



**D. STAFFORD**  
& ASSOCIATES

# **Title IX Coordinator and Investigator Training Class**

**Presented by DSA Associates:**

**Cathy Cocks**

**Beth Devonshire**

**Adrienne Murray**

**Ann Todd**

D. Stafford & Associates, LLC  
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# D. STAFFORD & ASSOCIATES

## Title IX Coordinator

(Virtual Course)

### Overview of Course Schedule

**All Classes will run from 11:00am to 5:00pm (Eastern) with a lunch break from 1:30pm to 2:15pm. Fifteen-minute breaks will also be given throughout the day.**

#### **Day 1 Understanding the Law**

- Title IX
- Title VII
- The Clery Act for Title IX Coordinators

#### **Day 2 Title IX and Related Policies**

- Policy and Procedures Considerations
- Title IX Personnel
- Defining Sexual Harassment

#### **Day 3 Preventing and Mitigating Harm**

- Training and Education
- Intake, Supportive Measures, and Emergency Removal
- Notice and Party Rights

#### **Day 4 Title IX Process Overview**

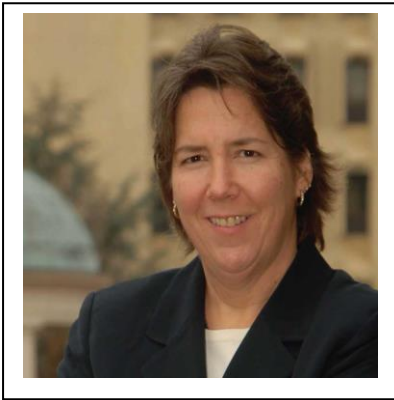
- Informal Resolution
- Formal Resolution: Investigation Stage
- Stress, Trauma, and Memory

#### **Day 5 The Formal Hearing Process**

- Formal Resolution: Hearing Stage
- Findings and Appeals
- Organizational Integrity



## Dolores Stafford, President & CEO



Ms. Stafford was the Chief of Police at The George Washington University in Washington, DC from 1992-2010. During her distinguished 26 year career in the law enforcement and security industry, she worked in Campus Law Enforcement for 23 years at Bucknell University, Butler University, and most recently, at the George Washington University, where she served as Chief of Police of a 176 member police department for 18 years. Chief Stafford retired from active law enforcement on May 5, 2010. She has a Bachelor's Degree in Criminal Justice from Mansfield University and has a Master's of Science Degree in Education from Bucknell University. Chief Stafford is a Certified Litigation Specialist.

As one of the nation's premier campus police chiefs, she is a much sought after speaker, consultant, educator, expert witness, and instructor on campus security, campus safety and law enforcement related issues and on compliance with the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act (The Clery Act) and the security and safety requirements of the HEOA.

Chief Stafford has won numerous accolades for her 26 years of service in the law enforcement field. She won the "Breaking the Glass Ceiling" award in 2002 in honor of her ongoing contributions to improving the law enforcement profession. In 2004, Stafford was honored by the European Association for Campus Security for her expertise and achievements in campus security. Campus Safety Magazine awarded her their 1<sup>st</sup> Annual Campus Safety Director of the Year Award for 2006. In June 2008, Chief Stafford was presented with the Distinguished Young Alumni Award by her alma mater, Mansfield University in Pennsylvania.

She has been a member of the International Association of Campus Law Enforcement Administrators (IACLEA) since 1990 and she served on the Board of Directors from 2000-2005. She served as the Chair of the IACLEA Accreditation Commission from 2005-2008 and she served as the 45<sup>th</sup> President of the International Association of Campus Law Enforcement Administrators in 2003-2004, she was the first female to hold that office.

Chief Stafford has been a keynote speaker and has conducted presentations on the Clery Act for various organizations, including IACLEA, NACUBO, American Council on Education (ACE); the Stetson Law Conference, Security on Campus Inc, and other video/teleconference training companies.



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She was a member of the IACLEA Government Relations Committee from 1995 to 2010 and was the Committee Chair from 1998 to 2000. Chief Stafford has testified at several congressional hearings, one at the request of the U.S. House of Representatives in July of 1997 and two at the request of the U.S. Senate in March of 1998 and July of 2015. Chief Stafford was selected to represent IACLEA as the primary negotiator during the 1999 and 2009 Negotiated Rule Making processes sponsored by the Department of Education regarding the development of final rules for the implementation of the Clery Act. She is a nationally recognized expert on compliance with the Clery Act.

Chief Stafford has been a featured speaker in many other areas of security and safety for the American Council on Education (ACE); American Association of State Colleges and Universities (AASCU); National Association of Student Personnel Administrators (NASPA), the National Association of College and University Business Officers (NACUBO); University Risk Management and Insurance Association (URMIA); Stetson University College of Law; and the International Association of Campus Law Enforcement Administrators (IACLEA).

Chief Stafford led the GW Police Department as the agency became an internationally accredited law enforcement agency with the Commission of Law Enforcement Accreditation (CALEA) in March of 2006 and the agency was successfully reaccredited in March of 2009. The agency subsequently achieved accreditation with the International Association of Campus Law Enforcement Administrators in May of 2007. She was chosen to become an assessor for CALEA in March 2006 and she is currently an IACLEA assessor, and as such, she has completed numerous on site assessments for those organizations.

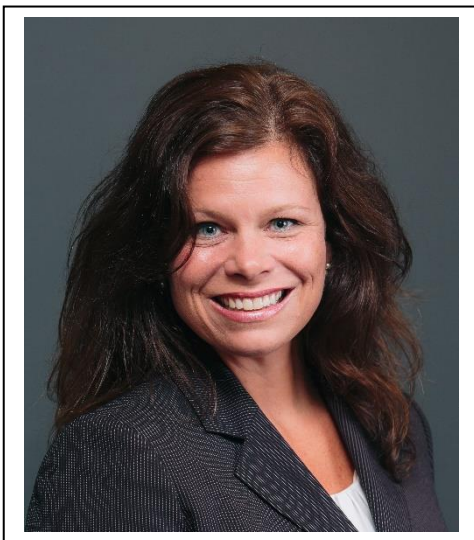
She has published more than a dozen articles in various professional journals and magazines. She was one of the lead authors of the International Association of Campus Law Enforcement Administrator's [Blueprint for Safer Campuses: An Overview of the Virginia Tech Tragedy and Implications for Campus Safety](#). This document, unveiled at a press conference sponsored by the Woodrow Wilson School at Princeton University on April 18, 2008, is a roadmap for campus safety and security. The Blueprint for Safer Campuses outlines the guiding principles for campus safety and security worldwide.





