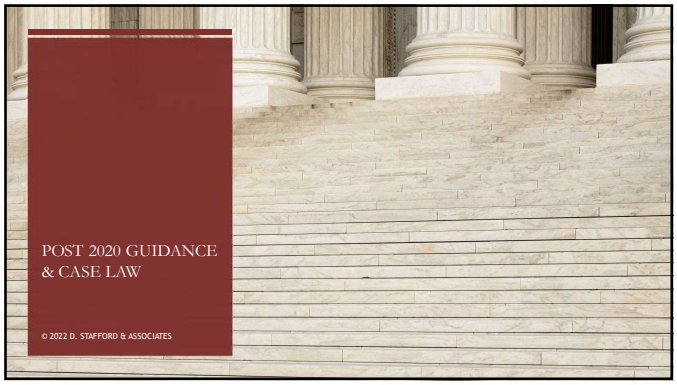
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Sexual Harassment Guidance Timeline

1972 - Title IX passed
1975 - Regulations
1997 - Guidance
2001 - Guidance
2006 - Guidance
2008 - Guidance
2010 - Guidance
2011 - Guidance

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Sexual Harassment Guidance Timeline

2014 - Guidance
2015 - Guidance
2017 - Guidance
2018 - Guidance
2020 - Regulations
2021 - Executive Order and QA
2022 - NPRM

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"ON THE BASIS OF SEX"

The Department of Education's interpretation of Bostock (June 22, 2021)



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FEDERAL REGISTER

The Daily Journal of the United States Government

Rule

Enforcement of Title IX of the Education Amendments of 1972 With Respect to Discrimination Based on Sexual Orientation and Gender Identity in Light of Bostock v. Clayton County

A Rule by the Education Department on 06/22/2021

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Interpretation

"Consistent with the Supreme Court's ruling and analysis in Bostock, the Department interprets Title IX's prohibition on discrimination "on the basis of sex" to encompass discrimination on the basis of sexual orientation and gender identity. As was the case for the Court's Title VII analysis in Bostock, this interpretation flows from the statute's "plain terms." See Bostock, 140 S. Ct. at 1743, 1748-50. Addressing discrimination based on sexual orientation and gender identity thus fits squarely within OCR's responsibility to enforce Title IX's prohibition on sex discrimination."

The Department of The Department of Education's interpretation of Bostock (June 22, 2021) Education's interpretation of Bostock (June 22, 2021)

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Application of Bostock to Title IX

There is textual similarity between Title VII and Title IX.

Additional case law recognizes that the reasoning of Bostock applies to Title IX and that differential treatment of students based on gender identity or sexual orientation may cause harm.

The U.S. Department of Justice's Civil Rights Division has concluded that Bostock 's analysis applies to Title IX.

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QUESTIONS AND ANSWERS ON THE TITLE IX REGULATIONS JULY 2021



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The Q&A

- 56 pages
- 67 Questions and Answers
  - Mostly reiterating the preamble
- Appendix of policy statement examples covering 17 topics
  - Additional insight provided

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Responding to Non-Title IX Sexual Misconduct (Q7)

The preamble makes clear that "Title IX is not the exclusive remedy for sexual misconduct or traumatic events that affect students." A school has discretion to respond appropriately to reports of sexual misconduct that do not fit within the scope of conduct covered by the Title IX grievance process.

(Question 7, p. 6)

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"Effectively Denies" Examples (Q8)

- *An effective denial of equal access to educational opportunities may include skipping class to avoid a harasser, a decline in a student's grade point average, or having difficulty concentrating in class.*
- *Examples of specific situations that likely constitute effective denial of equal access to educational opportunities also include "a third grader who starts bed-wetting or crying at night due to sexual harassment, or a high school wrestler who quits the team but carries on with other school activities following sexual harassment."*
- *A complainant does not need to have "already suffered loss of education before being able to report sexual harassment."*
- *Effective denial of equal access to education does not require "that a person's total or entire educational access has been denied.*

(Question 8, p. 7)

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"Effectively Denies" Examples (Q8)

- *While these examples help illustrate an effective denial of access, "[n]o concrete injury is required" to prove an effective denial of equal access.*
- *Complainants do not need to have "dropped out of school, failed a class, had a panic attack, or otherwise reached a 'breaking point'" or exhibited specific trauma symptoms to be effectively denied equal access.*
- *School officials turning away a complainant by deciding the complainant was 'not traumatized enough' would be impermissible." Schools may wish to include these and other examples in their internal policies, training, and communications to students and employees to help illustrate this concept.*

(Question 8, p. 7)

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Attempting to Participate (Q23)

Individuals who are currently participating in the school's education program or activity may also file formal complaints. . . The preamble gives several examples of situations of a complainant "attempting to participate" in a school's education program, including when a complainant:

1) has withdrawn from the school due to alleged sexual harassment and expresses a desire to re-enroll if the school responds appropriately to the allegations,
2) has graduated but intends to apply to a new program or intends to participate in alumni programs and activities,
3) is on a leave of absence and is still enrolled as a student or intends to re-apply after the leave of absence, or
4) has applied for admission.

(Question 23, p. 15)

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Rules of a Hearing (Q43 & Q44)

- *. . . may decide whether or how to place limits on evidence introduced at a hearing that was not gathered and presented prior to the hearing.*
- *The preamble adds that a school may adopt a rule stating that duplicative questions are irrelevant.*
- *. . . a postsecondary school could limit the role of advisors to relaying questions drafted by their party.*

(Question 43, p. 22)

- *. . . a school may prohibit advisors from questioning parties or witnesses in an abusive, intimidating, or disrespectful manner."*
- *". . . a school may enforce a rule requiring that relevant questions must be asked in a respectful, non-abusive manner.*

(Question 44, p. 23)

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Policy Example - The Role of the Advisor

Example Policy 1: The role of the advisor is narrow in scope: the advisor may attend any interview or meeting connected with the grievance process that the party whom they are advising is invited to attend, but the advisor may not actively participate in interviews and may not serve as a proxy for the party. The advisor may attend the hearing and may conduct cross-examination of the other party and any witnesses at the hearing; otherwise, the advisor may not actively participate in the hearing. (p. 42)

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Policy Example - The Role of the Advisor

Example Policy 2: During meetings and hearings, the advisor may talk quietly with the student or pass notes in a non-disruptive manner. The advisor may not intervene in meetings with the school. In addition, while advisors may provide guidance and assistance throughout the process, all written submissions must be authored by the student. (p. 42)

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Policy Example - The Role of the Advisor

Example Policy 3: The advisor may provide advice and consultation to the parties or parties' witnesses outside of the conduct of the live hearing to assist parties in handling the formal resolution process. (p. 42)

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Example Policy 3: When it is an individual's turn to appear before the decision-maker, that person will appear separately before the panel and may bring notes for their reference. The decision-maker may ask any individual for a copy of or to inspect their notes. The complainant and respondent may be accompanied by or may otherwise be in contact with their advisor at all times. If the hearing is conducted wholly or partially through video conference, an administrator will ensure that each party has the opportunity to appear before or speak directly to the hearing panel and to appropriately participate in the questioning process. (p. 43)

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Policy Example - The Live Hearing (Hearing Format)

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Example Policy 1: The hearing is an opportunity for the parties to address the decision-maker. The parties may address any information in the investigative report, submit supplemental statements in response to the investigative report or, at the time of any sanction, provide verbal impact and mitigation statements. The school will make all evidence gathered available to the parties at the hearing to give each party equal opportunity to refer to such evidence during the hearing, including for purposes of cross-examination. In reaching a determination, the decision-maker will meet with the complainant, respondent, investigator, and any relevant witnesses, but the decision-maker may not conduct their own investigation. (p. 44)

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Policy Example - Evidence

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Example Policy 2: The parties will have the opportunity to present the evidence they submitted, subject to any exclusions determined by the decision-maker. Generally, the parties may not introduce evidence, including witness testimony, at the hearing that they did not identify during the pre-hearing process. However, the decision-maker has discretion to accept or exclude additional evidence presented at the hearing. In addition, the parties are expected not to spend time on undisputed facts or evidence that would be duplicative. (p. 44)

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Policy Example - Evidence

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Example Policy 4: The role of the advisor at the live hearing is to conduct cross-examination on behalf of a party. The advisor is not to represent a party, but only to relay the party's cross-examination questions that the party wishes to have asked of the other party and witnesses. Advisors may not raise objections or make statements or arguments during the live hearing. (p. 46)

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Policy Example - The Cross-Examination Process (Explaining Cross-Examination)

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"Example Policy 1: While the hearing is not intended to be a repeat of the investigation, the parties will be provided with an equal opportunity for their advisors to conduct cross-examination of the other party and of relevant witnesses. A typical hearing may include: brief opening remarks by the decision-maker; questions posed by the decision-maker to one or both of the parties; cross-examination by either party's advisor of the other party and relevant witnesses; and questions posed by the decision-maker to any relevant witnesses." (p. 43)

Policy Example - The Live Hearing (Hearing Format)

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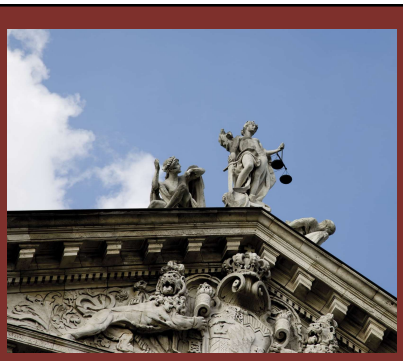


SEXUAL HARASSMENT CASELAW

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SEXUAL HARASSMENT CASE LAW



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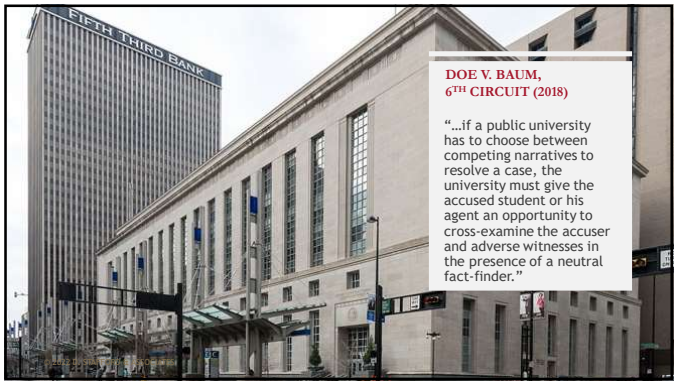
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Review of Relevant Case Law

- Gebser v. Lago Vista Ind. School District, SCOTUS (1998)
- Davis v. Monroe County Board of Education SCOTUS (1999)
- Jackson v. Birmingham Board of Education SCOTUS (2005)
- Fitzgerald v. Barnstable School Comm., SCOTUS (2009)

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DOE V. BAUM, 6TH CIRCUIT (2018)

"…if a public university has to choose between competing narratives to resolve a case, the university must give the accused student or his agent an opportunity to cross-examine the accuser and adverse witnesses in the presence of a neutral fact-finder."

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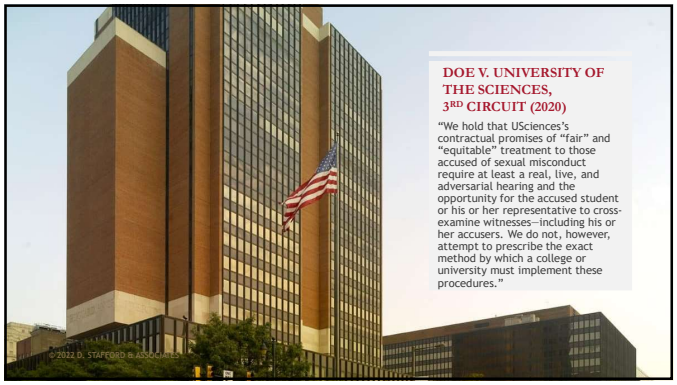
HAIDAK V. UMASS-AMHERST, 1ST CIRCUIT (2019)

"…we find that the university violated Haidak's federal constitutional right to due process in suspending him for five months without prior notice or a fair hearing, but that it did not thereafter violate his rights in expelling him after providing a fair expulsion hearing."

"Some opportunity for real-time cross-examination, even if only through a hearing panel."

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DOE V. UNIVERSITY OF THE SCIENCES, 3RD CIRCUIT (2020)
"We hold that USciences's contractual promises of "fair" and "equitable" treatment to those accused of sexual misconduct require at least a real, live, and adversarial hearing and the opportunity for the accused student or his or her representative to cross-examine witnesses—including his or her accusers. We do not, however, attempt to prescribe the exact method by which a college or university must implement these procedures."
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TITLE VII
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Protected Class



Different Groups



Different Laws

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Protected Classes

Familial status	Gender	Gender identity	Sex*	Sexual orientation
Age (40+)	Ancestry	Color*	National origin*	Race*
Disability	Genetic information	Military or veteran status	Religion*	

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* As defined by Title VII

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Law	Who	What	Enforcement
Title VI of the Civil Rights Act of 1964	Students	Race, color, or national origin	OCR
Title VII of the Civil Rights Act of 1964	Employees	Race, color, religion, or sex	EEOC
Title IX of the Education Amendments of 1972	Students; Employees	Basis of sex	OCR
503 and 504 of the Rehabilitation Act of 1973	Students	Disabilities	OCR
ADA/ADAA - Americans with Disabilities Act/Amendments	Employees (Title I); Students (Title II/III)	Disabilities	EEOC/ DOJ
ADEA - Age Discrimination in Employment Act	Employees	Age (40+)	EEOC
PDA - Pregnancy Discrimination Act	Employees	Pregnancy/Title VII	EEOC
USERRA - Uniformed Services Employment and Reemployment Rights Act	Employees	Veterans	DOL/DOJ

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Title VII of the Civil Rights Act of 1964

Title VII prohibits employment discrimination based on race, color, religion, sex, and national origin

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History



Photo by History in HD on Unsplash

- Civil Rights Act of 1964
- Proposed by Kennedy
- Signed by Johnson
- Race, color, religion, national origin, sex
- Original drafts did not include sex

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42 U.S.C. § 2000e-2 – Unlawful Employment Practices

- Fail or refuse to hire
- Discharge
- Discrimination with respect to compensation, terms, conditions, or privileges of employment
- Limit, segregate, or classify "his" employees
- Harassment is not defined in the statute



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The Regulations 29 C.F.R. §1604

- §1604.1 General principles
- §1604.2 Occupational qualification
- §1604.3 Separate lines of progression and seniority systems
- §1604.4 Discrimination against married women
- §1604.5 Job opportunities and advertising
- §1604.6 Employment agencies
- §1604.7 Pre-employment inquiries as to sex
- §1604.8 Relationship to Title VII of the Equal Pay Act
- §1604.9 Fringe benefits
- §1604.10 Employment opportunities related to sex
- §1604.11 Sexual harassment

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29 C.F.R. § 1604 Discrimination Because of Sex

- Sex-based discrimination
- Sex discrimination harassment
- Retaliation
- Pregnancy
- Disparate impact
- 3rd party harassment



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Basis of Sex

- Pregnancy-related protections
- Sexual orientation/Gender identity (Bostock)

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Discrimination



An adverse action is taken and is based on a protected class

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Disparate Treatment

When a person, or a group of people, are treated less favorably than another person or group of people on the basis of a protected class.

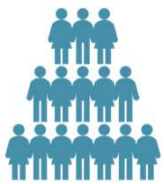


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Disparate Impact

When a policy, practice, or decision is based on neutral factors that have an adverse impact on a protected class



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29 C.F.R. § 1604.11(a) Sexual Harassment

Harassment on the basis of sex violates Title VII. Unwelcome conduct of a sexual nature that:

1. *Submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment; OR*
2. *Submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual; OR*
3. *Such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment*

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29 C.F.R. § 1604.11 Sexual Harassment

- Totality of Circumstances
- Notice
- 3rd party
- Prevention
- Related

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Quid Pro Quo

- Tangible employment action
- Punish for refusing to engage
- Submission due to conditions

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Severe or Pervasive

- Complainant belongs to a protected category
- Conduct was unwelcome
- Conduct based on complainant's protected category
- Plaintiff subjectively viewed the harassment as creating a hostile environment
- A reasonable person would objectively view the work environment as abusive

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Severe and Pervasive Examples



Rape	Physical threats	Unwelcome sexual advances
Repeated requests for sexual favors	Verbal or physical harassment of a sexual nature	Offensive comments based on sex

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Unwelcome Conduct



"in the sense that the employee did not solicit or incite it, and in the sense that the employee regarded the conduct as undesirable or offensive." Henson v. City of Dundee, 682 F.2d at 903

Totality of the circumstances

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Reasonable Person



More than petty slights



Conduct applications

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Retaliation



Protected activity



Adverse impact

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Employer Liable Unless they Can Show:

- Reasonably tried to prevent and correct harassing behavior
- Employee unreasonably failed to take advantage of preventative or corrective measures



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Same Sex Harassment

Oncale v. Sundowner Offshore Services, Inc., 523 U.S. 75 (1998)

Questions:

Are Title VII claims of harassment by a member of the same sex viable?

Were members of one sex exposed to terms or conditions that members of the other sex were not exposed?

- Harassment occurred because of complainant's sex
  - Credible evidence that respondent was gay or motivated by sexual desire
  - Respondent used "sex-specific and derogatory terms" reflecting respondent hostility to a particular sex
  - Evidence regarding respondent's treatment towards both sexes

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Menaker v. Hofstra University, 935 F.3d 20, 35 (2nd Cir. 2019).

(1) Where a university (a) takes an adverse employment action against an employee, (b) in response to allegations of sexual misconduct, (c) following a clearly irregular investigative or adjudicative process, (d) amid criticism for reacting inadequately to allegations of sexual misconduct by members of one sex, these circumstances support a prima facie case of sex discrimination.

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INTERSECTIONS



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	Title IX	Title VII
Protected Class	Sex	Sex, race, color, religion, national origin…age, or disability
Activities Covered	Academic opportunities and activities	Employment
Retaliation?	Prohibition on retaliation	Prohibition on retaliation
LGBTQ	Protections for gender identity and sexual orientation	Protections for gender identity and sexual orientation
Enforcement	OCR	EEOC and/or state agency
Training?	Training requirements	No training requirements
Standard	Preponderance/clear and convincing	Probable cause/Preponderance
Notice?	Notice requirements	No notice requirements
3rd Party?	It depends . . .	Yes

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Private Right of Action

Q: Do complainants have a private right of action under Title VII or Title IX for a claim of employment-related sex discrimination and retaliation?

A: Well, it depends…

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Amorous Relationship Policies



Where are these located?

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Case Study: Is it VII or TIX?

A student has filed a report stating that she believes her faculty member was masturbating during a recent lecture. The student has a recording of the lecture in which the faculty member is shown from above the waist, shaking, breathing hard, and saying "oh f*** yeah."