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**Adrienne Meador Murray, Executive Director,**  
**Equity Compliance and Civil Rights Services**



Adrienne Meador 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.). In January 2014, Murray joined the National Association of Clery Compliance Officers & Professionals (NACCOP) and D. Stafford & Associates where she currently serves as Executive Director of Training and Compliance Activities after

having been affiliated with D. Stafford & Associates as a part-time Associate since 2012.

As the Executive Director of Training and Compliance Activities, 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 2,500 criminal and civil rights investigators throughout the U.S.



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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 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. 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. 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.



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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.



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



Beth Devonshire, Esq., has been an Associate with DSA since 2012 and she became a full-time consultant in August of 2018. She was the Associate Dean of Students at UMass Boston from November 2016 to July 2018. In that role, Beth administered the student conduct system, chaired the CARE and BIT Teams, served as the Deputy Title IX Coordinator, oversaw the U-Access (an office dedicated to assisting students who are dealing with a multitude of issues such as food insecurity, homelessness, emancipation from foster care, and chronic poverty), and acted as a liaison with the various constituencies around the University. Additionally, Beth was responsible drafting the policies and

procedures related to students. Prior to that, Beth was the Director of Student Conduct at Bridgewater State University and the Director of Community Standards Stonehill College. Before

beginning her career in Higher Education, Beth served as a clerk for the Justices of the Superior Court, and in various positions for the Massachusetts House of Representatives. Beth has also presented extensively on Title IX including presentations to Colleges, State Wide Organizations, Regional Conferences, and at the OCR Title IX Conference in March of 2011.

Additionally, Beth has given multiple presentations on other legislation and legal issues effecting higher education, including FERPA, Clery and Alcohol and Other Drug Prevention. Beth is the former National Knowledge Community Public Policy Liaison for NASPA, and 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. In those roles, Beth was charged with keeping abreast of proposed and passed legislation and cases impacting higher education and communicating those changes to the membership.

Before beginning her career in Higher Education, Beth served as a clerk for the Justices of the Superior Court from 2006-2007. Prior to that, Beth worked at the Massachusetts State House as Deputy Attorney for House Ways and Means, Chief of Staff for the Committee on Election Laws and as a Researcher for the Committee on Local Affairs.



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Devonshire currently serves as an Associate for D. Stafford & Associates, a highly reputable consulting firm specializing in delivering on organizational, physical security, vulnerability and arming assessments; Clery Act compliance audits; assessments of Title IX compliance; Behavioral Intervention Team and Student Conduct Assessments and Training; and a host of other services related to security, safety and compliance for institutions of higher education.





## 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.

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 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 a member of the NC Bar and a Certified Clery Compliance Officer through the National Association of Clery Compliance Officers and Professionals (NACCOP). She is also a certified 360 facilitator through the Center for Creative Leadership. She 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



## **TITLE IX**

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- Public inspection upon request.*

*You may not, except with our express written permission, distribute or commercially exploit the content. Nor may you transmit it or store it in any other website or other form of electronic retrieval system.*



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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 Clerly 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.



# Title IX Overview

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## Agenda

- History
- The Law
- Sexual Harassment Case Law
- The 2020 Regulations
- Athletics
- Admission and Financial Aid
- Pregnancy and Parenting
- Employment
- Discipline and Other Considerations
- The Office for Civil Rights

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## Sexual Harassment Guidance Timeline



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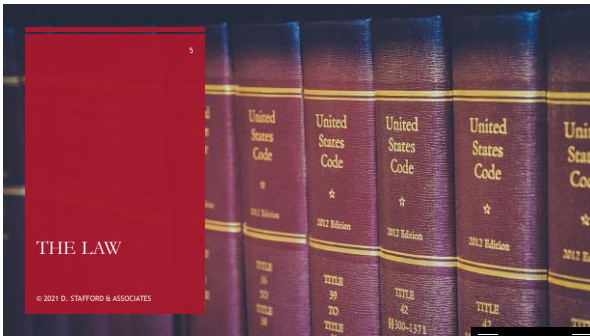
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## Federal Law



### Statutes

20 U.S.C.D.  
§1681-1688



### Regulatory Guidance

34 C.F.R. § 106



### Sub-Regulatory Guidance

Dear Colleague Letters  
OCR Website



### Executive Orders

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TITLE IX  
STATUTE

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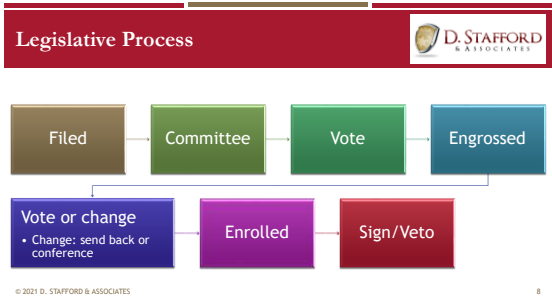
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Title IX  
20 U.S.C.  
1681 1688

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- 1681: Sex
  - Prohibitions, exceptions
  - Preferential or disparate treatment not required (but can be evidence)
  - “educational institution” defined
- 1687: Interpretation of “program or activity”

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**20 USCA 5 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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**Federal Statute Exceptions**

- Admission policies
- Institutions changing from single-sex status
- Religious institutions
- Military services or merchant marines
- Public traditional single-sex institutions
- Social fraternities or sororities and voluntary youth organizations
- Boys or girl conference
- Father-son/mother-daughter activities
- "Beauty pageants"