The student stated that this occurred when other students had been placed in a breakout room and that she believes she is the only person who observed the professor.

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OTHER CONSIDERATIONS



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1st Amendment and Academic Freedom

As noted above, OCR interprets its regulations consistent with the requirements of the First Amendment. Some speech may be used to communicate ideas or emotions that nevertheless implicate First Amendment protections. However, this case presents extraordinary factual circumstances: The Dean's reported years of sexual comments were just a portion of the ongoing alleged sexually harassing conduct the Dean was reported to have engaged in during his long tenure at the College, including asking for sexual favors from a student in exchange for assistance with a certification examination. The University therefore had an obligation under Title IX to investigate and, if warranted, take steps necessary to determine whether a hostile environment based on sex had been created.

Office For Civil Rights, Michigan State University Letter of Finding (2019)

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Academic Freedom

College and university teachers are citizens, members of a learned profession, and officers of an educational institution. When they speak or write as citizens, they should be free from institutional censorship or discipline, but their special position in the community imposes special obligations. As scholars and educational officers, they should remember that the public may judge their profession and their institution by their utterances. Hence, they should at all times be accurate, should exercise appropriate restraint, should show respect for the opinions of others, and should make every effort to indicate that they are not speaking for the institution.

- AAUP, *Policy Documents & Reports* 3-4 (9th ed. 2001)

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Academic Freedom

YES:

- Debate
- Pedagogical philosophy
- Compare, contrast, and challenge
- Express view
- Research
- Free from others' beliefs
- Grievance and due process
- Grade
- Teach

NO:

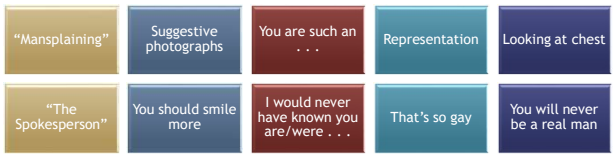
- Harass/threaten
- Protect incompetency
- Protect from abiding by law or regulations
- Protect from disciplinary or sanctions
- Allow disruption of speakers

Nelson, C. (2010, December 21). Defining Academic Freedom. Retrieved November 7, 2019, from https://www.insidehighered.com/views/2010/12/21/defining-academic-freedom.

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Microaggressions



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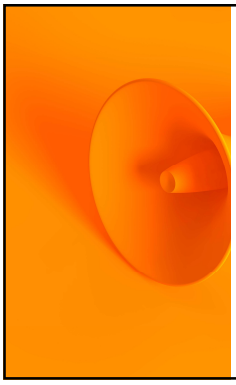
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First Amendment Limitations



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Case Study: What should be the School's Response?

MT, a faculty member has complained that staff, administrators, and fellow faculty are spreading vicious lies that he is having an extra-marital affair with one of his students. The student lives at his home with him and his wife.

MT has stated that "everywhere" he goes, people are talking about him and his student. MT also states that if he were a woman, no one would have an issue with the relationship he has with the student.

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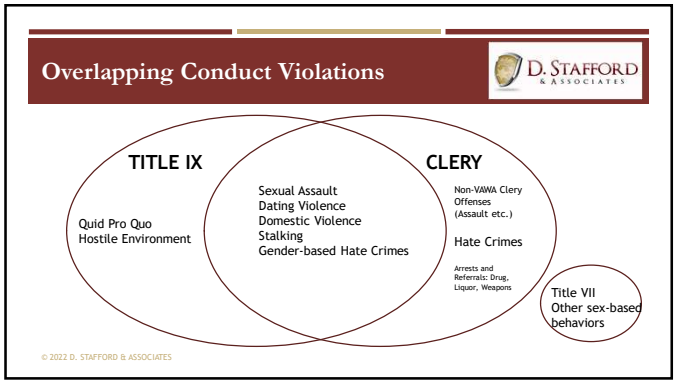
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Crime
THE CLERY ACT
FOR TITLE IX
COORDINATORS
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Overlapping Conduct Violations
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TITLE IX
Quid Pro Quo
Hostile Environment
Sexual Assault
Dating Violence
Domestic Violence
Stalking
Gender-based Hate Crimes
CLERY
Non-VAWA Clery Offenses (Assault etc.)
Hate Crimes
Arrests and Referrals: Drug, Liquor, Weapons
Title VII
Other sex-based behaviors
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Key Requirements of the Clery Act

- Collect, classify, and count crime reports/statistics
- Public disclosures
- Publish Annual Security Report
- Submit crime statistics to the Department

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Key Requirements (part 2)

- Provide educational programs and campaigns on dating/domestic violence, sexual assault, & stalking (DV/DV/SA/S)
- Have procedures for institutional disciplinary action for DV/DV/SA/S
- If you have a campus police or security department: Publish Daily Crime Log
- If you have residential facilities: Fire Log, Fire Safety Report, Missing Persons Procedures

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Campus Security Authorities (CSA)

- Campus police/security
- Security responsibility
- Individual or organization where crimes should be reported
- An official with responsibility for student and campus activities

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Reporting Considerations

Title IX - "Officials with authority"

- Title IX Coordinator
- Official(s) who can institute corrective measures on behalf of the school
- Any other person who is designated by the institution as a person who shall report

Clery Act - CSAs

- Campus police department
- Responsible for security
- Individuals to whom crimes should be reported
- "Officials with significant responsibility for student and campus activities"
- Local law enforcement

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Clery Reportable Crime Categories

- Murder/Non-negligent Manslaughter*
- Manslaughter by Negligence*
- Sex Assault*
  - Rape
  - Fondling
  - Incest
  - Statutory Rape
- Robbery*
- Aggravated Assault*
- Burglary*
- Motor Vehicle Theft*
- Arson*
- Arrests and Disciplinary Referrals for:
  - Liquor
  - Drugs
  - Weapons
- Domestic Violence
- Dating Violence
- Stalking
- Hate Crimes for *, plus
  - Larceny-Theft
  - Simple Assault
  - Intimidation
  - Destruction/Damage/Vandalism of Property

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Clery Geography



On Campus (& On-Campus Residential)



Public Property



Non-campus building or property

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Impact of Location & Party

- On campus; on public property within or immediately adjacent to and accessible from the campus; in or on non-campus buildings or property that your institution (or a recognized student organization) owns/controls
- May include some study abroad programs
- For VAWA offenses, must use processes even if occurs off-campus



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Geography versus Jurisdiction

Geography is the defined physical area in which the Clery Act attaches. A crime MUST occur within the institution's physical Clery geography to be captured.

Jurisdiction generally describes authority to apply law to a certain area and/or to certain persons.

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Timely Warning/Emergency Notification

	TIMELY WARNING (TWN)	EMERGENCY NOTIFICATION (EN)
Legal Standard:	Serious or continuing threat	Immediate threat to health and safety
Circumstance:	Clery-reportable crimes that have been reported (occurred in past)	Clery-reportable crimes as well as other types of emergencies (happening right now or about to happen)
Audience:	Community-wide	Can send to a segment of the community, if appropriate
When Issued:	As soon as pertinent information is available	Upon confirmation of emergency (when possible)
Follow-Up:	Not Required	Required

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Timely Warning Decisions

EVERY Clery-reported crime must be assessed on a case by case basis for timely warning purposes

The nature and type of the crime

The continuing danger to the campus community

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VAWA OFFENSES



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Duties Under VAWA

- Added "Dating Violence, Domestic Violence, & Stalking" to list of countable Clery crimes
- Added process and procedural requirements for DVDVS offenses (including Sexual Assault)
- Added training requirements on DVDVS offenses (including Sexual Assault) for students and employees.
- Added Gender Identity to Hate Crimes categories

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VAWA Offenses

Rape | Fondling | Incest | Statutory Rape

Dating Violence | Domestic Violence | Stalking

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Consent

- The Clery Act does not require any particular definition of consent
- ASR must include definition of consent as defined by jurisdiction (state law)
- Institution should have a definition in their institutional sexual misconduct policy

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VAWA PROCEDURAL REQUIREMENTS



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Response Requirements for VAWA Offenses

Procedures victims of VAWA Offenses should follow

Procedures an institution will follow when offense reported

and make sure it is all in WRITING.

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Written Explanation of Student or Employee's Rights

(b)(11)(vii) "When a student or employee reports to the institution that the student or employee has been a victim of dating violence, domestic violence, sexual assault, or stalking, whether the offense occurred on or off campus, the institution will provide the student or employee a written explanation of the student's or employee's rights and options, as described in paragraphs (b)(11)(ii) through (vi) of this section. . ."

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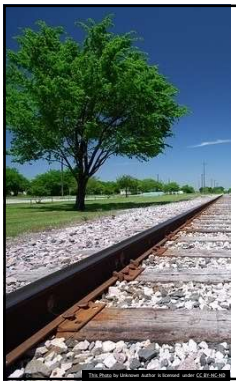


Written Explanation of Rights and Options

1. **The importance of preserving evidence** that may assist in proving that the alleged criminal offense occurred or may be helpful in obtaining a protection order
   - Not required but recommended: Where to obtain forensic exams, contact info, does not require police report and can have exam now, decide later
2. **How and to whom the alleged offense should be reported**
   - List any person or organization that can assist the victim
   - Recommended: Also include community organizations

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Written Explanation of Rights and Options

3. **Notification of the victim's option to**
   - Notify proper law enforcement authorities, including on-campus and local police
   - Be assisted by campus authorities in notifying law enforcement authorities if the victim so chooses
   - Decline to notify such authorities
4. **The rights of victims and the institution's responsibilities for**
   - Orders of protection
   - "No contact" orders
   - Restraining orders
   - Similar lawful orders issued by a criminal, civil, tribal, or institutional

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Written Explanation of Rights and Options

5. **To students AND employees about existing:**
   - Counseling, health, mental health services
   - Victim Advocacy
   - Legal Assistance
   - Visa and Immigration Assistance
   - Student Financial Aid
   - Other services available for victims
6. **Options for, available assistance in, and how to request changes to (if requested and reasonably available)**
   - Academic, living, transportation, working

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Written Explanation of Rights and Options

7. **Confidentiality**
   - Publicly available recordkeeping has no personally identifying information about the victim (not required for respondent but best practice in most cases)
   - Accommodations and protective measures are confidential (to the extent they can be without impairing the ability to provide them)
8. **Disciplinary Procedures**
   - An explanation of the procedures for institutional disciplinary action in cases of alleged dating violence, domestic violence, sexual assault, or stalking, as required

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Response to "Actual Knowledge"

2020 Title IX Regulations

- Contact the complainant
- Offer and/or implement supportive measures
- Explain the process for filing a formal complaint

Clery Act

- Written explanation of victim's rights and options including:
  - procedures to follow (preserve evidence, where report)
  - information about confidentiality
  - existing counseling, mental health, assistance, etc.
  - access to law enforcement and no contacts, etc.
  - changes to academic, living, transportation, and working situations, institutional procedures
  - process for institutional disciplinary process
- Assess for Timely Warning Notice OR Emergency Notification

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Clery Requirements for Disciplinary Proceedings



- Anticipated timelines ("reasonably prompt")
- Decision-making process
- How to and options for filing a school complaint (with contact info)
- How school determines which process to use
- Who makes decisions
- Include employee procedures
- Use procedures regardless of Clery geography

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Advisors Per Clery



- Provide the accuser and the accused with the same opportunities to have others present during any institutional disciplinary proceeding, including the opportunity to be accompanied to any related meeting or proceeding by the advisor of their choice
- Not limit the choice of advisor or presence for either the accuser or the accused in any meeting or institutional disciplinary proceeding; however, the institution may establish restrictions regarding the extent to which the advisor may participate in the proceedings, as long as the restrictions apply equally to both parties

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Standard of Evidence



- Any standard of evidence … must include in policy
- Would not prohibit using different standards for different groups

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Informal Resolution

Written information about procedures the institution will follow for VAWA offenses

Does not differentiate between formal vs informal

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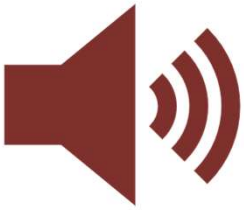
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Formal Complaint Rights

- Prompt, fair and impartial investigation and resolution
  - Anticipated timeframes
  - List all possible sanctions for each offense (employees and students)
  - Consistent with policy and transparent
  - Not required to list all protective measures

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LIVE HEARING

SILENT ON THIS REQUIREMENT

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Written Determination

- Result (include any sanctions and rationale for results and sanction)
- Appeals procedures
- Any change to the result
- When such results become final

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Bias Free and Training for "Officials"

Annual training on the issues related to dating violence, domestic violence, sexual assault and stalking and on how to conduct an investigation and hearing process that protects the safety of the victims and promotes accountability

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Clery Requirements for Officials



- Training must be described in ASR
- Annual
- Should include (at a minimum):
  - Relevant evidence and how it should be used
  - Proper interview techniques
  - Basic procedural rules for conducting a proceeding
  - Avoiding actual/perceived conflicts
- Can be in person or electronic (webinar or video)

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Appeals

Not required (but must provide notice if allowed along with appeal procedures)

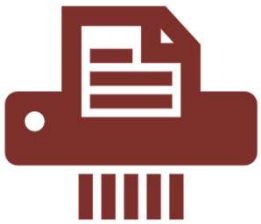
Simultaneous written decision describing result, sanction, any changes to the result, when it becomes final

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Recordkeeping

- Retain all records used in compiling ASR for three years from the latest publication of the report to which they apply (In effect 7 years)



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Case Study:

You are having a conversation with the Chair of the English department who tells you that one of her faculty members has not been to campus in two weeks because her ex-boyfriend (not affiliated with the institution) has been sending her pictures of her office and saying that he is waiting for her. The Chair told the faculty member to "stay home" but is now asking you for advice as to what to do next.

What are your next steps?

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TITLE IX
PERSONNEL
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TITLE IX
COORDINATOR
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Title IX Coordinator Responsibilities
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Contact information must be posted
Coordinates all Title IX efforts
Disseminates policy
Receives reports and/or outreach to complainant
Accepts or signs formal complaints
Makes jurisdictional determinations
Accepts complainant's withdrawal of complaint
Coordinates effective implementation of supportive measures and remedies
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Title IX Coordinator Responsibilities

Dismissal/ consolidation

Bias and conflict of interest decisions

Assign investigators

Informal resolution decisions

Update parties
- Notice documents
- Appeals process

Coordinate resolution process
- Assign decision-makers
- Implement sanctions/remedies

Facilitate trainings

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Title IX Institutional Responsibilities

- Determining and responding to discrimination in
  - Admission
  - Financial Aid
  - Athletics
  - Pregnancy
  - Employment
  - Discipline
- Sexual harassment response

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Admission and Financial Assistance

Admission Requirements	Financial Aid Requirements	To Do
• Public institutions only • No preferential treatment	• Prohibition on different amounts and eligibility criteria • Athletic scholarships	• Review data • Monitor procedures and practices • Review gifts

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Athletic Requirements

Requirements

- Effectively accommodate interests and abilities
- Financial assistance (scholarships)
- Benefits and opportunities (the laundry list)

To do

- Review data
- Review gifts
- Conference compliance

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Pregnancy

Requirements

- Admission and employment
- Treat as other disabilities
- Provide same educational programs and activities

To Do

- Provide accommodations
- Provide education
- Policy initiatives

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Employment

Requirements

- Recruitment
- Evaluation
- Classification
- Payment
- Assignment
- Retention

To Do

- Compliance and collaboration
- Review materials and data

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Discipline and Education

Requirements

- Rules applied equally
- Sanctions applied equally

To Do

- Review policies and materials
- Review cases and data

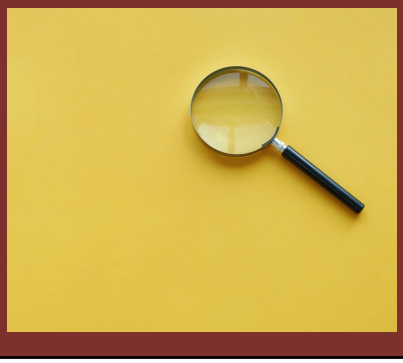
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INVESTIGATORS



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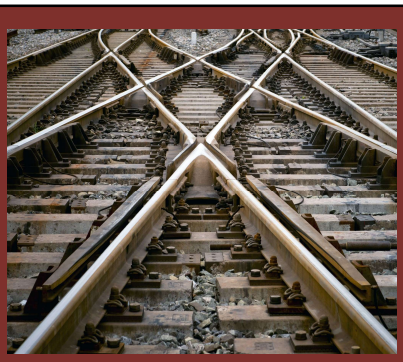
Investigator Responsibilities

- Gather directly related evidence
- Summarize relevant evidence
- Write final investigative report
- Other responsibilities?

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RESOLUTION FACILITATORS



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Decision-maker Categories

- Appeals of dismissals of complaint
- Live hearing
- Appeals of findings
- Others

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Hearings

- Only one role within a case (hearing officer or appeal officer)
- May ask questions in hearing
- Determine relevancy of questions in hearing
- Determine findings
- Determine sanctions
- Issues written determination of responsibility

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Appeals of Dismissal and Findings

- Procedure
- New evidence
- Conflict of interest and bias
- Additional grounds permitted

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Title IX Personnel – Informal Resolution Facilitator

- Facilitate the informal resolution process
- Receive same training as other Title IX Personnel

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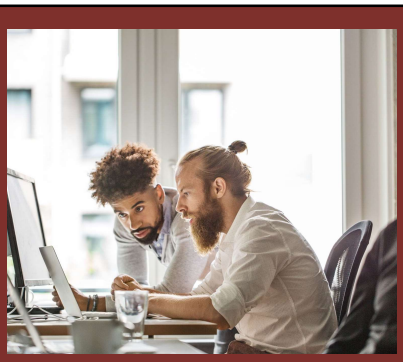
Decision-maker Considerations

- Internal
- External
- Assigning Chair
- No Prior Role
- Conflict of Interest/Bias

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ADVISORS



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Advisors

- Attorney
- Friend
  - Roommate
  - Fraternity Brother
  - Sorority Sister
- Parent
- Employee
  - Professor
  - Advisor
  - Victim Advocacy

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Institution Provided Advisors

- Institutions must provide an advisor if a party does not have one at hearing
- Conducts cross-examination of witnesses and opposing party
- Receives evidence and investigative report
- No training requirement
- Separate institutional requirements?

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Institution Appointed Advisor

- When required
- Who to appoint
- How to train

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Advisor



"If a party does not have an advisor present at the live hearing, the recipient must provide without fee or charge to that party, an advisor of the recipient's choice, who may be, but is not required to be, an attorney, to conduct cross-examination on behalf of that party."

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Advisors

Investigation

- May accompany party to investigation meetings
- Receives preliminary and investigative reports

Hearing

- Institutions must provide an advisor if a party does not have one at hearing
- Conducts cross examination of witnesses and opposing party

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Designated Responsibilities

- Appoint Title IX personnel
- Train Title IX personnel
- Interpret policy
- Draft and send notice documents
- Emergency removal decisions (and appeals)
- Determine bias and conflict of interest
- Make dismissal decisions
- Appeals of dismissal decisions
- Implement sanctions

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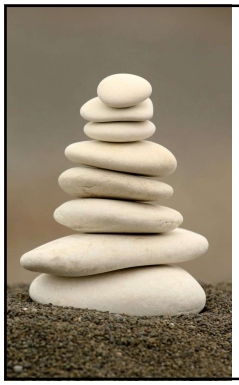


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Title IX and Related Policies

1



Agenda

- Sexual Harassment on Campus
- Quid Pro Quo
- Hostile Environment +
- The VAWA Offenses
- Policy and Procedural Considerations

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SEXUAL HARASSMENT ON CAMPUS

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SEXUAL ASSAULT ON CAMPUS

STUDIES SHOW THAT 1 OUT OF 5 COLLEGE WOMEN WILL BE THE VICTIM OF A SEXUAL ASSAULT.

- *The campus sexual assault (CSA) study: Final report.*
- *Report on the AAU Campus Climate Survey on Sexual Assault and Sexual Misconduct.*
- *Sexual_Assault_Campus_Survey/AAU_Campus_Climate_Survey_12_14_15.pdf*
- *Washington Post-Kaiser Family Foundation. 2015. "Poll: One in 5 women say they have been sexually assaulted in college."*

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2019 AAU Climate Survey

Reporting rates for nonconsensual sexual contact (force or incapacitation): 13% for all participants

- Female undergraduates: 25.9% Female graduate/professional: 9.7%
- Male undergraduates: 6.8% Male graduate/professional: 2/5%
- TGQN* undergraduates: 22.8% TGQN graduate/professional: 14/5%

**Transgender woman/Transgender man/Gender questioning/Nonbinary/genderqueer/Gender not listed*

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2019 AAU Climate Survey

- Of undergraduate women reporting victimization:
  - One incident - 9.5%
  - More than one - 16.4%
- Rate of victimization for women: Increase of 3% from 2015 survey
- Knowledge of definition of sexual misconduct: Up 11.5% (women) and 12.4% (men) from 2015 study
- Belief that school would take the report seriously: 65% said yes, but only 45% of actual reporters agreed
- Reporting rates for penetration (sexual touching was about ½ the reports of penetration):
  - Women: 29.5%
  - TGQN: 42.9%
  - Men: 17.8%

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Elements of Sexual Harassment

A. Is it conduct on the basis of sex?
B. Was it unwelcome?
C. Does it constitute Sexual Harassment?
   1. Quid Pro Quo
   2. Hostile Environment
   3. Sexual Assault, Dating Violence, Domestic Violence, or Stalking

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Sexual Harassment Under Title IX



PRONG 1: QUID PRO QUO



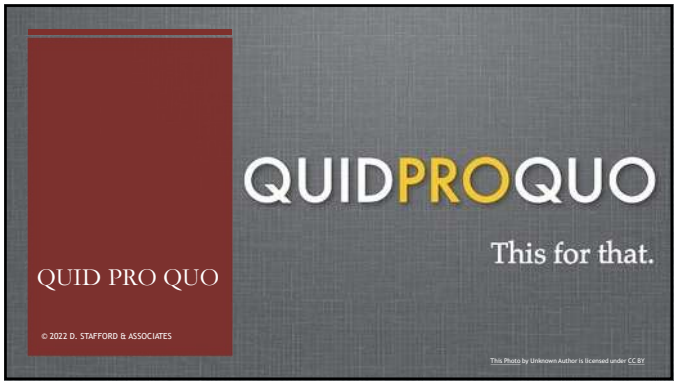
PRONG 2: HOSTILE ENVIRONMENT+



PRONG 3: VAWA OFFENSES

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PRONG 1: Quid Pro Quo

An employee of the recipient conditioning the provision of an aid, benefit, or service of the recipient on an individual's participation in unwelcome sexual conduct

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PRONG 1: Quid Pro Quo

Sex or gender-based	Employee	CONDITIONING aid, benefit, or service	UNWELCOME conduct (or threat of conduct)

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PRONG 1: Quid Pro Quo

- **What was the aid, benefit, or service?**
  - **Education:** admission, grades, awards, housing, access, membership, resources, support
  - **Employment:** hiring/firing, salary, benefits, promotions, location, privileges
  - **Other:** participation, movement, personnel/education records, reputation, access, status
- **How was it conditioned/communicated?**
  - Implied, stated, written

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Quid Pro Quo: Respondents

- Supervisors, Coaches, Faculty (Title IX)
- Volunteers/Non-employees (Non-Title IX)
- Students (Non-Title IX)

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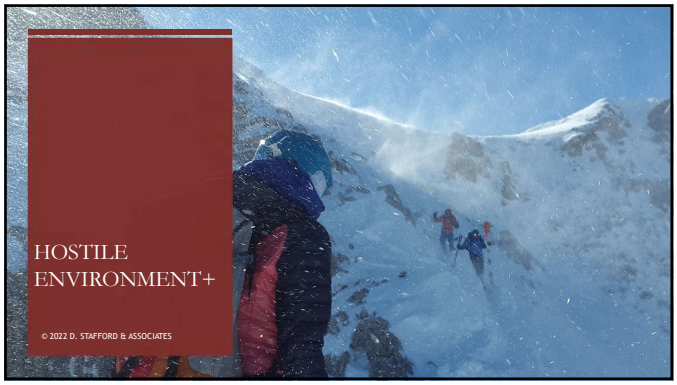
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PRONG 1: Quid Pro Quo

An employee of the recipient conditioning the provision of an aid, benefit, or service of the recipient on an individual's participation in unwelcome sexual conduct

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PRONG 2: Hostile Environment+ (The *Davis* Standard)

*Unwelcome conduct determined by a reasonable person to be so severe, pervasive, **and** objectively offensive that it effectively denies a person equal access to the recipient's education program or activity*

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PRONG 2: The *Davis* Standard

Davis v. Monroe County Board of Education, 526 U.S. 629 (1999).

Holding that *"funding recipients are properly held liable in damages only where they are deliberately indifferent to sexual harassment, of which they have actual knowledge, that is so severe, pervasive, and objectively offensive that it can be said to deprive the victims of access to the educational opportunities or benefits provided by the school."*

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Hostile Environment+






Sex
Gender-based

Unwelcome

Conduct
Severe
Pervasive
Objectively offensive

Impact on education (or employment)

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Hostile Environment+

ON THE BASIS OF SEX

- Physical touching
- Comments of a gender or sexual nature
- Motivated by complainant's gender or sexuality
- Sex stereotyping
- Pregnancy, childbirth, related medical conditions
- Gender-based harassment
- Gender Identity, Gender Expression, Sexual Orientation

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Hostile Environment+

UNWELCOME

- Unpack "consent" definition
- Behaviors that by their nature are "unwelcome"
- What was communicated between parties?
- Coercion, threats, intimidation
- Who initiated?
- Did the complainant participate?

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Hostile Environment+

SEVERE

- Characteristics of complainant and respondent
- Witnesses, public nature
- Direct vs. second-hand
- Degrading, crude
- Threats
- Physical actions, touching

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Hostile Environment+

PERVASIVE

- Number of incidents (dates, times)
- Number of witnesses, recipients, participants
- Different types of behaviors

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Hostile Environment+

OBJECTIVELY OFFENSIVE/REASONABLE PERSON

- *"Turns on both subjectivity (i.e., whether the conduct is unwelcome, according to the complainant) and objectivity (i.e., 'objectively offensive')"*
- *"Whether, standing in the shoes of the complainant, the conduct would be offensive"*
- The investigator conducts the subjective analysis while the decision-maker conducts the objective analysis

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Hostile Environment+

EFFECTIVELY DENIES … EQUAL ACCESS … EDUCATION PROGRAM

- *"Does not require that a complainant has already suffered loss of education before being able to report"*
- Harassment *"so undermines and detracts from the victim's educational experience"* that it effectively denies…
- Does not require certain manifestations of trauma
- Can't turn away a complainant who is *"high-functioning," "not showing particular symptoms,"* or *"not traumatized enough"*
- No requirement for *"tangible adverse action or psychological harm"*

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Hostile Environment+

EFFECTIVELY DENIES

- Skipping class to avoid a harasser
- A decline in a student's grade point average
- Difficulty concentrating in class
- Dropped out of school
- Failed a class
- Had a panic attack
- Reached a "breaking point"

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Sexual Harassment+: Definition Considerations

- Definition vs. Interpretation
- First Amendment issues
- "Below the line" unwelcome conduct
- No intent requirement

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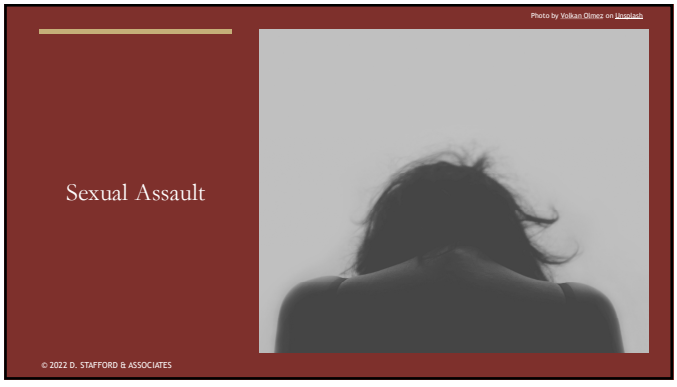
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PRONG 3: The VAWA Offenses

- *Sexual Assault*
- *Dating Violence*
- *Domestic Violence*
- *Stalking*

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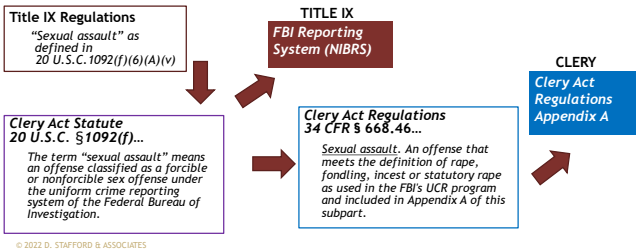
Sexual Assault

(3) "Sexual assault" as defined in 20 U.S.C. 1092(f)(6)(A)(v), "dating violence" as defined in 34 U.S.C. 12291(a)(10), "domestic violence" as defined in 34 U.S.C. 12291(a)(8), or "stalking" as defined in 34 U.S.C. 12291(a)(30)

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Sexual Assault: Definition Breadcrumbs



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Breadcrumbs Continued…

Appendix A in Clery Regulations

- **Crime Definitions from the Summary Reporting System (SRS) User Manual from the FBI's UCR Program**
  - Rape
- **Crime Definitions from the National Incident-Based Reporting System (NIBRS) User Manual from the FBI's UCR Program**
  - Fondling
  - Incest
  - Statutory Rape

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Clery Act Regulations - Rape (Appendix A)

Rape: The penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, without the consent of the victim

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Rape - FBI NIBRS Definition

Sex Offenses, Forcible - Any sexual act directed against another person, without the consent of the victim including instances where the victim is incapable of giving consent.

Forcible Rape - (Except Statutory Rape) The carnal knowledge of a person, forcibly and/or against that person's will or not forcibly or against the person's will in instances where the victim is incapable of giving consent because of his/her temporary or permanent mental or physical incapacity.

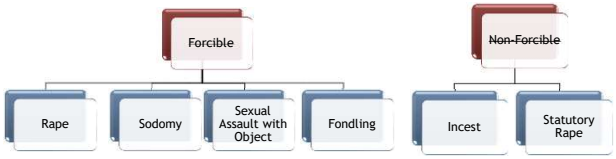
Forcible Sodomy - Oral or anal sexual intercourse with another person, forcibly and/or against that person's will or not forcibly or against the person's will in instances where the victim is incapable of giving consent because of his/her youth or because of his/her temporary or permanent mental or physical incapacity.

Sexual Assault With An Object - To use an object or instrument to unlawfully penetrate, however slightly, the genital or anal opening of the body of another person, forcibly and/or against that person's will or not forcibly or against the person's will in instances where the victim is incapable of giving consent because of his/her youth or because of his/her temporary or permanent mental or physical incapacity.

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Rape - FBI NIBRS Definition



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Rape: Definition Considerations

- Clery vs. NIBRS
- Attempts vs. Completions
- Forcible language
- Behaviors outside the definitions

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NIBRS Definition of Sex Offenses

Any sexual act directed against another person, without the consent of the victim, including instances where the victim is incapable of giving consent.

A. *Fondling* - The touching of the private body parts of another person for the purpose of sexual gratification, without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental incapacity.

B. *Incest* - Sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.

C. *Statutory Rape* - Sexual intercourse with a person who is under the statutory age of consent.

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Incest and Statutory Rape: Definition Considerations

- State law definitions
- Complainant as a non-student
- Conduct codes

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Fondling: Definition Considerations

Severity compared to "rape"

Over or under clothing

Forcible language

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Intimate Partner Violence



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INTIMATE PARTNER VIOLENCE

(3) "Sexual assault" as defined in 20 U.S.C. 1092(f)(6)(A)(v), **"dating violence" as defined in 34 U.S.C. 12291(a)(10), "domestic violence" as defined in 34 U.S.C. 12291(a)(8),** or "stalking" as defined in 34 U.S.C. 12291(a)(30)

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Dating/Domestic Violence: Definition Breadcrumbs

Title IX Regulations

"dating violence" as defined in 34 U.S.C. 122291(a)(10) *"domestic violence"* as defined in 34 U.S.C. 12291(a)(8)

TITLE IX

VAWA Statute
34 U.S. Code § 12291
Definitions and grant provisions

CLERY

Clery Act Regulations
***34 CFR* § 668.46(a)**
Expanded Definition of Dating Violence

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Dating Violence (Title IX): 34 U.S.C. 12291(a)(10)

The term "dating violence" means violence committed by a person -

(A) who is or has been in a social relationship of a romantic or intimate nature with the victim; and

(B) where the existence of such a relationship shall be determined based on a consideration of the following factors:

(i) The length of the relationship.

(ii) The type of relationship.

(iii) The frequency of interaction between the persons involved in the relationship.

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Dating Violence – Clery Act

- Violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim.
  - The existence of such a relationship shall be based on the reporting party's statement and with consideration of the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship.
  - For the purposes of this definition -
    - Dating violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse.
    - Dating violence does not include acts covered under the definition of domestic violence.

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Domestic Violence (Title IX): 34 U.S.C. 12291(a)(8)

The term "domestic violence" includes felony or misdemeanor crimes of violence committed by a current or former spouse or intimate partner of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction receiving grant monies, or by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the jurisdiction.

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Domestic Violence – Clery Act

- A felony or misdemeanor crime of violence committed by
  - a current or former spouse or intimate partner of the victim
  - by a person with whom the victim shares a child in common
  - by a person who is cohabitating with, or has cohabitated with the victim, as a spouse or intimate partner
  - by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction in which the crime of violence occurred OR
  - by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the jurisdiction in which the crime of violence occurred

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What is a "Crime of Violence?"

- According to Section 16 of title 18 of the United States Code, the term "crime of violence" means
  - an offense that has as an element the use, attempted use, or threatened use of physical force against the person or property of another, or
  - any other offense that is a felony and that, by its nature, involves a substantial risk that physical force against the person or property of another may be used in the course of committing the offense.

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Dating & Domestic Violence: Definition Considerations

- Title IX vs. Clery language
- Defining "violence"
- Unique aspects to IPV cases

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Stalking

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STALKING

(3) "Sexual assault" as defined in 20 U.S.C. 1092(f)(6)(A)(v), "dating violence" as defined in 34 U.S.C. 12291(a)(10), "domestic violence" as defined in 34 U.S.C. 12291(a)(8), or **"stalking" as defined in 34 U.S.C. 12291(a)(30)**

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Stalking (Title IX): 34 U.S.C. 12291(a)(30)

The term "stalking" means engaging in a course of conduct directed at a specific person that would cause a reasonable person to -

(A) fear for his or her safety or the safety of others; or

(B) suffer substantial emotional distress.

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Additional Clery Act Definitions

(ii) For the purposes of this definition -

(A) ***Course of conduct*** means two or more acts, including, but not limited to, acts in which the stalker directly, indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to or about a person, or interferes with a person's property.

(B) ***Reasonable person*** means a reasonable person under similar circumstances and with similar identities to the victim.

(C) ***Substantial emotional distress*** means significant mental suffering or anguish that may, but does not necessarily, require medical or other professional treatment or counseling.

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Breaking Down the Definition

- Acts of stalking behavior
- Directed at a specific person
- Two or more acts
- Fear or emotional distress
- Reasonable person

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Substantial Emotional Distress

- Difficulty eating or sleeping
- Anxiety or nervousness
- Nightmares
- Drug or alcohol use
- Headaches/illness
- School/work impacted
- Irritability, anger, shock, or confusion
- Fear response/hypervigilance
- Changing routines
- Depression

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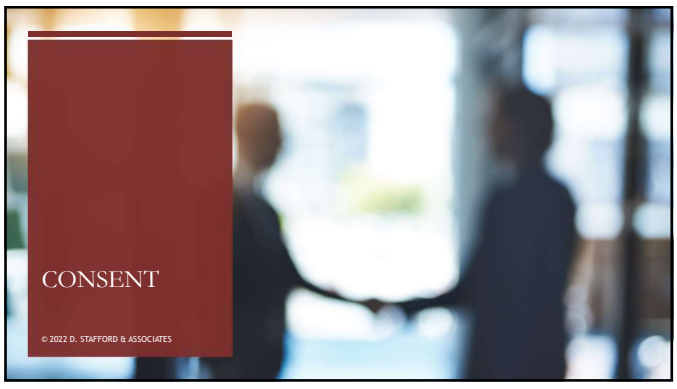
Stalking: Definition Considerations

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- Title IX vs. Clery language
- Stalking and Intimate Partner Violence
- Stalking and Disability

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Consent

- Mutually agreed upon
- Informed and freely given
- Initiator responsibility
- Positions of power
- Silence and prior relationships
- Verbal consent
- Withdrawal

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Consent cannot be given due to…

- Force
- Incapacitation

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Force

- Physical
- Coercion
- Intimidation
- Threat

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Physical Force

- Holding down
- Forced to touch
- Level of violence

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Intimidation

Physical

Verbal

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Threats

- Physical harm
- Reputational harm
- Veiled threats

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Incapacitation

Incapacitation is the physical and/or mental inability, whether temporary or permanent, of an individual to make rational, reasonable decisions, or judgments regarding one's well-being or welfare.