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**Federal Statute – "Program or 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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**TITLE IX REGULATIONS (REGULATORY GUIDANCE)**

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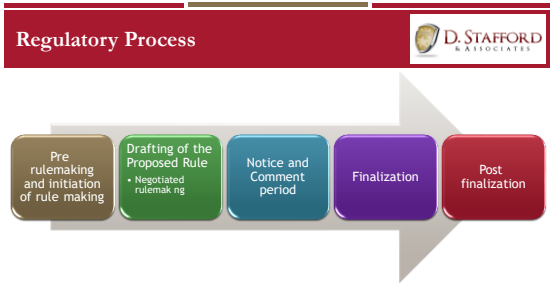
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**34 C.F.R. Part 106 – Nondiscrimination on the Basis of Sex in Educational Program or Activities Receiving Financial Assistance (pre-2020)**

- 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 (106.31 – 106.43)
- Subpart E: Employment (106.51 – 106.61)
- Subpart F: Procedures (106.71)

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## Key Regulation Language (pre 2020)



- Subpart A: Introduction
  - 106.8(a) *Designation of responsible employee.* Each recipient shall designate at least one employee to coordinate its efforts to comply with and carry out its responsibilities under this part...
  - 106.8(b) “A recipient must adopt and publish grievance procedures that provide for the prompt and equitable resolution of student and employee complaints alleging any action that would be prohibited by this part”

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### TITLE IX SUB REGULATORY GUIDANCE

The screenshot shows a document header for the United States Department of Education, Office for Civil Rights, dated April 4, 2011. The text begins with 'Dear Colleague:' and discusses the Department's commitment to Title IX, which prohibits discrimination on the basis of sex in education programs or activities. It specifically addresses sexual harassment and violence, stating that such acts constitute sex discrimination under Title IX. The document explains that the requirements of Title IX apply to all educational institutions receiving federal financial assistance, including schools, colleges, and universities. It also notes that the Department has issued this guidance to clarify its interpretation of Title IX and to provide schools with information on how to comply with the law.

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## Sub Regulatory Guidance



- January 19, 2001 Revised Sexual Harassment Guidance: Harassment of Students by School Employees, Other Students, or Third Parties (Title IX)
- October 26, 2010: Dear Colleague Letter: Harassment and Bullying
- April 4, 2011 Guidance on Addressing Sexual Harassment/Sexual Violence
- April 29, 2014 Questions and Answers about Title IX and Sexual Violence
- April 24, 2015 Guidance on Obligation of Schools to Designate a Title IX Coordinator
- May 13, 2016 Guidance on Rights of Transgender Students
- September 22, 2017 Dear Colleague Letter and Q&A on Campus Sexual Misconduct
- November 29, 2018 Notice of Public Rule Making
- May 6, 2020 Publication of the Final Rule

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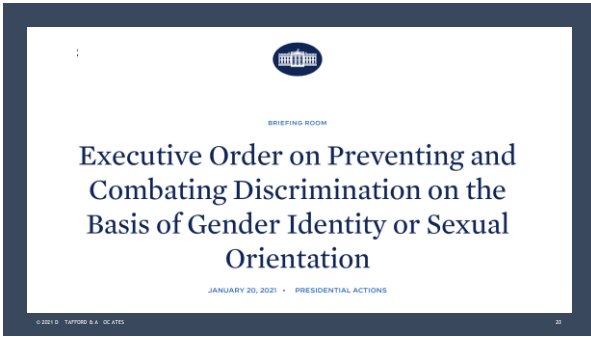
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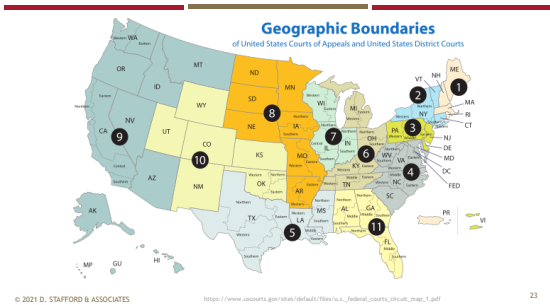
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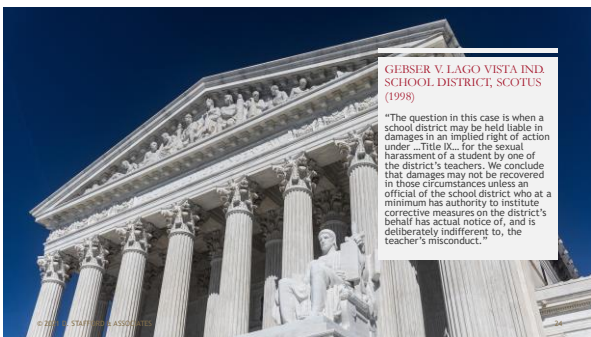
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**DAVIS V. MONROE COUNTY BOARD OF EDUCATION, SCOTUS (1999)**

"We consider here whether a private damages action may lie against the school board in cases of student-on-student harassment. We conclude that it may, but only where the funding recipient acts with deliberate indifference to known acts of harassment in its programs or activities. Moreover, we conclude that such an action will lie only for harassment that is so severe, pervasive, and objectively offensive that it effectively bars the victim's access to an educational opportunity or benefit."

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**JACKSON V. BIRMINGHAM BOARD OF EDUCATION, SCOTUS (2015)**

"We consider here whether the private right of action implied by Title IX encompasses claims of retaliation. We hold that it does where the funding recipient retaliates against an individual because he has complained about sex discrimination."

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**FITZGERALD V. BARNSTABLE SCHOOL COMMITTEE, SCOTUS (2009)**

"...Title IX was not meant to be an exclusive mechanism for addressing gender discrimination in schools, or a substitute for §1983 suits as a means of enforcing constitutional rights. Accordingly, we hold that §1983 suits based on the Equal Protection Clause remain available to plaintiffs alleging unconstitutional gender discrimination in schools."