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Incapacitation Causes



Alcohol | Drugs | Disability | Other

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Incapacitation Results

- Lack understanding
- Physically helpless
- Blackout
- Unconscious

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Levels of Consumption

- Impairment
- Intoxication
- Incapacitation

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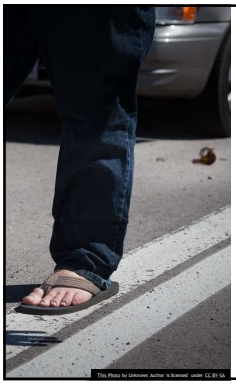
Impairment

- The state of being diminished or weakened due to the consumption of alcohol
- Begins as soon as alcohol enters the bloodstream
- Increases with consumption of alcohol

Question: Is it a violation of policy if two IMPAIRED people have sexual intercourse?

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Intoxication

- An act or instance of inebriation; drunkenness
- Intoxication is legally met when an individual's blood alcohol level reaches .08 or greater

Question: Is it a violation of policy if two INTOXICATED people have sexual intercourse?

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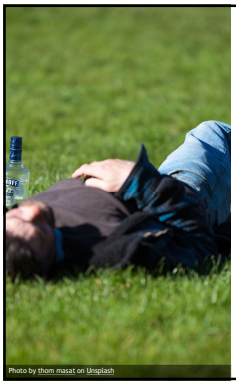


Photo by thom masat on Unsplash

Incapacitation

- So impaired as to be incapable of giving consent
- Lacking the capacity to consent
- If a person cannot understand the nature of the proposed act or cannot understand they have a right to refuse or are otherwise unaware that the activity is occurring

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Two-Step Determination

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Was the complainant incapacitated?

Did the respondent (or would a reasonable person) know?

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Case Study: Name that Violation

You receive a report signed by 4 members of the basketball team involving MN a student and their coach SM (the coach is not paid). Specifically, the report alleges that the only reason that MN is the starting point guard is because he and SM are dating.

What are the potential violations?

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Case Study: Name that Violation

You receive a police report involving SD, a first-year student. SD has been arrested for possession and distribution of child pornography. Some of the pictures are of SD having sexual intercourse with minors.

What are the potential violations?

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Case Study: Name that Violation

You receive an incident report involving NM (a student who identifies as male) and BC (a student who identifies as female). The report stated that NM woke up last week to BC performing oral sex on him.

What are the potential violations?

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POLICY
VS
PROCEDURES



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Policy vs Procedures

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Policy

What are the rules, why they exist, when they apply

Internal Procedures

Step by step actions for the staff

External Process Information

Information through a notice letter or information sheet explaining the process and steps for the involved parties

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REVIEW
JURISDICTION/
APPLICABILITY

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Policy

"This policy will address behaviors in which the respondent is a current student or employee, the complainant is a current student or employee, occurs within the institutions program or activities, and occurred within in the United States."

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Procedure

- Review the report for subject matter jurisdiction/personal jurisdiction over report
  - Who are the parties, what is their relationship with the university
  - Where did the incident occur
- Review if other actions are necessary (emergency removal, administrative leave, mutual orders of no contact)
- Provide appropriate outreach

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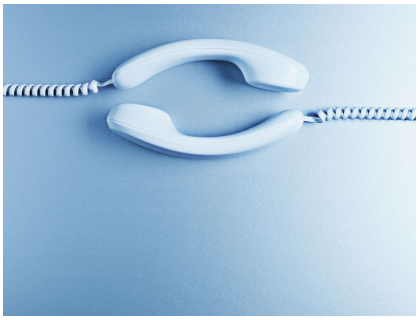
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External Process Information - Referral

For a case to be adjudicated under the Title IX Grievance Procedures, it must meet the jurisdictional requirements. As the incident which was reported occurred off-campus, this matter has been referred to the Dean of Student's Office . . ."

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CONTACT THE COMPLAINANT

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Policy

"Upon receipt of a report, the Title IX Coordinator will promptly contact the complainant."

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Procedure

- Within 2 business days, send letter to complainant requesting a meeting. If the report was submitted by the Complainant or with the Complainant's knowledge, use Complainant report letter. If not, use 3rd party report letter.
- Attach the following forms:
  - Notification of Rights and Options
  - Copy of the Policy
- If the complainant does not respond 3 days after initial outreach, send a follow-up letter

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External Process Information

Our office would like the opportunity to meet with you to learn whether there are any supportive measures that you need at this time. I have looked at your schedule and see that you are free on . . .

Included in this letter is our Explanation of Rights and Options which includes information on preserving evidence, reporting options, and on and off-campus services. . .

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FORMAL COMPLAINT AND NOTICE OF ALLEGATIONS OR CLOSE CASE

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Policy

"The grievance process begins with a formal complaint, which is a document signed by either the complainant or the Title IX Coordinator."

"Once a formal complaint is filed, the Title IX Coordinator shall provide the complainant and respondent with timely notice of the allegations."

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Procedure

- Meet with complainant and review grievance process, including signing of a formal complaint. The formal complaint should contain the following information if known:
  - Time and location of incident, parties involved, alleged behaviors, signature of Complainant or Title IX Coordinator
- If the complainant does not sign formal complaint, make a determination regarding the Title IX Coordinator signing the complaint. Considerations include the following:
  - Harm to the community if no formal complaint filed, accessibility of information regarding the complaint
- If complaint is filed, send Notice of Allegations/Investigation and attach party rights
- Send out witness letters as needed

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External Process Information

This is an acknowledgement that the University is in receipt of your signed formal complaint, received on [Date] regarding an allegation of sexual misconduct as defined by the University's Sexual Misconduct Policy. You have identified [Respondent's name] as the person responsible for the misconduct. Specifically, your complaint alleges: [Summary of the Incident]

These allegations, if substantiated, would be a violation of one or more of the following:

Violations

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External Process Information – Close Case

This is an acknowledgement that the University has received a report alleging sexual misconduct as defined by the University's Sexual Misconduct Policy. Since that time, you have stated that you do not wish to file a formal complaint. [OR You have not responded to these communications, which I have interpreted to mean that you do not wish to file a formal complaint.]

Please understand that our ability to respond fully may be limited. The University does reserve the right to file a formal complaint, signed by the Title IX Coordinator. Based on the available information, the University will not be filing a formal complaint, and therefore, the matter is closed

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PRELIMINARY REPORT

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Policy

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"Prior to completion of the investigative report, the respondent and complainant, and their respective advisors, if any, will be provided a copy of the evidence in an electronic format or a hard copy. The parties will have 10 calendar days to submit a written response."

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Procedure

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- All documents considered evidence should be converted and merged into one pdf
- The pdf should be watermarked for each party, and security settings should be set to prohibit editing.
- A transfer link is sent to the parties simultaneously via email

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External Process Information

Prior to the completion of the report, you and your advisor, if applicable, will receive a Dropbox link to access a copy of the evidence. You will have until [Date] to review the evidence and provide a written response to the investigator. The written response may include corrections, additional evidence, or a request for additional action by the Investigator(s). To provide the written response, use the following link: [Submission link].

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NOTICE OF FINAL REPORT AND HEARING

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Policy

"Following the evidence inspection and review period, the investigator(s) shall prepare a written report summarizing and analyzing the evidence, including both evidence indicating the alleged behavior occurred and that it did not occur. The Title IX Coordinator will provide the final investigation report to the parties. The parties will have 10 days to provide a written response to the final investigative report."

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Procedure

- Receive the written determination from the decision-makers and send to general counsel
- After review, convert the report and attachments into pdf
- Appoint decision-makers
- Schedule meeting space or set up Zoom meeting
- The pdf should be watermarked for each party, and security settings should be set to prohibit editing.
- A transfer link is sent to the parties simultaneously via email
- Include a copy of the Hearing Agenda and Rules of Decorum

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External Process Information

The Final Investigative Report may be accessed at [Link]. This report fairly summarizes the relevant evidence and incorporates any written responses from the parties following the preliminary report.

You may submit a written response to the Final Investigative Report. The written response will be provided to the decision-maker along with the Final Investigative Report. Your written response must be submitted to me by [Date].

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REQUEST FOR VIRTUAL HEARING

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Policy

"Either party may request, no later than seven calendar days prior to the hearing, for the hearing to occur with the parties located in separate rooms with technology enabling the hearing body and parties to simultaneously see and hear the party or the witness answering questions."

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Procedure

- Notify both parties of the request for a virtual hearing
- Book the space and technology
- Send login information to the decision-makers, parties, and advisors
- Include an instruction sheet on using the technology

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External Process Information

Either the complainant or respondent may request to have the parties located in separate rooms and the hearing will be held using Zoom technology. If you wish to utilize this option, you must notify [Name] at [Email] no later than [Date].

Follow-up communication

There has been a request that this hearing take place virtually. As such, please use the link found in this notification to access the hearing.

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WRITTEN DETERMINATION

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Policy

"The complainant and respondent will be informed concurrently in writing of the outcome within 10 business days."

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Procedure

- Convert the outcome letter and attachments into pdf
- The pdf should be watermarked for each party, and security settings should be set to prohibit editing
- A transfer link is sent to the parties simultaneously via email

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External Process Information

This letter is to inform you of the decision regarding your administrative hearing that was held on [Date of hearing] regarding the formal complaint that was filed on [Date of the formal complaint]. Specifically, the complaint alleges: [incident summary]. Using a preponderance of the evidence standard, the following findings regarding the allegations are listed below.

Both the Complainant and the Respondent have a right to appeal. Appeals must be on one of the following grounds . . .

This decision is not final until the appeal process is complete. You will be notified if the other party has appealed. If no timely appeal is filed, the determination becomes final on [Date].

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APPEAL

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Policy

"Appeals must be submitted in writing to the Title IX Coordinator or designee within 5 business days of receipt of written determination or dismissal. Parties will be given an opportunity to submit a written statement in support of or against the final determination made by the decision-makers"

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Procedure

- Receive appeal
- Notify the parties that an appeal has been received
- If other party submits an appeal, notify the parties that an appeal has been received
- Choose an appellate decision-maker and notify the parties as appropriate
- Once deadline for conflict of interest or bias has passed, provide the final investigation report, written determination, appeals, and recording of the hearing for the appellate decision-maker

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External Process Information

I have received your request for an appeal regarding the decision made on [Date]. Both parties may submit an appeal. The appeal must be submitted by [Date].

The following appellate decision-maker has been assigned to your case [Name and Title]. If you believe they have a conflict of interest or bias, you may request their removal by [Date].

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CONDUCTING A POLICY REVIEW

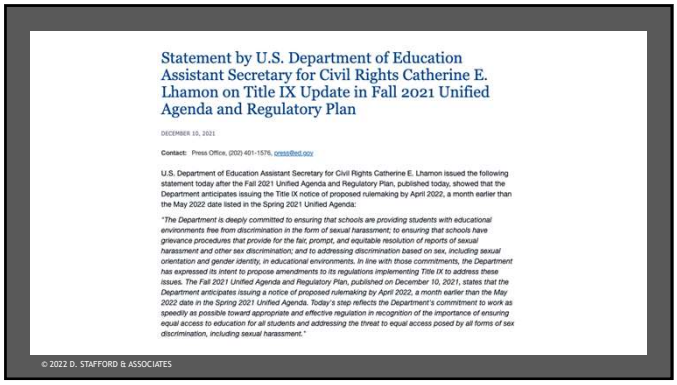


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Statement by U.S. Department of Education Assistant Secretary for Civil Rights Catherine E. Lhamon on Title IX Update in Fall 2021 Unified Agenda and Regulatory Plan
DECEMBER 10, 2021
Contact: Press Office, (202) 401-1576, press@ed.gov
U.S. Department of Education Assistant Secretary for Civil Rights Catherine E. Lhamon issued the following statement today after the Fall 2021 Unified Agenda and Regulatory Plan, published today, showed that the Department anticipates issuing the Title IX notice of proposed rulemaking by April 2022, a month earlier than the May 2022 date listed in the Spring 2021 Unified Agenda:
"The Department is deeply committed to ensuring that schools are providing students with educational environments free from discrimination in the form of sexual harassment; to ensuring that schools have grievance procedures that provide for the fair, prompt, and equitable resolution of reports of sexual harassment and other sex discrimination; and to addressing discrimination based on sex, including sexual orientation and gender identity, in educational environments. In line with those commitments, the Department has expressed its intent to propose amendments to its regulations implementing Title IX to address these issues. The Fall 2021 Unified Agenda and Regulatory Plan, published on December 10, 2021, states that the Department anticipates issuing a notice of proposed rulemaking by April 2022, a month earlier than the May 2022 date in the Spring 2021 Unified Agenda. Today's step reflects the Department's commitment to work as speedily as possible toward appropriate and effective regulation in recognition of the importance of ensuring equal access to education for all students and addressing the threat to equal access posed by all forms of sex discrimination, including sexual harassment."
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Steps in the Process
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PLANNING
WRITING
APPROVAL
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Type of Review
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UPDATES
FULL REVIEW AND REWRITE
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Planning



Timeline

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Know the Roles

Constituents | Writers | Reviewers

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What Role Does Each Play?

Title IX Coordinator	Legal counsel	Student affairs	Human resources	Academic affairs
Risk management	Students	Advocates	Public safety	Cultural centers

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Writing Group Competencies

Laws and legal issues

Cultural competencies

Campus climate

Campus politics

Writing

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Materials to Review

Current policy

Regulations and Guidance

State laws

Common practices

Intersecting policies

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Models

Title IX Only

Other sexual misconduct is referred to different policies

Sexual Misconduct - Same Resolution Process

- Covers all sexual misconduct
- Resolution process follows Title IX regulations
- Resolution process is same for employees and students

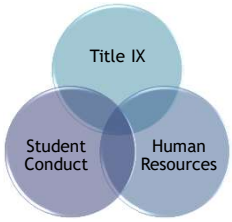
Sexual Misconduct - Multiple Resolution Processes

- Covers all sexual misconduct
- Diverts at resolution stage based on Title IX criteria and respondent's status

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Departmental Intersections



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Discussion: Non-Title IX Violations

- Are there sex-based offenses that are not included here but should be included in our conduct codes?
- Are there other behaviors that are sex-based that are not included here but should be included in our conduct codes?

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Policy Sections

- Statement of Policy
- Related Policies
- Applicability/Jurisdiction
- Title IX Coordinator
- Employee Responsibilities
- Definitions
- Prohibited Conduct

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Policy Sections

- Reporting Options
- Supportive Measures
- Accommodations and Interpretive Services
- Interim Action
- Grievance Procedures
- Education and Prevention
- Record Management
- Interpretation and Revision

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Final Review

- Legally compliant
- Comprehensive and flexible
- True to institutional mission
- Clear and understandable!

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Review Process



Review and Comments



Final approval

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Final Approval



It just happens



Cabinet approval



Board of Trustees

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Be Prepared



Why



Process



Benefits and risks

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Update References to Title IX

- Conduct code
- Minors on campus
- Inappropriate relationships
- FERPA
- Vendor contracts
- Collective bargaining agreements

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137

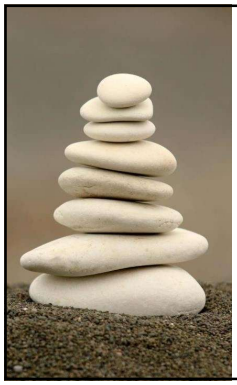


138

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Intake and Notice Stages

1



Agenda

- Trauma Informed
- Intake
- Notice
- Party Rights
- Supportive Measures
- Emergency Removal and Administrative leave
- Consolidation
- Dismissal

2



3



4

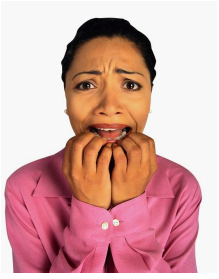
Trauma Informed

- Neutral Process
- Apply to all parties
- Check biases
- Seek clarification
- Gender-neutral approach

5

Let's Talk Stress and Anxiety

- What makes you stressed/anxious?
- How does your **body** respond when you are stressed/anxious?
- How does your **mind** respond?



6

What Is Trauma?