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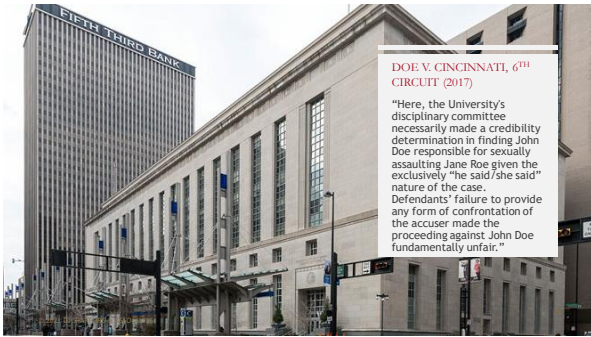
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**DOE V. CINCINNATI, 6<sup>TH</sup> CIRCUIT (2017)**

"Here, the University's disciplinary committee necessarily made a credibility determination in finding John Doe responsible for sexually assaulting Jane Roe given the exclusively "he said/she said" nature of the case. Defendants' failure to provide any form of confrontation of the accuser made the proceeding against John Doe fundamentally unfair."

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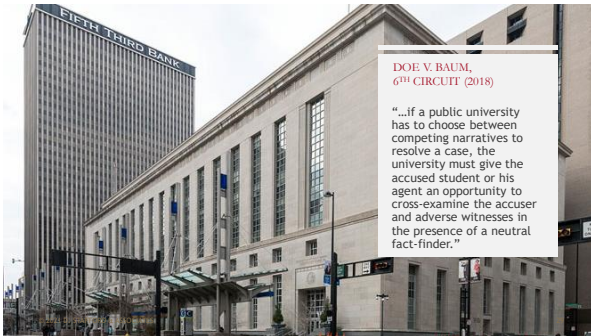
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**DOE V. BAUM, 6<sup>TH</sup> CIRCUIT (2018)**

"...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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**HAIKAK V. UMASS-AMHERST, 1<sup>ST</sup> CIRCUIT (2019)**

"...we find that the university violated Haikak'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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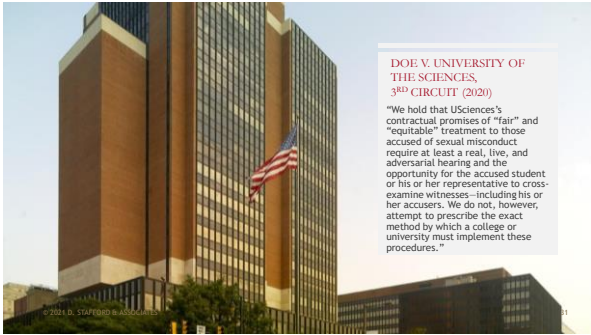
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**DOE V. UNIVERSITY OF THE SCIENCES, 3<sup>RD</sup> CIRCUIT (2020)**

"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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**STATE LAWS**

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**THE 2020 REGULATIONS**

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## 2020 Regulation Changes



- **New Subpart A: Introduction**
  - 106.8(a) *Designation of responsible-employee-coordinator*. Each recipient shall designate at least one employee to coordinate its efforts to comply with and carry out its responsibilities under this part employee must be referred to as the "Title IX Coordinator."
  - 106.8(c) *Adoption of grievance procedures*. A recipient must adopt and publish grievance procedures that provide for the prompt and equitable resolution of student and employee complaints alleging any action that would be prohibited by this part and a grievance process that complies with § 106.45 for formal complaints as defined in § 106.30.

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## 2020 Regulation Changes



- **Subpart A: Introduction (106.1 - 106.9)**
    - CHANGE: coordinator; publication; grievance procedures; preservation of rights
  - **Subpart B: Coverage (106.11 - 106.17)**
    - CHANGE: Religious institutions
  - **Subpart D: Education Programs/Activities (106.31-106.43)**
    - New: 106.30: Definitions of sexual harassment
    - New: 106.44: Recipient's response to sexual harassment
    - New: 106.45: Grievance process formal complaints of sexual harassment
- NO CHANGE
- Subpart C: Admission and Recruitment (106.22 - 106.23)
  - Subpart E: Employment (106.51- 106.61)
  - Subpart F: Procedures (106.71)

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## Title IX Overview



Applies to Higher Ed  
and K-12



Limited regulations  
pre-2020



Covers wide range of  
sex discrimination

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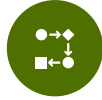
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2020 Regulations



Preamble



Process For Sexual Harassment ONLY



Technical Assistance

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§106.3 – Remedial Action



Fix it



No monetary damages

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§106.6 – Effect of Other Requirements and Preservation of Rights



Constitutional Rights

FERPA

Title VII

Parents and guardians

State and local laws

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### §106.8(a) Designation of Coordinator



  
Title IX  
Coordinator

  
Notification of  
parties

  
Contact  
information

  
Reporting  
information

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### §106.8(b) Dissemination of Policy



Notification that  
you do not  
discriminate



Title IX  
Coordinator  
contact  
information



Grievance  
procedure



United States

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### §106.8(C) Adoption of Grievance Procedure



*“grievance procedures that provide for the prompt and equitable resolution of student and employee complaints alleging any action that would be prohibited by this part and a grievance process that complies with § 106.45 for formal complaints as defined in § 106.30.”*

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§106.8(d) Application Outside of the United States



Only applies to US (and US territories)

Use other policy

No Clery conflicts

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§106.8(d) Religious Institution



Submit in writing

Specific tenant

Not required

Raise any time

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§106.30 Definitions – Actual Knowledge



*“Actual knowledge means notice of sexual harassment or allegations of sexual harassment to a recipient’s Title IX Coordinator or any official of the recipient who has authority to institute corrective measures on behalf of the recipient.”*

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- Title IX  
Coordinator
- Official  
with  
authority
- Different  
K-12  
standard
- Designation
- Not same as  
CSAs

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§106.30 Definitions  
Complainant &  
Respondent

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- **Complainant**  
*“an individual who is alleged to be the victim of conduct that could constitute sexual harassment”*
- **Respondent**  
*“an individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment”*

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§106.30 Definitions  
Formal Complaint

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- *“... a document filed by a complainant or signed by the Title IX Coordinator alleging sexual harassment against a respondent and requesting that the recipient investigate the allegation of sexual harassment.”*
- *“At the time of filing a formal complaint, a complainant must be participating in or attempting to participate in the education program or activity of the recipient with which the formal complaint is filed.”*
- *“Where the Title IX Coordinator signs a formal complaint, the Title IX Coordinator is not a complainant or otherwise a party.”*

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§106.30  
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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On the Basis of Sex

"Under *Bostock*'s reasoning, laws that prohibit sex discrimination – including Title IX of the Education Amendments of 1972 ... prohibit discrimination on the basis of gender identity or sexual orientation, so long as the laws do not contain sufficient indications to the contrary."