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7

Comparison

Stress

Trauma

8

Impact of Trauma



9

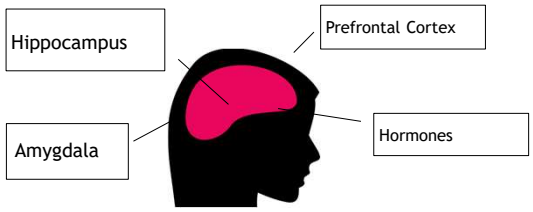
DURING THE TRAUMATIC EVENT:

NEUROBIOLOGY



10

The Limbic System and Stress



11

The Body's Response to Fear



Heart
Lungs
Muscles
Brain
Eyes
Stomach
Skin
Nerves

12

Degraded Prefrontal Cortex

Alcohol

Age

Prolonged stress exposure

13

Response

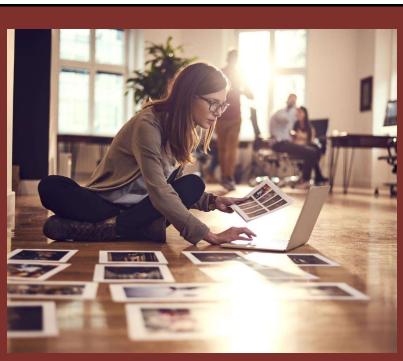
Reflex

Habit

14

IMMEDIATELY AFTER THE TRAUMATIC EVENT:

MEMORY



15

Memory



16

Memory Encoding


Central Details


Peripheral Details


Time and Context

17

Trauma Memory Encoding


Sensory

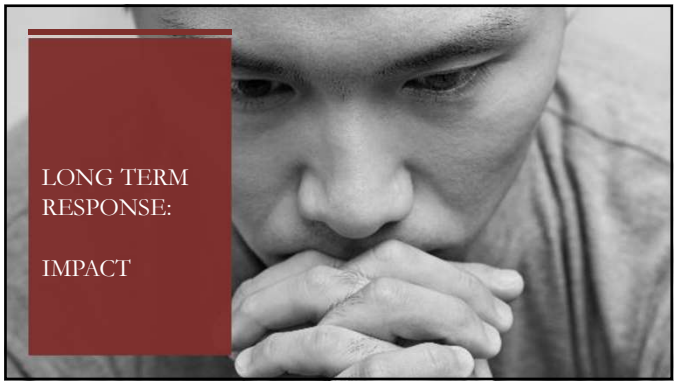

Emotional


Flashbulb memories

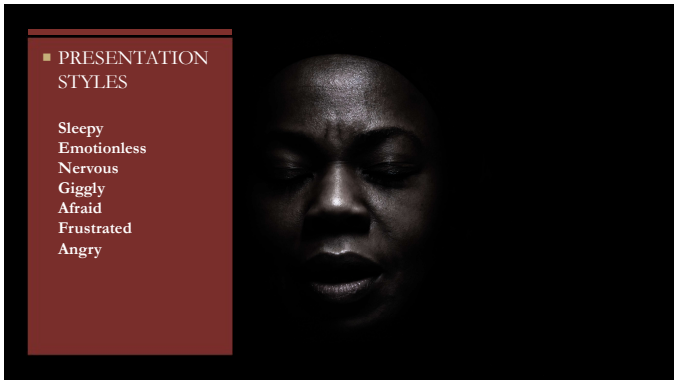
18


MEMORY
STORAGE
OVER TIME

19


LONG TERM
RESPONSE:
IMPACT

20


PRESENTATION
STYLES
Sleepy
Emotionless
Nervous
Giggly
Afraid
Frustrated
Angry

21

Post-Traumatic Response

- Self-mutilation
- Eating disorders
- Promiscuity/disinterest in sex
- Substance use/abuse
- Depression
- Counterintuitive behaviors
- Suicide attempts/completions
- Sleep disorders

22

Re-traumatization in the Title IX Process

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- Safety and well-being
- Maintain privacy and confidentiality
- Kept up to date
- Empathy and respect

23

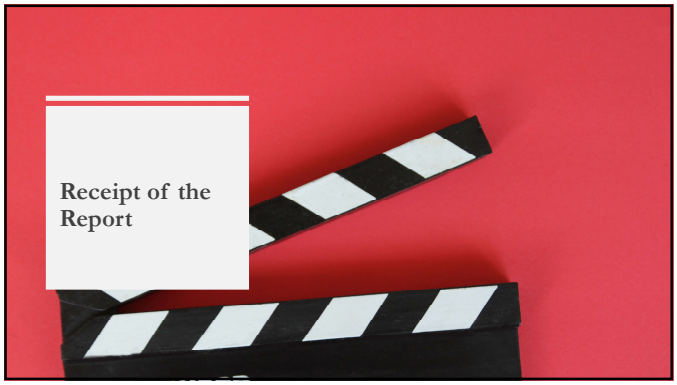
Multi-Pronged Approach



24



25



26

Sandbox A University
Title IX Referral Form

Submitted on January 5, 2022 at 10:59:42 am EST

Nature	**Title IX**
Urgency	**Normal**
Incident Date and Time	**2021-10-31 12:00 AM**
Incident Location	**Alcott Residence Hall Room 3A**

Reported by

Name:	**Randy Donnovan**
Title:	**Resident Director**
Email:	**rd@DSA.edu**
Phone	**555-555-5551**
Address:	

Involved Parties

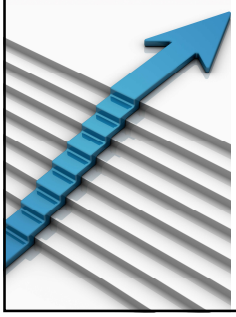
Carrie Chase (012345) Complainant	cc@dsa.edu 3A Alcott Hall	555-555-5552
Rich Reynolds (12346) Respondent	rr@dsa.edu 1A Alcott Hall	555-555-5553
Wendy White (12347) Witness	ww@dsa.edu 3A Alcott Hall	555-555-5554

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Incident Narrative
Narrative:
On 1/4/22 I, Randy Donnovan was on-call. At 8:30 pm, Resident Carrie Chase and Resident Wendy White asked if they could talk with me. Chase and White asked if Donnovan could make Resident Rich Reynolds "move" because they did not feel comfortable with them living in Alcott Hall. Donnovan stated that he could not do that without knowing the reason. Chase stated that there had been an "incident" between Chase and Reynolds on Halloween and that he "took advantage of her." Donnovan told Chase that he was a Responsible Employee and that anything she told Donnovan, he would have to report to the Title IX Coordinator. Chase told Donnovan that she did not want to tell Donnovan anything else and abruptly left Donnovan's office. Donnovan was unable to provide Chase with any additional information at this time.

At 9:30 PM, Donnovan went to Chase's room and asked to come in and speak with her. Chase let Donnovan into her room. Donnovan provided to Chase a copy of the Explanation of Rights and Options Brochure and asked if she needed anything at this time. Donnovan stated that based on the information provided by Chase, he would be contacting Trey Titus, the Title IX Coordinator, who would reach out to Chase. Chase thanked Donnovan. Donnovan left Chase's room.

28



Case Study: Next Steps

What are your steps after receiving the report?

29

Evidence collection

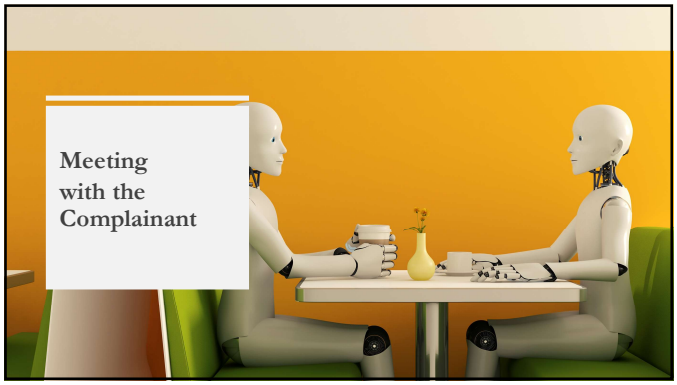
- Additional reports
- Video

Clery

- Notification requirements
- Review for Emergency Notification or Timely Warning

Public Safety

30



31

TITLE IX ASSESSMENT

D. STAFFORD & ASSOCIATES

- Title IX Definition
- Eligible Complainant
- Education Activity or Program
- Wishes of the Complainant

32

Be Prepared

D. STAFFORD & ASSOCIATES

1

READ THE REPORT

- Real-time In-person reports?

2

Learn about the party

- Year, major, grades, department, organization, athlete
- Discipline history?

3

Set the Space

- Accessible?
- Table or behind a desk?
- Tissues
- Fidget toys

33

Materials

- Policy
- Rights and Options
- Flowcharts
- FERPA waiver
- Extra computer

34

Complainant Checklist

- Policy and Procedures
- Reporting options
- Medical attention
- Preserving evidence
- Supportive measures
- On-off campus resources
- Mutual no-contact orders
- Right to an advisor
- Free from retaliation

35

Meeting Follow-up

- Review
- Checklist
- Supportive measures
- Formal Complaint

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Sandbox A University
Title IX Complaint Form

Submitted on January 5, 2022 at 11:29:47 am EST

Nature	**Formal Title IX Complaint**
Urgency	**Normal**
Incident Date and Time	**2021-10-31 12:00 AM**
Incident Location	**Alcott Residence Hall 3A Alcott hall**

Reported by

Name:	**Carrie Chase**
Title:	
Email:	**cc@dsa.edu**
Phone	**555-555-5552**
Address:	

Involved Parties

Carrie Chase (12345) Complainant	ca@dsa.edu 3A Alcott Hall	555-555-5552
Rich Reynolds (12346) Respondent	rr@dsa.edu 1A Alcott Hall	555-555-5553
Wendy White (12347) Witness	ww@dsa.edu 3A Alcott Hall	555-555-5554

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Complaint

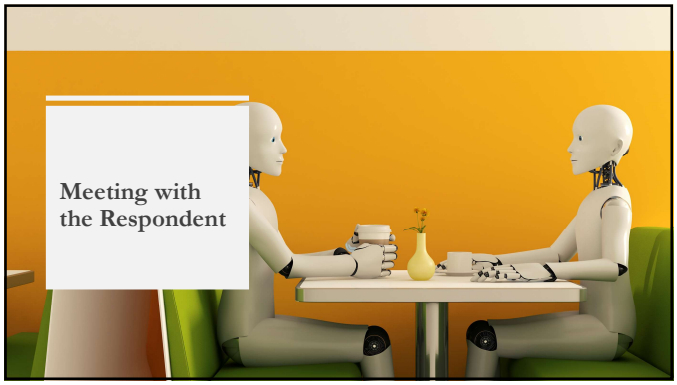
Please provide a detailed description of the incident(s) using specific and concise language (who, what, where, when, and how). Please include as much detail as possible, including dates, times, and locations.

On Halloween night, me and Wendy were hanging out in our room getting ready for the Halloween Party at Ziggy's. We drank some shots. We then went to Rich's room to get him and walk to the party. Rich and I were hanging out. We were dancing and I drank a couple more drinks. Me and Rich left and went back to my room. I am not sure what happened when we got back as I only have flashes of things. I remember Rich putting on a condom and him having sex with me. I did not want to have sex with him. I woke up the next morning and there was vomit and a used condom in the trash by my bed. Rich was not there. I sent him a Snapchat asking what happened. He said not to worry about anything. I don't have the messages saved. We have not talked since.

I thought I would be fine after break, but I am not. I keep seeing him and I am afraid to leave my room because I do not want to run into him. We are in one of the same classes and I do not want to go to that class anymore.

By entering my name in the box below, I am submitting this formal complaint requesting the institution investigate. I understand that all evidence, including this statement, will be shared with the Respondent. I have been explained my rights and options by the Title IX Coordinator or designee.
[PLEASE ENTER YOUR FULL NAME IN THE BOX BELOW]
Carrie Chase

39



40



41

Policy and Procedures

Preserving evidence

Supportive measures

On-off campus resources

Mutual no-contact orders

Right to an advisor

Respondent Checklist

42



Case Study: Unring a bell?

During the meeting with the Respondent, he tells you that the behaviors were completely consensual and that this is the second time that they have had sex.

The Respondent stated that he really enjoys where he is living, and he cannot change any of his classes due to his work schedule.

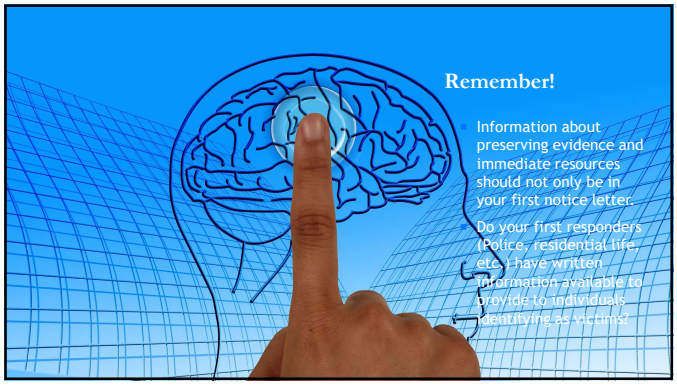
43



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45



46



WHOSE JOB IS IT?

47

Complainant

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Notice of Report/Request for Intake

- Report may be from complainant or third party
- May follow an initial phone call to inform the complainant
- Set up a meeting to discuss supportive measures and options; right to an advisor; provide explanation of rights and options; refer to policy

Notice of Case Closure

- Complainant has declined to sign a formal complaint
- Complainant has not responded to outreach

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Complainant/Respondent

Notice of Investigation

- May be combined with notice of allegation
- Must give sufficient time to prepare for participation
- Provide date, time, location, and purpose of all meetings
- Names of investigators and how to raise a claim of bias or conflict of interest
- Any requests for information such as witnesses
- Provide any known parties or witnesses
- How to request accommodations or interpretive services

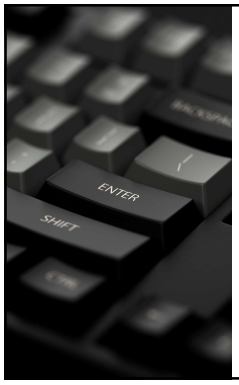
49

Complainant/Respondent

Notice of Allegation

- Identities of parties, if known
- Conduct allegedly constituting sexual harassment
- Allegations may be updated during the course of the investigation
- Date and location, if known
- Respondent is presumed not responsible
- Advisor of choice
- May inspect and review evidence
- Prohibit false statements

50

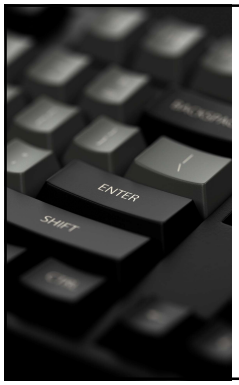


Case Study: What is Missing?

This is an acknowledgement that the University is in receipt of a signed formal complaint of the Title IX Policy. A copy of the Policy is attached to this letter.

Specifically, it is alleged that you experienced a violation of this policy on October 31, 2021, while in your room.

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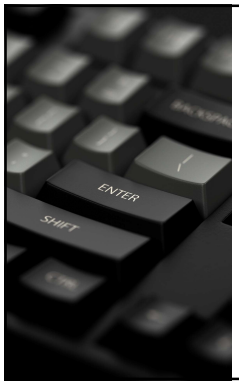
Case Study: Lessons Learned

This is an acknowledgement that the University is in receipt of a signed formal complaint of the Title IX Policy. A copy of the Policy is attached to this letter.

Specifically, you identified the following violations:

- Non-consensual touching

52



Case Study: Lessons Learned

Specifically, in the Formal Complaint, it is alleged:

"On Halloween night, me and Wendy were hanging out in our room getting ready for the Halloween Party at Ziggy's. We drank some shots. We then went to Rich's room to get him and walk to the party. Rich and I were hanging out. We were dancing and I drank a couple more drinks. Me and Rich left and went back to my room. I am not sure what happened when we got back as I only have flashes of things. I remember Rich putting on a condom and him having sex with me. I did not want to have sex with him. I woke up the next morning and there was vomit and a used condom in the trash by my bed. Rich was not there. I sent him a Snapchat asking what happened. He said not to worry about anything. I don't have the messages saved. We have not talked since."

53

Other Pitfalls

- Dates
- Too specific
- Dating violence
- Typos
- Grammar

54

Complainant/Respondent

Notice of Preliminary Report (sharing of evidence)

- All evidence directly related to the allegation(s)
- Sent prior to completion of investigative report
- Parties have at least 10 days to submit a written response for consideration by the investigator(s)

55

Complainant/Respondent

Notice of Final Report and Hearing

- Fairly summarizes relevant evidence
- Sent at least 10 days prior to the hearing
- Date, time, location, participants, and purpose of hearing
- Option to request separate rooms with appropriate technology
- Explanation of cross-examination including providing an advisor if none

56

Complainant/Respondent

Notice of Written Determination

- Allegations potentially constituting sexual harassment
- Procedural steps
- Findings of fact supporting the determination
- Conclusions regarding the application of policy
- Statement of and rationale for the result of each allegation
- Sanctions and/or remedies
- Appeal procedures
- Determination becomes final after appeal decision or if no appeal is filed

57

Complainant/Respondent

Notice of Appeal Submission

- Notification to both parties that an appeal has been submitted
- Give both parties a reasonable, equal opportunity to submit a written statement in support of or challenging the outcome

Notice of Appeal Decision

- Result of the appeal and the rationale for the result

Notice of No Appeal Submitted

- No appeals have been filed and decision is final

58

Complainant/Respondent

Notice of Informal Resolution

- Allegations
- Requirements for informal resolution including the right to withdraw from the informal resolution process prior to agreeing to the resolution
- Any consequences
- Obtain voluntary, written consent

59

Complainant/Respondent

Notice of Dismissal of Formal Complaint

- No longer falls under Title IX
- Complainant withdraws from the process
- Indicate if it is referred elsewhere

Notice of Additional Allegations

- Notification of additional allegations based on new information
- Include previous information included in notice of allegation

Notice of Temporary Delay

- Explanation as to why the case is delayed (e.g., volume of witnesses)
- Anticipated timeline

60

Witness

Notice of Investigation

- Identified as a witness
- Date and location of incident, parties involved
- Date, time, and location of meeting
- Policy information
- Accommodation requests

Notice of Hearing

- Date, time, and location of hearing
- Notification that they are subject to questioning by the advisors and decisionmaker(s)

61

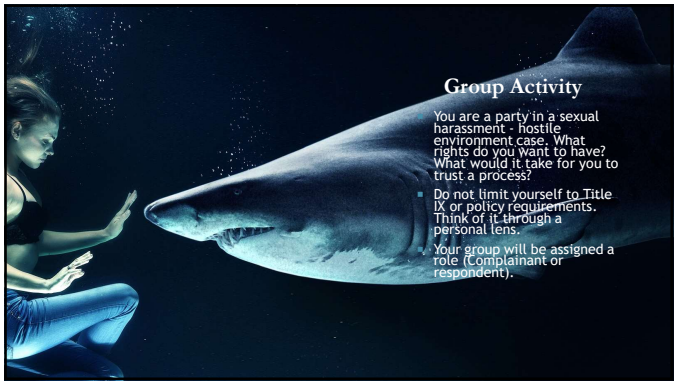
Other Possible Notices

- Case updates
- No contact letters
- Supportive measures
- Conflict of interest
- Consolidation

62



63


Group Activity
You are a party in a sexual harassment - hostile environment case. What rights do you want to have? What would it take for you to trust a process?
Do not limit yourself to Title IX or policy requirements. Think of it through a personal lens.
Your group will be assigned a role (Complainant or respondent).

64

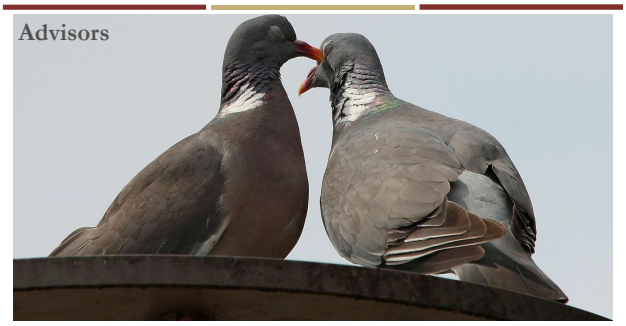

Prompt
Fair and Impartial
Photos by Saffu on Unsplash and Meatle from Pixabay

65

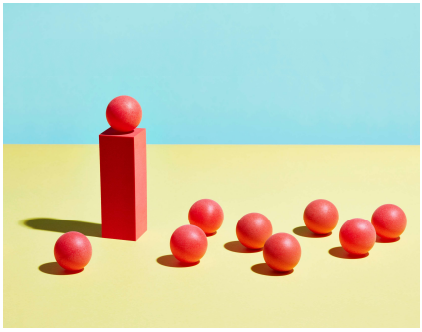

NOTICE AND RESPONSE

66

Advisors



67



SUPPORTIVE MEASURES

68

Determinations of Responsibility



69



APPEAL

70



RETALIATION

71



72



Case Study: Party Rights

How and when do you communicate these rights to the complainant and respondent?