Executive Order on Preventing and Combating Discrimination on the Basis of Gender Identity or Sexual Orientation, January 21, 2021

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PRONG 1: Quid Pro Quo



Must be an employee respondent (not volunteer, visitor, student)



"This for that" harassment



When favorable professional or educational treatment is conditioned on a sexual activity

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



No definition of consent required



Not the same Title VII "hostile environment" or 2001 Guidance



First Amendment protections

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**PRONG 3: The VAWA Offenses**



Sexual Assault

Rape  
Fondling  
Incest  
Statutory Rape



Intimate Partner Violence

Dating Violence  
Domestic Violence



Stalking

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**§106.30 Definitions  
Supportive Measures**



*"Non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the complainant or the respondent before or after the filing of a formal complaint or where no formal complaint has been filed."*

*"Such measures are designed to restore or preserve equal access to the recipient's education program or activity without unreasonably burdening the other party, including measures designed to protect the safety of all parties or the recipient's educational environment, or deter sexual harassment."*

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§106.30 Definitions – Supportive Measures



- Non-disciplinary, non-punitive
- Both parties
- Academic, housing, and athletic impact
- “Mutual restrictions on contact”

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§106.44 Recipient’s Response



- Deliberately Indifferent
- Educational Program or Activity
- Equitable
- Contact Complainant
- On-line

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§106.44 (c) Emergency Removal; (d) Administrative Leave



Emergency removal



Administrative leave

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§106.45 Grievance Process



*“A recipient’s treatment of a complainant or a respondent in response to a formal complaint of sexual harassment may constitute discrimination on the basis of sex under title IX.”*

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§106.45 Grievance Process



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§106.45 Grievance Process



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§106.45 Grievance Process



Notice requirements



Additional allegations

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Training  
§106.44(b)(1)(iii)

- **All Title IX Personnel**
  - Definition of sexual harassment
  - Scope of the recipient's education program or activity
  - How to conduct an investigation and grievance process including hearings, appeals, and informal resolution processes, as applicable
  - How to serve impartially, including by avoiding prejudgment of the facts at issue, conflicts of interest, and bias
- **Decision-makers**
  - Technology to be used at a live hearing
  - Issues of relevance of questions and evidence, including when questions and evidence about the complainant's sexual predisposition or prior sexual behavior are not relevant
- **Investigators**
  - Issues of relevance to create an investigative report that fairly summarizes relevant evidence

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§106.45(b)(3) Dismissal of a Formal Complaint



Must dismiss:

- Behavior does not constitute sexual harassment
- Did not occur in educational program or activity, not in the United States

May dismiss:

- Complainant withdraws formal complaint
- Respondent no longer enrolled/employed
- Insufficient evidence

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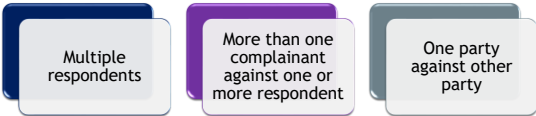
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§106.45(b)(4) Consolidation of a Formal Complaint



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§106.45 Grievance Process



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§106.45(b)(6) Hearings



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§106.45(b)(6) Hearings



Advisor

Relevancy

Participation consequences

“Physically present”

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§106.45(b)(7) Determination Regarding Responsibility



Allegations

Procedural steps

Findings of fact

Conclusion/application

Rationale

Appeal procedures

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Sanctions and Remedies



Sanctions



Remedies

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§106.45(b)(8) 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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§106.45(b)(8) Appeals



Notification of appeal

Equal opportunity to respond

Written outcome - rationale

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§106.45(b)(9) Informal Resolution



Notice



Voluntary



Not allowed for Employee/student

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§106.45(b)(10) Recordkeeping  
(seven years)



Case Materials



Training materials

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§106.71 Retaliation Prohibited



Intimidation, threats, coercions, discrimination

May use same grievance procedure

1<sup>st</sup> Amendment

False reports

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Participation



Separate Teams



Equal Opportunity



Adjustment Period

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Effective Accommodation of Interest and Abilities



Financial Assistance



Benefits and Opportunities ("the laundry List")

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Program Structure and Administration



Team Preparation and Competition

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## Three-part Test



Substantially proportionate



Program expansion



Interest and abilities

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### Part 1 Substantially Proportionate

ATHLETIC OPPORTUNITIES  
SUBSTANTIALLY  
PROPORTIONATE TO  
ENROLLMENT



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### Part 2 History and Continuing Practice of Program Expansion

History or continuing practice of adding programs

- Adding or upgrading teams
- Expansion plan



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### Part 3 – Interests and Abilities



Unmet interest



Sustainability



Competition

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### Scholarships

§ 106.37(c) Financial assistance

- Athletic based award compared to percentage of M/F student athletes
- Other awards not counted



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### The Laundry List § 106.41(c)



- Equipment and supplies
- Scheduling
- Travel and per diem
- Tutors
- Coaching
- Facilities
- Publicity
- Support services
- Recruiting

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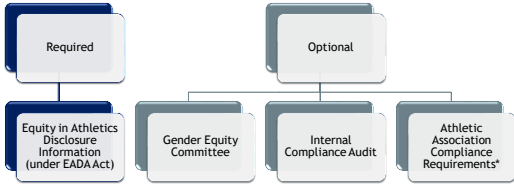
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## Other Obligations



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## Inclusion of LGBTQ+ Student Athletes

- Executive Order
- NCAA
- Legislation
- Case Law



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## Name, Image, and Likeness



Funding through an outside source



Schools provide education and resources

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## eSports



Women - 5% of eSport athletes



Three-part test



On-line harassment

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ADMISSION AND FINANCIAL AID

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## Admission



- \$106.15 Application
- \$106.21 Admission
- \$106.22 Preference in Admission
- \$106.23 Recruitment
- \$106.36 Counseling

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## Financial Assistance



- General provisions
- Sex-based scholarships
- Wills and trusts
- Athletic scholarships

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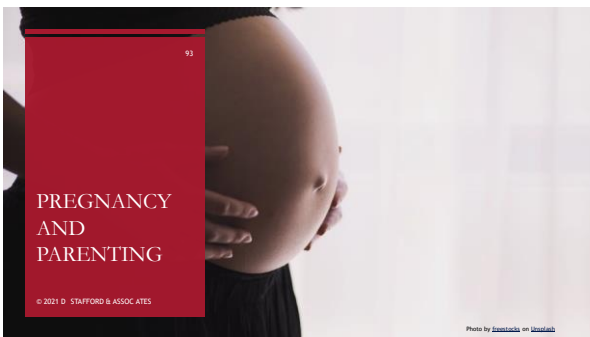
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## The Regulations - 34 C.F.R. . . .



§106.21 (c)  
Admission

§106.31  
Educational  
Program or  
Activities

§106.40  
Marital or  
Parental Status

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## Institutional Responsibilities



### MUST Allow or Provide:

- Continued participation in programs/activities
- Reasonable adjustments
- Excuse absences
- Leave of absence
- Return status
- Temporary medical condition
- Protects against harassment
- Policies and procedures
- Breastfeeding

### CANNOT:

- Require Dr. note ONLY for pregnancy
- List pregnancy as an infraction
- Exclude from programs/activities
- Remove financial aid

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## Policy Considerations



Flexibility

ALL parents

Non-  
gendered  
language

Resources

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## Policy Example



### University of Michigan, Rackham Graduate School Parental Accommodation Policy

Graduate students in good standing are entitled to a "Parental Accommodation" period of up to 6 weeks following the birth of a child or adoption of a child under six years of age. During this time the student is entitled to "a modification of deadlines and academic expectations to accommodate the student's new parental responsibilities" including assignments, exams and other requirements, as determined in consultation with the student's advisor. During the Accommodation Period, students retain any salary or stipend and benefits, except as otherwise stated in their contract or grant. Following the expiration of the six-week term, Rackham encourages faculty to remain flexible with their academic expectations.

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Subpart A  
and  
Subpart E

- §106.7 Effect of employment opportunities
- §106.51 Employment
- §106.52 Employment criteria
- §106.53 Recruitment
- §106.54 Compensation
- §106.55 Job classification and structure
- §106.56 Fringe benefits
- §106.57 Marital or parental status
- §106.58 Effect of other laws
- §106.59 Advertising
- §106.60 Pre-employment inquiries
- §106.61 Sex as a bona-fide occupational qualification

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Examples 

- Utilize narrow applicant pools
- Only hire women TAs
- Separate tenure lines
- Different health insurance or retirement programs
- Only hire or promote men as they “don’t get pregnant”

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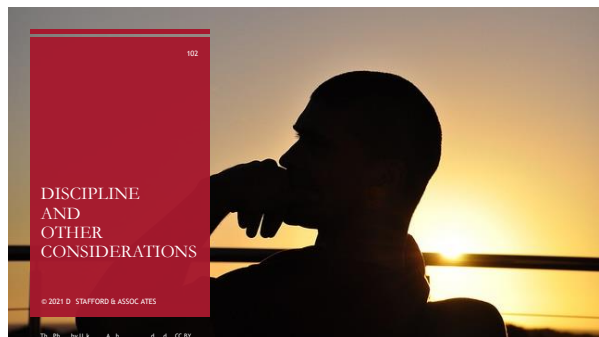
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DISCIPLINE  
AND  
OTHER  
CONSIDERATIONS  
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## Equity in Discipline



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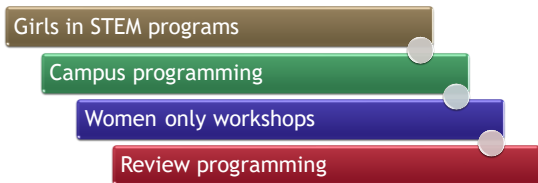
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## Other Considerations



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*The mission of the Office for Civil Rights is to ensure equal access to education and to promote educational excellence throughout the nation through vigorous enforcement of civil rights.*

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## Title IX Resources



### Website

<https://www2.ed.gov/about/offices/list/ocr/index.html?src=oc>



### Blog

<https://www2.ed.gov/about/offices/list/ocr/blog/index.html>

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Resolves Complaints

Compliance Reviews

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Evaluation



Opening the Complaint for Investigation



Investigation



Resolution After Determination of Non-Compliance



Resolution Prior to Conclusion of the Investigation

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- Provides OCR with procedures to promptly and effectively investigate complaints and compliance reviews, issue findings, and secure resolution agreements that remedy discriminatory policies or practices identified by OCR.
- Evaluations
- Facilitated Resolution
- Case planning, investigation, and resolution
- Compliance reviews and directed investigations
- Monitoring resolution agreements
- Initiation of enforcement
- Recent Changes

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### Michigan State University Overview



- 8/28/2015 - Letter of Finding/Resolution Agreement
- 8-9/2016 - Indianapolis Star report, criminal complaints (Nassar and Strampel), civil suit
- 2/19/2018 - ED begins on-site program review
- 2/22/2018 - OCR begins Title IX compliance review
- 12/14/2018 - ED issues Program Review Report (PRR) related to Clery
- 8/6/2019 - Health and Human Services (HHS) Office of Civil Rights Voluntary Resolution Agreement
- 9/5/2019 - ED Press Release regarding Program Review (Clery) and Letter of Finding and Resolution (Title IX)