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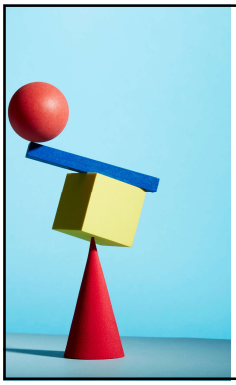
74

Supportive Measures

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Counseling	Extensions of deadlines or other course-related adjustments,	Modifications of work or class schedules,	Campus escort services,
Mutual restrictions on contact between the parties,	Changes in work or housing locations,	Leaves of absence,	Increased security and monitoring

75



Case Study: Supportive Measures

The report indicates that the Complainant and Respondent live in the same residence hall and are also in one of the same classes.

- What are the potential supportive measures that are available?
- What are the potential conflicts or issues?
- How do you facilitate implementation?

76



77

Emergency Removal Criteria

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Rising from the allegations

+

Immediate threat to physical health and safety

78

Immediate vs. Imminent

Immediate	Poses a threat of instant harm or attack
Imminent	Poses a threat of impending or looming harm or attack

79

Risk vs. Threat

Risk	Effect of an occurrence on objectives Focuses on particular incidents and the effects Risk Assessment – Potential event that may occur and its effect
Threat	An intention to cause harm Focuses on the person's intentions and the harm those intentions may cause Threat Assessment – A person of concern's intentions and their ability to carry out the intentions

80

Dating Violence/
Domestic Violence?

Stalking?

When do we do it?

Sexual Assault?

Sexual Harassment?

81

Title IX Coordinator

Police

Who conducts the analysis?

Human Resources/ Student Affairs

Threat Assessment Team

82

REMEMBER!



83

Threat Assessment Inquiry

Immediate	Imminent
• Motives and goals • Communications • Attack-related behaviors • Capacity • Other people are concerned • Sees violence as acceptable • Pathway to violence	• Experiencing hopelessness, desperation, and/or despair • Trusting relationship • Consistency • Inappropriate interest • Additional circumstances

84



Case Study: Emergency Removal

Is there anything in the report that warrants an emergency removal at this point?

What information learned during the course of the investigation might change your initial thought?

85

Title IX Coordinator

Who else?

Who decides and notifies?

Human Resources/ Student Affairs

Threat Assessment Team Chair

86

The Challenge

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What does it look like?

Who does it?

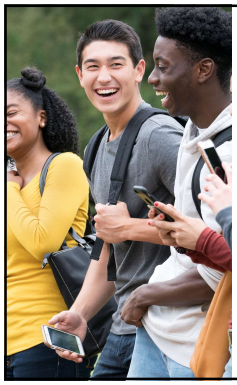
87

Administrative Leave

Temporary

Benefits and pay

88

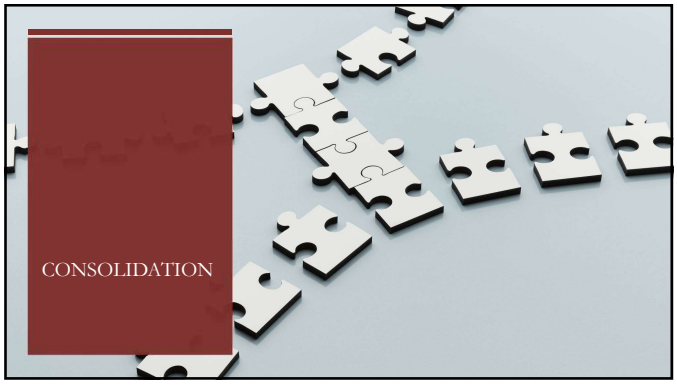


Case Study: Administrative Leave

When you are meeting with the Respondent, you learn that he is also a Resident Assistant (he was a late addition, and the roster was not updated).

- Should the Respondent be placed on administrative leave?
- If yes, who notifies the Respondent?
- What if the Complainant did not file a formal complaint, but you were still aware of the allegation?

89



90

More than One Respondent



MULTIPLE PARTY ASSAULTS



GROUP DYNAMICS

91

More than One Complainant



EMPLOYEE



SERIAL RESPONDENT



GROUP VICTIMS

92

One Party Against the Other Party



CROSS COMPLAINTS



INCAPACITATION



DATING/DOMESTIC VIOLENCE

93

Arising from the Same Facts or Circumstance



PATTERN OF BEHAVIOR



INTERPERSONAL VIOLENCE



SINGLE EVENT

94

Other Considerations



FORMAL COMPLAINT



INTERSECTING POLICIES



LOCATION

95

Investigation Considerations

- Formal Complaint
- Notice to the parties
- Updates to the parties
- Witnesses
- Advisor
- Inspect and Review Evidence
- Investigative Report

96

Hearing Considerations

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- Live
- Virtual
- Cross-examination
- Relevancy
- Participation
- Bias

97



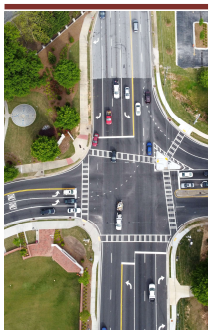
Case Study: Patterns

During an investigation alleging non-consensual sexual contact, a witness states that the respondent also inappropriately touched them. They provide you with additional names of people who have also been touched by the respondent.

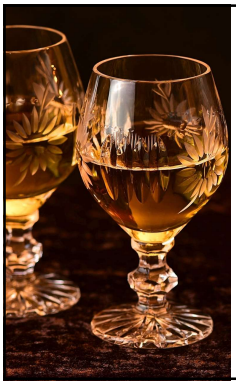
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Case Study: Intersecting Policies

A complainant reports that they have been subjected to harassing comments based on both their gender identity as well as their race.



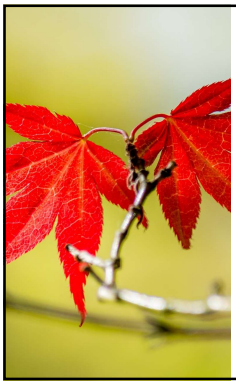
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Case Study: Cross Claims

The complainant reports an incapacitated sexual assault—he states he was too drunk to consent but does have memories of the night. The respondent states that he was blacked out and has no memories of the night. The respondent states that they would like to file a formal complaint against the complainant.

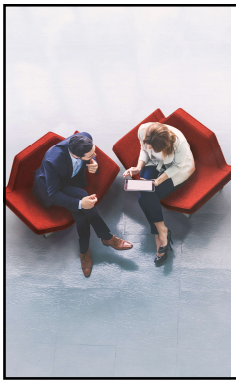
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Case Study: Are They The Same?

Two students have filed formal complaints against the same respondent. One complainant alleges sexual assault. The other complainant alleges stalking and dating violence.

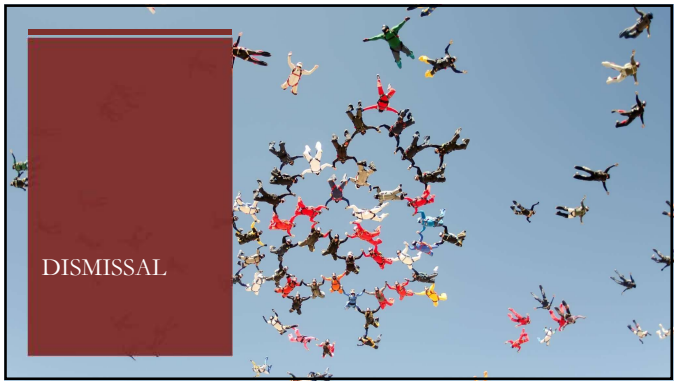
101



Case Study: Advisor of Choice

A student has indicated that their advisor of choice is the complainant for a separate case involving the same respondent.

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Dismissal

Must

- Does not constitute sexual harassment
- Not in educational program or activity
- Not in the United States

May

- Complainant withdraws complaint
- Respondent no longer enrolled
- Prevented from gathering evidence

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Examples of Appeals Based on Dismissal

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- Complainant reengages in the process
- Incorrect jurisdictional determinations
- Dismissal due to incorrect facts
- Recipient determines evidence does not meet burden of proof

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When Does Dismissal Occur



Intake



Investigation



Hearing

106

Notification of Dismissal



Written Notice



Reason(s) for Dismissal



Simultaneous to the Parties

107

Appeal



Procedural Irregularity



New Evidence



Bias or Conflict of Interest

108

Post-dismissal Steps

- Supportive Measures
- Separate Process
- Reopen Investigation

109



Case Study: Off-Campus

You are the Title IX Coordinator and receive a report involving a student who reported being sexually assaulted off-campus by multiple members of the debate team. The names of the members of the team are not included in the report.

What are your next steps?

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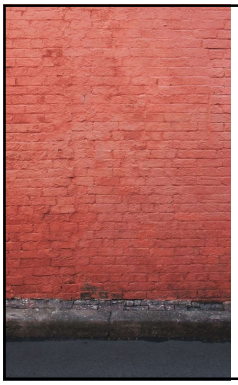


Case Study: Sexual Harassment?

You are the Title IX Coordinator and receive a report alleging that Professor Blum is making comments of a sexual nature in class. The report contains a student's name but indicates that they do not want to file a formal complaint, they just want to "put it on your radar." This is the third report you have received about Professor Blum. You have dismissed the other two reports as they were anonymous reports.

What are your next steps?

111

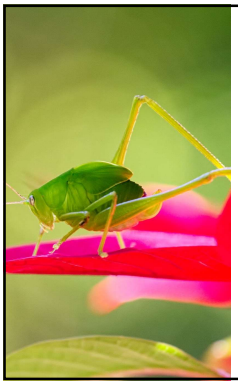


Case Study: Brick Wall

You are the Title IX Coordinator and receive a call from your investigators who tell you that "they have hit a brick wall" and have only been able to interview the Complainant. The Complainant does not have any memory of the night and is not sure if any sexual behaviors took place.

What are your next steps?

112

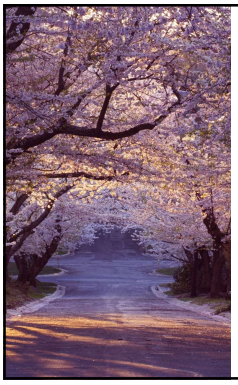


Case Study: No Response

You are the Title IX Coordinator and are responsible for sending out all notice documents to the parties and witnesses. The Complainant has not responded to your multiple attempts to schedule an interview with the investigators. Your last email to the Complainant indicated that you would close the investigation if you did not receive a response from the Complainant. You have not heard back from the Complainant.

What are your next steps?

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Case Study: Goodbye?

You are the Title IX Coordinator and oversee all investigations involving students and employees. Coach Stella is accused of engaging in sexually harassing behaviors directed at multiple members of the team. These behaviors include verbal statements and inappropriate contact. Coach Stella tells you that they are going to retire at the end of the season (which is in 2 weeks) and that you will never see Coach Stella again.

What are your next steps?

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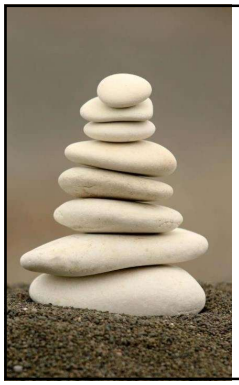


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Investigation and Resolution Stages

1



Agenda

- Informal Resolution
- Investigation Stage
- Formal Resolution: Hearing
- Appeals

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Types



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Informal Resolution

- Mediation
- Arbitration
- Restorative Justice
- Administrative Conference Agreements
- Educational Efforts

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Mediation



- Mediator facilitates resolution
- Mediator does not recommend outcome
- Parties create agreement
- Mediator may finalize
- Typically, non-binding

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Arbitration



- Neutral person given power to resolve dispute
- Binding or non-binding
- Collective Bargaining Agreements may provide language

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Restorative Justice



- Repair harm
- Both parties are involved in the process
- Parties work together to determine how to repair harm
- Opportunities for communication (directly and indirectly)
- Collaborative, not coercive
- Community involvement

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Restorative Justice v. Mediation

	Restorative Justice	Mediation
Focus	• Repairing harm • Making things right	• Problem-solving • Decision-making
Preparation	• Pre-conference meetings with all impacted parties	• No pre-conference meetings
Requirements	• Voluntary • Responsible party accepts responsibility for behavior	• Voluntary

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https://www.pathways2rc.com/news/2018/10/24/the-differences-and-similarities-of-restorative-justice-and-mediation

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Administrative Conference Agreement



- No facts in dispute
- Both parties must agree
- Acceptance of responsibility
- Sanctions

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Educational Efforts



- Permanent supportive measures
- Directive to cease behavior
- Messaging to campus community
- Events and trainings
- Referrals and collaborations

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Restorative Justice v. Restorative Practice

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Umbrella terms

Multiple functions

Community building

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Where Does It Fit Into Process?

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Informal Resolution

Sanction

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Infusion into Process



Current activities



Program examples

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Benefits

- Harmed party/ Complainant
- Responsible party/ Respondent
- Community

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Uses Outside of Higher Ed



Community



Workplace



Courts

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Restorative Conferencing/Facilitated Dialogue



- Structured and facilitated
- Harmed party/responsible party
- Parties determine steps
- Examples:
  - Apology
  - Education
  - Mentoring
  - Voluntary leave

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Restorative Circle



- Similar to Conference
- Multiple people
- Turn-taking
- Examples:
  - Groups
  - Culture

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Surrogate Participation



- Similar to conference/circle
- Complainant has a “stand-in”

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Indirect Facilitation ("Shuttle Diplomacy")

- Facilitator takes lead
- Back-and-forth between parties
- Does not require face-to-face

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Implementation

Culture

Buy-in

Preparation

Policy

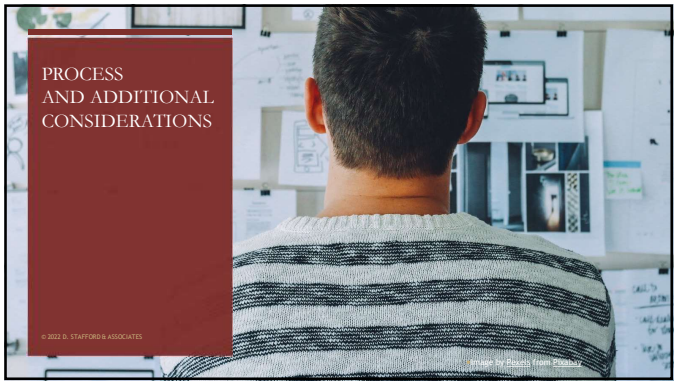
Training

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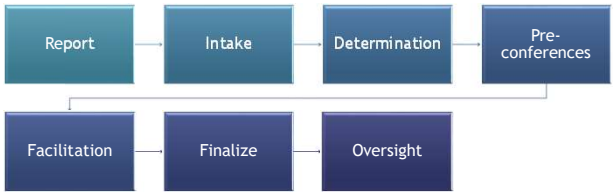


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Process



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Who is Responsible?



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What is the Title IX Coordinator's Role


Oversee


Determinations


Facilitate


Training

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Training for Facilitators

- What is RJ?
- Techniques
- Sexual violence
- Parties
- Preparation

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When Is It Appropriate?

- Additional complaints
- Sexual harassment
- Dating violence
- Sexual assault
- Intersecting behaviors

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Policy Considerations

- Options
- Goal
- Voluntary
- Guidelines
- Timelines
- Cases
- Participation expectations
- Binding or non-binding
- Sanctions and remedies

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Policy Considerations

- Records subject to subpoena
- What happens if it becomes a formal resolution?
- Impact of incomplete requirements
- Required record keeping
- Student and employee conduct files

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What If…

- The parties cannot reach an agreement
- The institution does not support the agreement
- The complainant does not participate
- The respondent did not complete necessary requirement(s)

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Case Study: Can We?

While meeting with the Complainant, she told you that she had reservations about the formal process as she did not want the Respondent to "get kicked out" and only wants him to move. Your policy does not allow for informal resolution for cases of sexual assault.

What can you do?

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Case Study: What Now?

During the informal resolution process, the Respondent admitted that he "caused the Complainant harm" but will not take responsibility for a policy violation.

- Can this be considered an agreement?
- If not, can the investigators use the information that was discovered during the informal resolution process? Why/why not?

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Case Study: Unfulfilled Requirements?

After an agreement has been signed, the Complainant contacts your office and asks if the Respondent has fulfilled all the requirements of the agreement. You check and they have not.

- How do you monitor requirements?
- What happens if they are not fulfilled?

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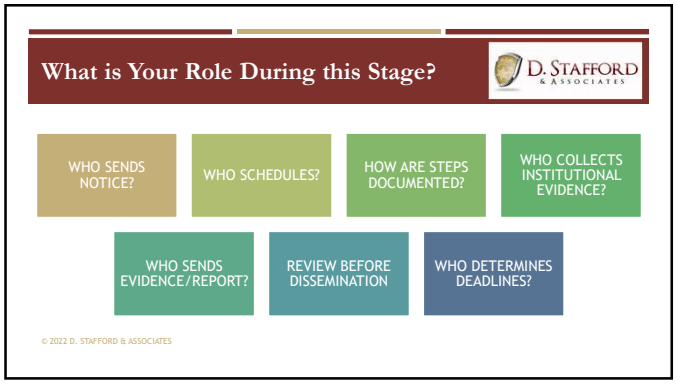
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INVESTIGATION STAGE
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What is Your Role During this Stage?
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WHO SENDS NOTICE?
WHO SCHEDULES?
HOW ARE STEPS DOCUMENTED?
WHO COLLECTS INSTITUTIONAL EVIDENCE?
WHO SENDS EVIDENCE/REPORT?
REVIEW BEFORE DISSEMINATION
WHO DETERMINES DEADLINES?
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Investigation Roadmap

Investigative strategy → Research and initial evidence collection → Interviews → Additional evidence collection → Report writing

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EXPECTATIONS OF GREAT INVESTIGATORS

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Title IX Investigations

- Burden of proof
- Burden on institution
- Cannot restrict ability of parties to discuss the allegations
- Cannot restrict parties to gather/present relevant evidence

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Investigations in the Regulations

- Fact witnesses
- Expert witnesses
- Inculpatory evidence
- Exculpatory evidence

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Virtual Investigations: Helpful Notice Language

- Please be in a location with good Wi-Fi and have your camera on.
- For confidentiality purposes, please find a private location. Be sure no other persons, except for your advisor, are in the room (on or off camera) during the interview.
- As it can take a few minutes to log in, please begin the login process 10 minutes before the start time.
- If you are unable to secure a private location or you have Wi-Fi issues, please contact Dr. Roe's office and they will assist you in looking for an alternative space for the Zoom interview.
- You will join a waiting room - please be patient - the investigators will join you into the meeting when the previous interview has finished.
- If you have evidence to share, please send it in advance of the interview to droe@college.edu.