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### 2015 Letter of Finding



- Two complaints
- Summary
- Harassment by employees
- Students A and B
- Additional concerns

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## 2015 Resolution Agreement



- Revise policy
- Improve procedures
- Increase training on procedures and where to report
- Directed training at athletes
- MOU with local police
- Training for police
- Address staffing needs
- Create necessary committees
- Examine past files
- Contact A and B
- Evaluate campus safety
- Monitor implementation of recommendations

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## 2019 Letter of Finding



Focus on Nassar



Expands to Strampel



Reviews prior Resolution Agreement

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## Nassar Related Reports



*“OCR finds that the University failed to provide an appropriate response to Reporter 11’s 2014 complaint to the University’s Title IX office, in which Reporter 11 alleged that Employee X sexually assaulted her during a medical appointment. OCR further finds that the University’s failure permitted an ongoing sexually hostile environment that denied Reporter 11 access to, and the ability to benefit from, the University’s programs and activities.”*

(LOF, p. 43)

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Independent investigation

Interim measures

Investigation failures

Denied opportunities

Lessons learned

Nassar Related Reports

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Strampel Related Reports

*"The preponderance of the evidence indicates that for nearly 15 years, the University obtained sufficient information and notice that the Dean's behavior was potentially creating a sexually hostile environment for students and staff. Despite this, the University repeatedly failed to respond to the information and notices, investigate, and take prompt and effective steps reasonably calculated to end any harassment, eliminate a hostile environment if one had been created, and prevent the harassment from recurring."*

(LOF, p. 45)

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Strampel Related Reports

Notice Investigation Response Resolve complaints Timeline Institutional failures

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**Agenda**

- Protected Class
- Title VII
- Intersections of Title VII and Title IX
- Special Considerations

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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
USERRA - Uniformed Services Employment and Reemployment Rights Act			DOL/DOJ

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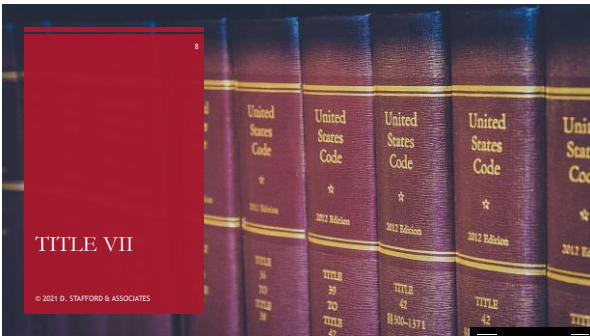
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Title VII of the Civil Rights Act of 1964 

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

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### History



- 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
- 3<sup>rd</sup> 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.



Example:  
• Only men are given promotions

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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



Examples:  
• Requirement of certain degrees  
• Height and weight requirements  
• In-person interviews

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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
-   
3<sup>rd</sup> 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

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- 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." <i>Henson v. City of Dundee</i> , 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:**

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



This includes conduct of non-employees as well.

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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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Investigations in the Case Law:

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

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(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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GROUP DISCUSSION

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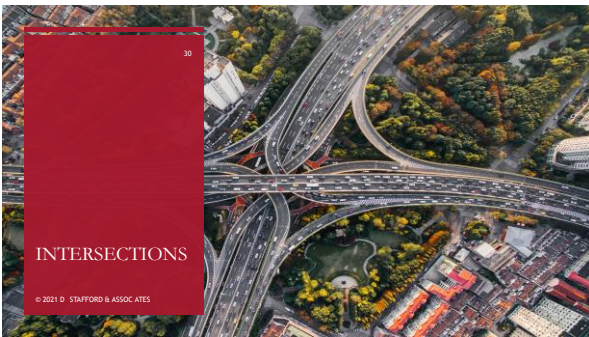
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INTERSECTIONS

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# Amorous Relationship Policies



7 Title VII

9 Title IX

Separate policy?

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SPECIAL CONSIDERATIONS

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**Microaggressions** 

"Mansplaining"	Suggestive photographs	You are such an . . .	Representation	Looking at chest
"The Spokesperson"	You should smile more	I would never have known you are/were . . .	That's so gay	You will never be a real man

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**First Amendment Limitations** 

Obscenity	Defamation	Incitement
True threats	Integral to criminal conduct	

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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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**The Clery Act for Title IX Coordinators**

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**Agenda**

- Key Requirements
- Counting Crime Statistics
- Clery Reporting: Public Disclosures
- VAWA Offenses
- VAWA Procedural Requirements

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**KEY REQUIREMENTS**

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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)




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Gettysburg College  
**2019 - 2020 Academic Year**  
**Annual Security and Fire Safety Report**  
 Prepared by the Department of Public Safety  
 Includes Crime Statistics for Calendar Years (CYs) 2016, 2017 & 2018

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**Three Part Test**

1. Was the crime reported to a Campus Security Authority?
2. Is the crime a Clery Act crime?
3. Did the crime occur on or within the institution's reportable Clery geography?

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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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**Who is never a CSA?**



-  Professional Counselors
-  Pastoral Counselors

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CSA FUNCTION

# REPORT

A CSA'S FUNCTION IS TO REPORT ALLEGATIONS OF CLERY ACT CRIMES MADE IN GOOD FAITH.