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Types of Evidence

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- Real evidence
- Demonstrative
- Documentary
- Testimonial

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Statements

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- Investigator Interviews
- Written Statements
- Formal Complaint
- Other

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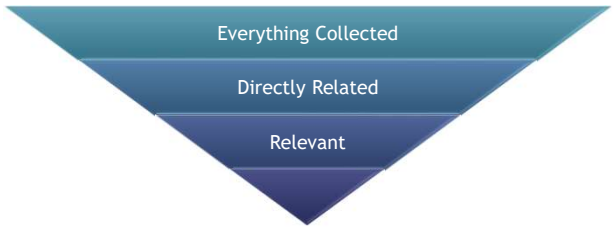
Other Sources of Evidence

- Photographs
- Text messages
- Social media/dating apps
- Documents (diagrams, memos, letters, notes)
- Voicemail
- Phone logs
- Guest lists

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Evidence Collection



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The Regulations on Relevancy

Relevant Evidence In Investigation

Relevant Questions At Hearing

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What Does Relevancy Mean?



- Directly related to the issue and helps prove or disprove the issue
- Fact must be material to an issue in the case
- Makes something more/less true or more/less false

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Other Ways to Put It…

The evidence does not need to be conclusive

The evidence constitutes a link in the chain of proof

The evidence, in connection with other evidence, helps "a little"

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How Could These Be Relevant?

Admissions

Eyewitness

Communications

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How Could These Be Relevant?



Background



Charts



Floorplans

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How Could These Be Relevant?



Research



Expert Testimony

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What About…



Character and Character Traits

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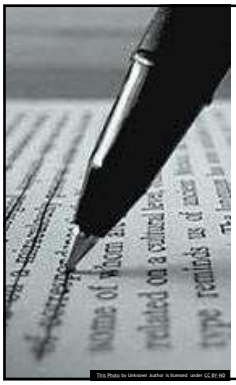




WHAT IS NOT RELEVANT?

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Not Applying Federal Rules of Evidence

~~Rule 403: The court may exclude relevant evidence if its probative value is substantially outweighed by a danger of one or more of the following: unfair prejudice, confusing the issues, misleading the jury, undue delay, wasting time, or needlessly presenting cumulative evidence.~~

~~Rule 404: Evidence of a person's character or character trait is not admissible to prove that on a particular occasion the person acted in accordance with the character or trait.~~

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Not Relevant (from the Regulations)

RELATED BUT NOT RELEVANT
Past Sexual Behavior

- Complainant's sexual predisposition/prior sex unless…
  - Offered to prove that someone other than the respondent committed the conduct alleged or
  - Complainant's prior sexual behavior with respect to the respondent and are offered to prove consent

ALWAYS OUT
Privileged Information

- Physician, psychiatrist, psychologist records in connection with the provision of treatment to the party
  - Unless voluntary, written consent

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Major Case Documents

Pre-Investigation		Investigation		Decision
Formal Complaint	Notice of Investigation	Evidence Review	Investigative Report	Written Determination

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Evidence Review

"provide both parties an equal opportunity to inspect and review any evidence obtained as part of the investigation that is directly related to the allegations raised in a formal complaint, including the evidence upon which the recipient does not intend to rely in reaching a determination regarding responsibility and inculpatory or exculpatory evidence whether obtained from a party or other source, so that each party can meaningfully respond to the evidence prior to conclusion of the investigation"



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Investigative Report



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"Create an investigative report that fairly summarizes relevant evidence"

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DSA - Versions of the Report

Preliminary Report

Scope
Methodology
Evidence Obtained

Final Report

Scope
Methodology (edited)
Evidence Obtained
Summary of Evidence

Written Determination

Scope
Methodology (edited)
Summary of Evidence (edited)
Results (including rationale, sanctions, remedies)

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DSA Preliminary Report

- **Evidence Obtained**
- Scope
- Methodology

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Preliminary Report Components - Evidence



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Optional Components

Scope	Alleged behavior Alleged policy violation(s)
Methodology	Procedural steps (Notifications, interviews, methods used to gather evidence)

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Inspect and Review Stage

Send to party and advisor	Provide at least 10 days to review	Allow submission of written response	Investigator must "consider" written response prior to completion of report

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DSA Final Investigative Report

- Scope (from Preliminary Report)
- Methodology (Edited)
- Evidence Obtained (from Preliminary Report and any additional)
- Summary of Evidence (new)

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Final Investigative Report Components - Evidence



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Inspect and Review Stage

Send to party and advisor

At least 10 days before hearing

Allow review and written response

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Case Files & Recordkeeping

- Paper/Virtual
- Notices
- Communications
- Evidence
- Supportive Measures

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Case Study: One More Thing

During the course of the investigation, the investigators learn that the complainant and the respondent had been in a "on and off again" dating relationship for the past few months.

- How is the Title IX Coordinator notified? When?
- Are there additional violations as a result?
- How would this be communicated to the parties?

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Case Study: You're Late!

The investigator contacts you to let you know that they need "a little more time" to conduct the interviews as they have had a family emergency and will be out for the next "few days."

- What are your next steps?

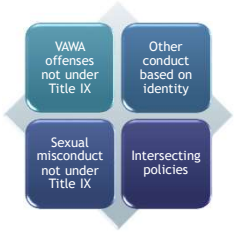
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Other Types of Investigations



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Possible Differences

- Jurisdiction
- Definitions
- Policy
- Adjudication Process
- Report
- Timeline

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Likely Similarities



INTERVIEWS



EVIDENCE COLLECTION



ADVISORS

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Bias/Conflict of Interest Check In

- Title IX Coordinator
- Investigator
- Notice Documents
- Investigation Process

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Your Role

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Structure

Hearing preparation

The hearing

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Live Hearing

In-person

Virtual

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Record of Hearing

Audio

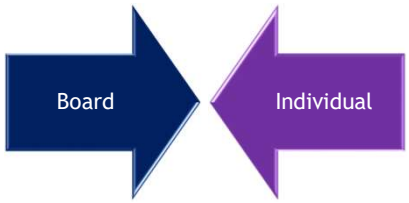
Video

Transcript

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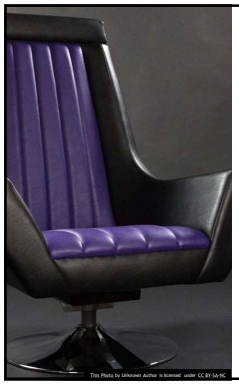
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Decision-makers



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The Chair

- Board Chair
  - Manages the agenda
  - Determines relevancy of questions
  - Coordinates decision
- Procedural Chair
  - Logistics
  - Has no role in decisions, including relevancy

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Chair-related Tasks

Recording | Introductions | Order of Questioning | Witness Management | Enforcing Rules of Decorum

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Decision-maker(s) Task

Review Report | Ask Questions | Determine Relevancy | Assess Credibility | Make the Finding | Produce the Written Determination

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HEARING PREPARATION



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Live Hearings – Institution Specific

- Pre-hearing Meeting
- Rules of Decorum
- Hearing Script

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Pre-hearing Tasks

- Attendance Confirmation
- Scheduling
- Action Items

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Preparing the Parties



- Hearing format
- Vetting of questions for relevancy
- Irrelevant questions (rape shield/privilege)
- Impact of attendance
- Impact of participation
- Role of advisor
- Appointed advisor
- Confirmation of witnesses

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Decision-maker Pre-work



Review report



Review allegations



Review policy

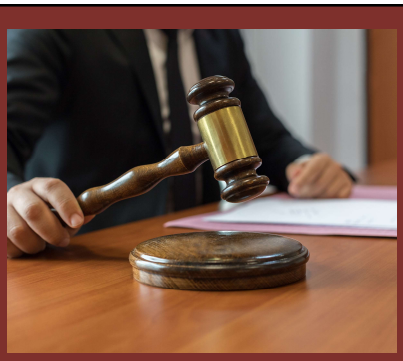


Draft relevant questions

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THE HEARING



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Written Responses

- Decision-makers
- The parties

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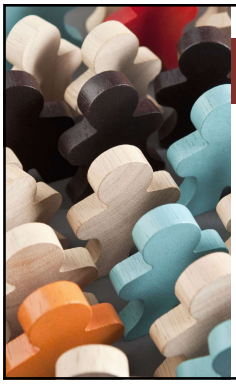
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Participants

- Decision-maker(s)
- Respondent and Advisor
- Complainant and Advisor
- Witness(es)

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- Complainant and Respondent
  - Subject to cross-examination
  - Can be questioned by the board
  - Do you allow for a verbal statement?
- Witnesses
  - Subject to cross-examination
  - Can be questioned by the board

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Other Possible Personnel in Attendance

General Counsel	• Advise on process?
Stenographer	• Only needed if not recording
Accommodation	• Interpreter or mandated support person
2nd Advisor	• Is a support person allowed? Union rep?

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Mandatory Components



Complainant Cross-Examination



Respondent Cross-Examination



Witness Cross-Examination

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Optional Components



Introductions



Reading Allegation



Review of Rights and Rules



Opening/Closing Statements



Decision-maker Questions

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Impartial Hearings



Consistent application



Ask clarifying questions



Avoid bias

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Questioning by the Advisors

Question	Relevancy Determination	Answer
• By Advisor	• By Decision-maker	• By party or witness

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Order of Questioning/Statements

Fairness

Equality

Logic

Common Sense

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Relevancy and Admissibility Determinations

- Past sexual history
- Privileged information
- Repetitive question
- New information
- Not probative of material fact

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Reason for Relevancy Determination



Not a lengthy or complicated explanation



Logic and common sense



Shows neutrality



May trigger appeal ("procedural irregularity")

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"NEW EVIDENCE" AT THE HEARING



Allow



Disallow



Stop Hearing

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Party Issues

REQUEST FOR INFORMAL

DISRUPTIVE

INAPPROPRIATE QUESTION

NOT PARTICIPATING

NO SHOW

EMOTIONAL ...

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Situational Issues



Safety



Disability



Length



Phrasing

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Decision-maker Issues (Appeal Grounds)



Procedural Error



New Evidence



Bias/Conflict

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MAKING
A
FINDING



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Formal Resolution – Making a Finding

- Policy language - Alleged violations
- Weighing the evidence
- Determined behaviors
- Standard of evidence

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Elements of the Policy Violations

- Sex Act
- Relationship
- Consent
- Act of Violence
- Conduct
- Impact
- Location

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Fact Considerations



Weight



Credibility

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Weight/Relevance

- Character
- Prior bad acts
- Pre/post behavior
- Hearsay
- Opinion
- New evidence

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BEHAVIORS

BASED ON THE INFORMATION AVAILABLE, WHAT BEHAVIORS OCCURRED?

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Standard of Evidence

More likely than not

Clear and convincing

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Disciplinary Sanctions and Remedies



Sanctions

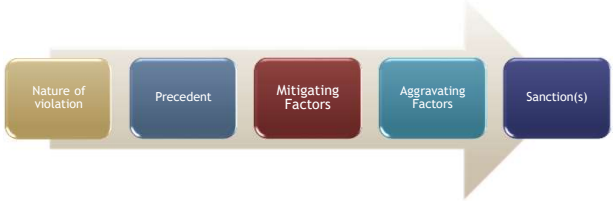


Remedies

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Formal Resolution – Disciplinary Sanction



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Formal Resolution – Remedies

Make permanent supportive measures

One-sided no contact orders

Restrictions from locations

Restrictions from activities

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Written Determination

- Allegations
- Procedural steps
- Findings of fact
- Conclusion/application
- Rationale
- Appeal procedures

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Other Decision-Maker

Appellate Decision-maker

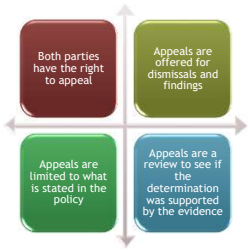
Appeal of Case Dismissal

Appeal of Emergency Removal?

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Key Points of Appeals



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Role of Appellate Decision-Maker

Follow the Appellate Basis

Not A Substitute of Judgement

Respect the Credibility of Previous Decision-maker

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Who is the Appeals Officer?

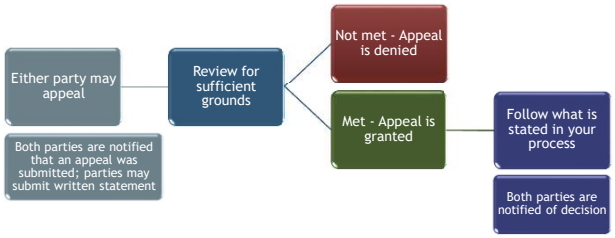


- Separate role
- Trained
- Conflict of interest or bias

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Appeal of Result



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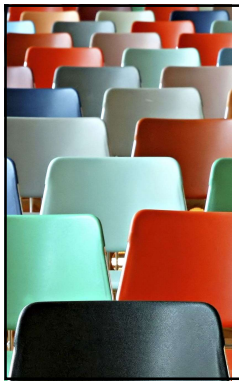
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Basis of Appeal

- Procedural irregularity that affected outcome
- New evidence that could affect the outcome
- Conflict of interest or bias that affected the outcome
- Additional Grounds are permitted (must be in policy)

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Examples of Appeals Based on Findings

- Erroneous relevancy determinations regarding evidence
- The hearing was not recorded or transcribed
- Advisors were not permitted to ask relevant questions
- The board members were biased against a party
- The written determination relied on statements from parties who did not participate
- The decision was erroneous and the board members were negligent in making their determination

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Stating the Appropriate Ground

Does it state an appropriate ground?

Who makes this determination?

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Meeting the Grounds

What information is provided?

Did it or could it "affect the outcome?"

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Appeal Determinations

- Does the appeal state appropriate grounds?
- Does the information in the appeal meet grounds?
- What is the institution's response?

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Response to the Appeal

Denied

- No further process

Granted

- Procedural irregularity – what is the process to remedy error?
- New Evidence – does the case return to decision-maker?
- Conflict of interest or bias – what is the process to remedy error?

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Written Determination Requirements



The result



Rationale



Simultaneous notification

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Articulating the Decision

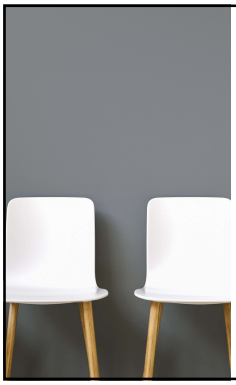
State what the appeal asserted

Explain your analysis and rationale

Describe the action to be taken

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Case Study: No Show

At the start of the hearing, you get a call from the Decision-makers that the Complainant's advisor did not show up for the hearing.

What do you do?

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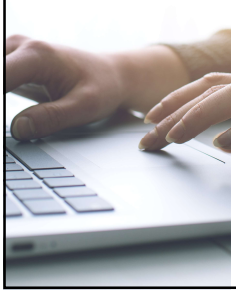
Case Study: STOP right there

You are attending the hearing to assist in its facilitation – breakout rooms, calling witnesses, etc. During the hearing, the Decision-makers are not making relevancy determinations for the Respondent but are for the Complainant.

What do you do?

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Case Study: It's Broken

You are not at the hearing and receive a call from the Decision-makers who tell you that one of the witnesses cannot attend because they do not have a computer with a working camera.

What do you do?

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Case Study: Equal?

Neither party at the hearing had an advisor. You appointed each party with an advisor who was trained as a decision-maker.

During the hearing, the Complainant's advisor is much more prepared for the hearing, and states that they met with their party previously. The Respondent's advisor is not as prepared and indicates that they have not met with their party previously.

You receive an appeal from the Respondent which states that he received "inappropriate counsel."

What do you do?

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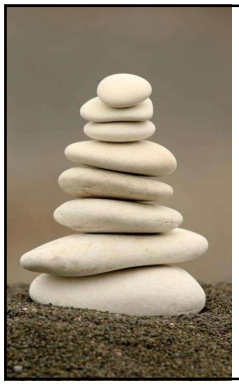


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Organizational Integrity and Training

1



Agenda

- Organizational Integrity
- Training of Title IX Personnel

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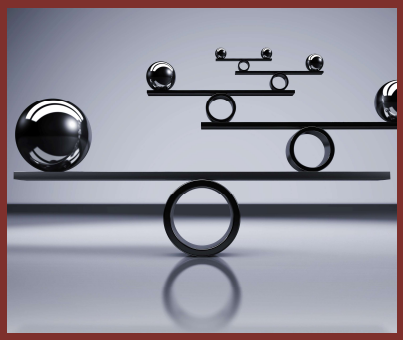


ORGANIZATIONAL INTEGRITY

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SERVING IMPARTIALLY



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Conflict of Interest or Bias

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Generally

Individually

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Procedural Challenges

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During Investigation/Hearing

Basis of Appeal

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Training

Prejudgment of facts

Conflict of Interest

Bias

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Avoiding Prejudgment of Facts

Open mind

Listen

Objective

Neutral

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Conflict of Interest

External

Internal

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Conflicts of Interest

Roles on campus

Past employment

Volunteering

Social media presence

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Bias

- Personal experience
- Personal identity
- Social identity
- Theoretical perspective
- Professional identity
- Religious perspective
- Political perspective

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Identity Bias

Bias, Data, Impact

- Gender Identity
- Sexual Orientation
- BIPOC
- National Origin
- Individuals with disabilities

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REPRESENTATION MATTERS



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Types of Bias

Confirmation Bias	Confirmed preconceived opinion
Availability Bias	Most important to the memory immediately recalled
Hindsight Bias	See things as more predictable than they were
Foresight Bias	Ability to predict future events
Identity Bias	More likely to believe one group over another
Personal Experience Bias	Believe similar experience (or disbelieve the dissimilar)

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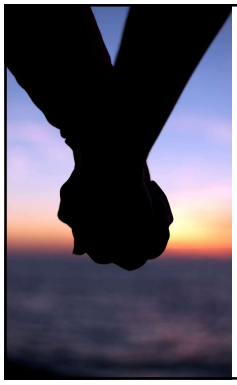


Case Study: The Tweet

You have a staff member who has served on your hearing board for several years and is considered one of your most reliable board members. Recently, you became aware of a tweet by the staff member that mocked people who are transgender. The tweet is two years old.

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Case Study: Assigning Personnel

You have a dating violence case involving two individuals with the same gender and sexual identities. Though you have no history of bias on the part of your investigator and board members, you are aware that they all belong to a conversative church that has actively supported anti-LGBTQ political candidates and policies.

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Case Study: The Appeal

You have a case involving a respondent who is Black and a complainant who is white. The respondent was found not responsible. The complainant has appealed. When you gave the case to the appeal officer, they stated, "You know, every case I have ever had involved a Black respondent."

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Case Study: The Interview

An investigator was recently interviewed by the student newspaper regarding their role with Title IX. They self-disclosed that they were a survivor of sexual assault which is why they do this work. Shortly after the article is released, you assign them to a sexual assault case. The respondent, upon notification of who the investigator will be, has requested a new investigator based on a conflict of interest/bias.

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Case Study: Take Back the Night

A Title IX hearing is approaching. The respondent has filed a request for a different hearing officer because of a bias. The respondent stated that the hearing officer has participated in the recent Take Back the Night event and spoke out against rape, which the respondent is accused of.

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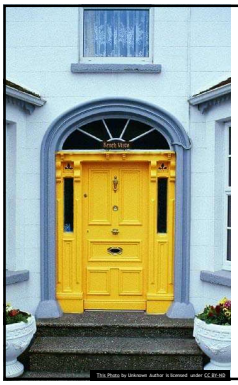


Case Study: The Fan

A recent student sexual harassment case resulted in a finding of "not responsible." The complainant has submitted an appeal claiming investigator bias. The appeal states that the investigator was biased against her because the investigator favored the respondent, a football player. The complainant referenced being interviewed in the investigator's office which had school football paraphernalia displayed.

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Case Study: Door One, Two, or Three

You have five possible hearing panelists for a sexual harassment case with a faculty respondent and graduate student complainant. You need three panelists. Three of them have a potential conflict:

- Panelist 1 - Serves on the Tenure Review Committee which recently denied tenure for the respondent
- Panelist 2 - Has had the complainant in two courses when the complainant was an undergraduate and provided a letter of recommendation for graduate school
- Panelist 3 - Works in the same department as the complainant's aunt and attends the same church as the respondent

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Case Study: The VP

Your appeal officer is the vice president for student affairs. The complainant is a student member of the board of trustees. The vice president frequently interacts with the board. The president has repeatedly requested updates about the case from the vice president. You have raised the concern about there being the perception of a conflict. The vice president was insulted that you could possibly think they would not be fair and impartial and stated that they are fine to be the appeal officer.

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ORGANIZATIONAL INTEGRITY



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Organizational Integrity

"Organizational Integrity is the term we use to describe the foundational value that is the engine behind getting things done in the organization. It is the collective version of individual integrity where '*I* will do what *I* say *I* will do' becomes '*We* will do what *we* say *we* will do.'"

- Partners in Leadership, 2009.

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FOLLOW YOUR PROCESS

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STAY IN YOUR LANE

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MANAGE THE "NOISE"

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LEAD WITH MORAL COURAGE

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Rushworth Kidder, Moral Courage (2006).

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Final Note

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1. Run a fair, thorough, and impartial process
2. Let your morale compass guide you
3. Do what your policy says you will do
4. Do what the regulations tell you to do

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TRAINING OF TITLE IX PERSONNEL

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Adjudicator Training - Clery Act

- Annual
- Clery offenses
- Investigation and hearing process
- Safety and accountability

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Title IX Personnel Training

- Title IX Coordinators
- Investigators
- Decision-makers
- Informal Resolution Facilitators

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Training for All Title IX Personnel

- Definition of sexual harassment
- Scope of education program/activity
- Conduct grievance process
- Serve impartially

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Additional Training - Investigators



Relevance



Investigative Report

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Additional Training - Decision-makers



Technology



Relevancy

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Advisors



NO REQUIREMENT



SHOULD YOU

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Training Materials

Can't rely on sex stereotypes

Address implicit and unconscious bias

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Training Material Recordkeeping

- 7 years
- All materials
- Available on website

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Information

Name
Position
Date(s) of training
Title of Training
Materials provided

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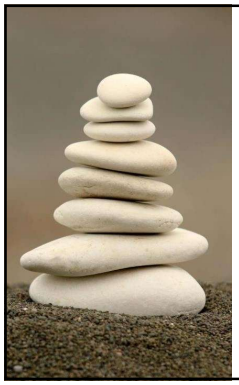


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Education and Prevention

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Agenda

- Community and Education and Prevention

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2



3

EDUCATIONAL REQUIREMENTS



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Who Has to be Trained?

- Students
- Employees
- Mandatory Reporters
  - Policy
  - State Law
- Officials with Authority
  - Deans
  - Supervisor
- Other Constituencies
  - Counseling
  - Advisors
  - Off-campus resources

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From the VAWA Regulations…

(j) … an institution must include in its annual security report a statement of policy that addresses the institution's programs to prevent dating violence, domestic violence, sexual assault, and stalking

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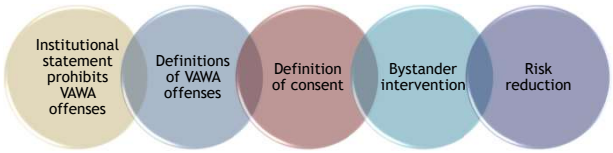
Programs to Prevent VAWA Offenses



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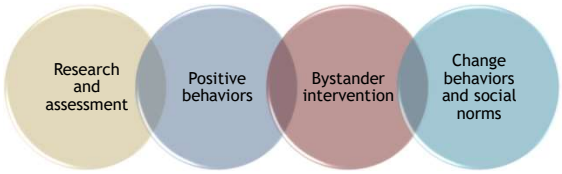
Primary Prevention Programs



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Primary Prevention Programs



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Primary Prevention Programs

Delivery Options

Audience

Attendance

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Ongoing Prevention Programs



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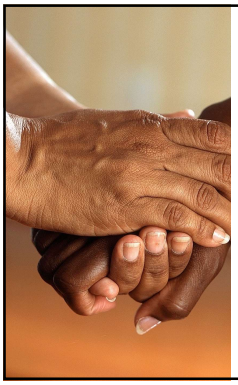
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Awareness Campaigns

- Community-wide or audience-specific programming, initiatives, and strategies that increase audience knowledge and share information and resources to prevent violence, promote safety, and reduce perpetration.

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Bystander Intervention

(ii) ***Bystander Intervention*** means safe and positive options that may be carried out by an individual or individuals to prevent harm or intervene when there is a risk of dating violence, domestic violence, sexual assault, or stalking. Bystander intervention includes recognizing situations of potential harm, understanding institutional structures and culture conditions that facilitate violence, overcoming barriers to intervening, identifying safe and effective intervention options, and taking action to intervene.

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Ongoing Prevention & Awareness

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Coordinated Strategies

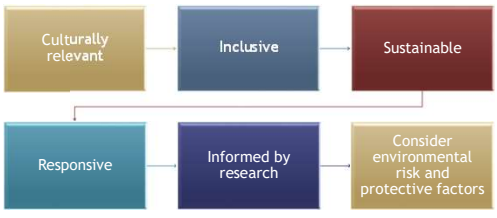
- Communication
- Programming, such as Take Back The Night, safe walks
- Coordination with campus groups
- Tabling
- Curriculum infusion

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Programs to Prevent VAWA Offenses

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Recommended Practice from 2016 Clery Handbook Guidance (rescinded)

Community involvement

- Local rape crisis centers
- Local law enforcement officials
- Social services personnel
- Coalitions against domestic and sexual violence

Not required for all to attend

Can combine topics

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BRINGING PREVENTION TO CAMPUS



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Education for Employees and Students



- Raise awareness
- Referrals

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Essential Campus Components

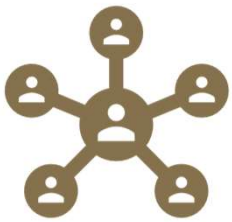
Coalition Building | Policy Analysis | Data Collection | Inclusive Programming | Male Involvement | Social Marketing

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Coalition Building

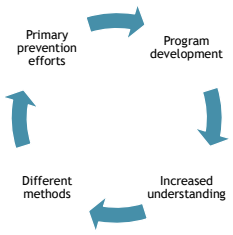
- Collaboration
- Share knowledge
- "Check ins"



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Data Collection



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Inclusive

- ADA compliant
- Interpreters
- Universal design
- Safe spaces
- Inclusive training material
- Challenge stereotypes

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Inclusive Involvement

- Influential
- Allies
- Masculinity
- Messaging
- Healthy relationships
- Victim perspective

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Image by Ian Wilson from Pixabay

HOW CAN YOU USE SOCIAL MEDIA?

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Sexual Citizenship

People are sexual beings

Why do you want to have sex?

How does it impact others?

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Additional Considerations

Understanding consent

The power of space

The power of groups

Gendered scripts

Marginalized populations

Catfishing

Modeling of behavior

Programming

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MODELS FOR PREVENTION



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Effective Prevention Strategies

Comprehensive | Varied teaching methods | Sufficient dosage | Theory driven | Positive relationships

Appropriately timed | Socio-culturally relevant | Well-trained staff | Outcome evaluation

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Different Prevention Efforts



PRIMARY PREVENTION



SECONDARY PREVENTION



TERTIARY PREVENTION

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The Public Health Approach

Define → Identify → Develop → Adopt

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Effective Prevention Strategies



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Level	Influences	Strategy	Prevention activities example
Individual	Personal traits and beliefs	Positive attitudes	Mentoring and education
Relationship	Peers and family	Modeling behavior	Bystander
Community	Institutional relationships	Policies and processes	Social media
Societal	Belief systems and social norms	Laws	Target lawmakers

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Alcohol Related Strategies



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Other Strategies

Social Justice Paradigm
- Root cause of sexual violence

Stop Sexual Violence
- Strategies
- Approaches

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Examples

Tea video	Clothesline Project	Take Back the Night
Walk a Mile in Our Shoes	It's on Us	Bystander
One Love	360 Stay Safe	STARRSA

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Primary Prevention - Incoming Students

Name of Program	Date Held	Location Held	Prohibited Behavior Covered
First Year Student Orientation	8/15/2020	Main Auditorium	DoV, DaV, SA & S*
First Year Student Orientation	8/16/2020	Main Auditorium	DoV, DaV, SA & S*
Transfer Student Orientation	8/15/2020	South Hall	DoV, DaV, SA & S*
Law School Student Orientation	8/17/2020	North Hall	DoV, DaV, SA & S*
Graduate School Orientation	8/16/2020	East Hall	DoV, DaV, SA & S*
Bystander Intervention Training	8/17/2020-8/19/2020	Fair Sports Complex	SA*

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Primary Prevention - Incoming Employees

Name of Program	Date Held	Location Held	Prohibited Behavior Covered
New Employee Orientation	1/15/2020	Human Resources	DoV, DaV, SA & S*
New Employee Orientation	3/18/2020	Human Resources	DoV, DaV, SA & S*
New Employee Orientation	6/21/2020	Human Resources	DoV, DaV, SA & S*
New Employee Orientation	8/25/2020	Human Resources	DoV, DaV, SA & S*
New Employee Orientation	9/10/2020	Human Resources	DoV, DaV, SA & S*

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Ongoing Prevention - Students

Name of Program	Date Held	Location Held	Prohibited Behavior Covered
Behind Closed Doors Skits	3/15/2020	Main Auditorium	DoV, DaV, SA & S*
Behind Closed Doors Skits	9/03/2020	Main Auditorium	DoV, DaV, SA & S*
Residence Hall Speaker Series-1	2/17/2020	Cole Residence Hall	DoV* DaV
Residence Hall Speaker Series-4	12/02/2020	Cole Residence Hall	S*
Clothesline Project	10/01/2020-10/05/2020	Student Commons Main Floor	DoV, DaV, SA *
Vagina Monologues	12/02/2020	Main Auditorium	SA*
Poetry Speak Out	3/19/2020	Student Commons Lounge	DoV, Dav*
Safe Zone Hate Crime Prevention	11/02/2020-11/04/2020	Office of Diversity & Inclusion	DoV, DaV, SA & Stalking (LGBTQ)

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Ongoing Prevention -Employees

Name of Program	Date Held	Location Held	Complied with Section B a-e?	Prohibited Behavior Covered
Faculty Spring Orientation	1/15/2020	Graduate School Faculty Conference Room	Yes	DoV, DaV, SA & S*
Faculty Spring Orientation	3/18/2020	Arts & Sciences Conference Room	Yes	DoV, DaV, SA & S*
Faculty Fall Orientation	8/25/2020	Moot Court Room	Yes	DoV, DaV, SA & S*
Staff In-Service	9/11/2020	Human Resources	Yes	DoV, DaV, SA & S*
Poster Campaign: "Challenging Myths and Stereotypes About Victims of Rape in HE"	11/01/2020-12/01/2020	Posters placed in Faculty lounges in Main Hall B1-B5, King Hall, offices of advisors	Yes	DoV, DaV, SA*
Web-based Training- "The Role of Faculty in Assisting Students Who Disclose Abuse"	4/10/2020	Provost Smith	Yes	DoV, DaV, SA & S*

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Remember

Develop a plan

Clery requirements

Primary and ongoing programs

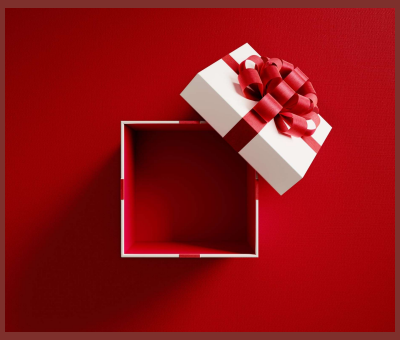
Prevention

Documentation

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THINK OUTSIDE THE BOX



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RELATIONSHIPS AND SEX HAPPEN ON YOUR CAMPUS

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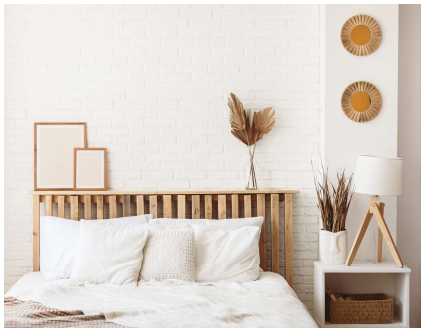
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TEACH HEALTHY EXAMPLES

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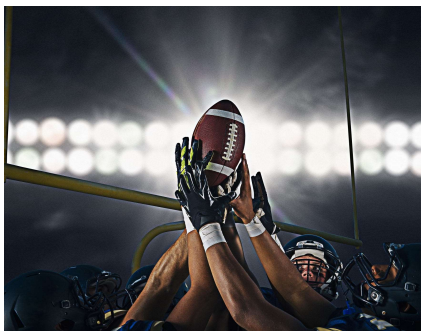
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RETHINK SPACE

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POWER OF THE GROUP

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THE ROLE OF GENDER, RACE, CLASS, AND PRIVILEGE

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Sandbox A University
Title IX Referral Form

Submitted on January 5, 2022 at 10:59:42 am EST. Last modified January 5, 2022 at 11:30:40 am EST.

Nature	**Title IX**
Urgency	**Normal**
Incident Date and Time	**2021-10-31 12:00 AM**
Incident Location	**Alcott Residence Hall Room 3A**

Reported by

Name:	**Randy Donnovan**
Title:	**Resident Director**
Email:	**rd@DSA.edu**
Phone	**555-555-5551**
Address:	

Involved Parties

Carrie Chase (012345) Complainant	cc@dsa.edu 3A Alcott Hall	555-555-5552
Rich Reynolds (12346) Respondent	rr@dsa.edu 1A Alcott Hall	555-555-5553
Wendy White (12347) Witness	ww@dsa.edu 3A Alcott Hall	555-555-5554

Incident Narrative

Narrative:

On 1/4/22 I, Randy Donnovan was on-call. At 8:30 pm, Resident Carrie Chase and Resident Wendy White asked if they could talk with me. Chase and White asked if Donnovan could make Resident Rich Reynolds "move" because they did not feel comfortable with them living in Alcott Hall. Donnovan stated that he could not do that without knowing the reason. Chase stated that there had been an "incident" between Chase and Reynolds on Halloween and that he "took advantage of her." Donnovan told Chase that he was a Responsible Employee and that anything she told Donnovan, he would have to report to the Title IX Coordinator. Chase told Donnovan that she did not want to tell Donnovan anything else and abruptly left Donnovan's office. Donnovan was unable to provide Chase with any additional information at this time.

At 9:30 PM, Donnovan went to Chase's room and asked to come in and speak with her. Chase let Donnovan into her room. Donnovan provided to Chase a copy of the Explanation of Rights and Options Brochure and asked if she needed anything at this time. Donnovan stated that based on the information provided by Chase, he would be contacting Trey Titus, the Title IX Coordinator, who would reach out to Chase. Chase thanked Donnovan. Donnovan left Chase's room.

Pending IR #00000022
Submitted from 108.20.80.82 and routed to Cathy Cocks (Consultant, Student Affairs, Title IX, and Equity Compliance)
Modified by Beth Devonshire, J.D. on January 5, 2022 at 11:30:40 am EST from 108.20.80.82
Copies originally to: investigations@dstaffordandassociates.com

Sandbox A University
Title IX Complaint Form

Submitted on January 5, 2022 at 11:29:47 am EST

Nature	**Formal Title IX Complaint**
Urgency	**Normal**
Incident Date and Time	**2021-10-31 12:00 AM**
Incident Location	**Alcott Residence Hall 3A Alcott hall**

Reported by

Name:	**Carrie Chase**
Title:	
Email:	**cc@dsa.edu**
Phone	**555-555-5552**
Address:	

Involved Parties

Carrie Chase (12345) Complainant	ca@dsa.edu 3A Alcott Hall	555-555-5552
Rich Reynolds (12346) Respondent	rr@dsa.edu 1A Alcott Hall	555-555-5553
Wendy White (12347) Witness	ww@dsa.edu 3A Alcott Hall	555-555-5554

Complaint

Please provide a detailed description of the incident(s) using specific and concise language (who, what, where, when, and how). Please include as much detail as possible, including dates, times, and locations.

On Halloween night, me and Wendy were hanging out in our room getting ready for the Halloween Party at Ziggy's. We drank some shots. We then went to Rich's room to get him and walk to the party. Rich and I were hanging out. We were dancing and I drank a couple more drinks. Me and Rich left and went back to my room. I am not sure what happened when we got back as I only have flashes of things. I remember Rich putting on a condom and him having sex with me. I did not want to have sex with him. I woke up the next morning and there was vomit and a used condom in the trash by my bed. Rich was not there. I sent him a Snapchat asking what happened. He said not to worry about anything. I don't have the messages saved. We have not talked since.

I thought I would be fine after break, but I am not. I keep seeing him and I am afraid to leave my room because I do not want to run into him. We are in one of the same classes and I do not want to go to that class anymore.

By entering my name in the box below, I am submitting this formal complaint requesting the institution investigate. I understand that all evidence, including this statement, will be shared with the Respondent. I have been explained my rights and options by the Title IX Coordinator or designee.

[PLEASE ENTER YOUR FULL NAME IN THE BOX BELOW]

Carrie Chase

Pending IR #00000023
Submitted from 108.20.80.82 and routed to Cathy Cocks (Consultant, Student Affairs, Title IX, and Equity Compliance). Processed by routing rule #24.
Copies to: investigations@dstaffordandassociates.com

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