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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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COUNTING CRIME STATISTICS:

CLERY CRIMES

Criminal Offenses or Primary Crime (Crimes Reported by Hierarchy)	Calendar Years (CY) 2018 - 2018					On-Campus (Residence Only)
	Calendar Year	On Campus (Including Residential)	Non-Campus	Public Property	Totals	
Murder & Non-Negligent Manslaughter	2018	0	0	0	0	0
	2017	0	0	0	0	0
	2016	0	0	0	0	0
Kidnapping by Negligence	2018	0	0	0	0	0
	2017	0	0	0	0	0
	2016	0	0	0	0	0
Sex	2018	11	2	2	15	11
	2017	15	2	2	19	15
	2016	16	1	0	17	16
Fondling	2018	11	1	0	12	11
	2017	11	1	0	12	11
	2016	11	1	0	12	11
Incest	2018	0	0	0	0	0
	2017	0	0	0	0	0
	2016	0	0	0	0	0
Statutory Rape	2018	0	0	0	0	0
	2017	0	0	0	0	0
	2016	0	0	0	0	0
Robbery	2018	0	0	0	0	0
	2017	0	0	0	0	0
	2016	0	0	0	0	0
Aggravated Assault	2018	0	0	0	0	0
	2017	1	0	0	1	1
	2016	0	0	0	0	0
Burglary	2018	0	1	0	1	0
	2017	0	1	0	1	0
	2016	0	0	0	0	0
Motor Vehicle Theft	2018	0	0	0	0	0
	2017	0	0	0	0	0
	2016	0	0	0	0	0

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**Three Part Test**

1. Was the crime reported to a Campus Security Authority?
2. Is the crime a Clery Act crime?
3. Did the crime occur on or within the institution's reportable Clery geography?

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**Clery Crime Categories**



- Primary Crimes
- Hate Crimes
- Arrests and Referrals for Drug, Liquor, and Weapon Violations
- Dating Violence, Domestic Violence, and Stalking Incidents (VAWA Offenses)

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**Clery Reportable Crime Categories**



- Murder/Non-negligent Manslaughter\*
- Negligent Manslaughter\*
- 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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### Counting Clery Crimes

If a crime is reported (and otherwise meets the three part test) it is counted.

- Includes attempts
- Includes cases a DA would reject
- Includes cases of "not responsible"
- Does NOT include every conduct code violation

It is not the word used but the facts of the case that determine how it gets counted

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### COUNTING CRIME STATISTICS:

### CLERY GEOGRAPHY



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### Three Part Test

1. Was the crime reported to a Campus Security Authority?
2. Is the crime a Clery Act crime?
3. Did the crime occur on or within the institution's reportable Clery geography?

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### Clery Geography



On Campus (& On-Campus Residential)



Public Property



Non-campus building or property

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### Student Organization Houses



University owns the land and/or building and the house is within 1 mile of campus border  
Count as On Campus

Student organization owns the land and building and the house is within 1 mile of campus border  
Count as Noncampus

University owns the land and/or building and the house is not within 1 mile of campus border  
Count as Noncampus

Student organization owns the land and building and the house is not within 1 mile of campus border  
Count as Noncampus

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### Impact of Location & Party

- 2020 Title IX Regulations
  - Conduct that occurs within its "education program or activity"
  - Against a person within the United States
  - School must have exercised substantial control over both the respondent and the context in which the sexual harassment occurs
  - Also includes any building owned or controlled by a student organization that is officially recognized by a postsecondary institution
- Clery Act
  - 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. For example, under Title IX, an act may not physically occur on campus, but if it occurs within certain programs between certain people, Title IX attaches.

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**CLERY REPORTING:  
PUBLIC DISCLOSURES**

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## Public Disclosures



- Daily Crime Log
- Annual Security Report (ASR)
- Emergency Notifications/Timely Warning Notices

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Timely Warning/Emergency Notification		
	TIMELY WARNING (TWN)	EMERGENCY NOTIFICATION (EN)
<b>Legal Standard:</b>	Serious or continuing threat	Immediate threat to health and safety
<b>Circumstance:</b>	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)
<b>Audience:</b>	Community-wide	Can send to a segment of the community, if appropriate
<b>When Issued:</b>	As soon as pertinent information is available	Upon confirmation of emergency (when possible)
<b>Follow-Up:</b>	Not Required	Required

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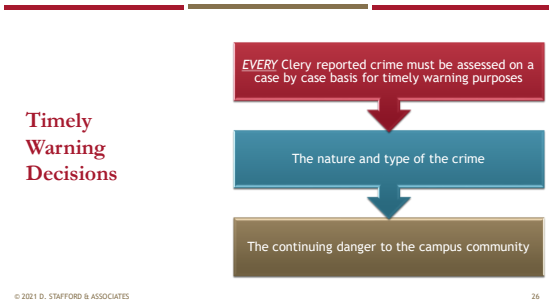
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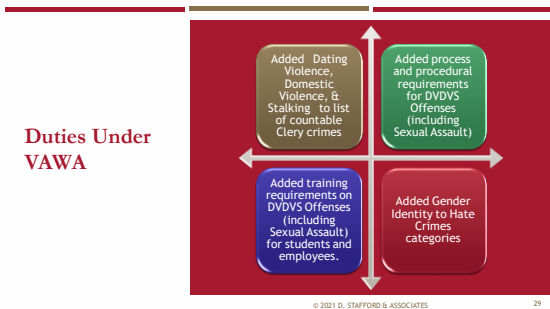
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**VAWA Offenses**



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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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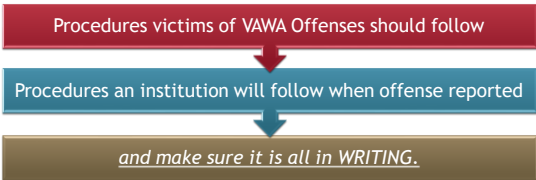
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# Response Requirements for VAWA Offenses



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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



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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



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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



- **2020 Title IX Regulations**
  - Either the preponderance of the evidence standard or the clear and convincing standard
  - Must be the same for all sexual misconduct
- **Clery Act**
  - Any standard of evidence ... must include in policy
  - Would not prohibit using different standards for different groups

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2020 Title IX Regulations

- Can offer, but may not require
- Not allowed for "employee on student" sexual harassment
- Party may withdraw up to a point

Clery Act

- Written information about procedures the institution will follow for VAWA offenses (does not differentiate between formal vs informal)

## Informal Resolutions

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### Formal Complaint Rights

2020 Title IX Regulations

- Treat equitably with goal to restore/preserve access to education; due process for respondent
- Include presumption of not responsible
- Include any discipline for false statements
- Reasonably prompt time-frames\*
  - Describe the range of sanctions
  - Describe range of supportive measures

Clery Act

- 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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### Formal (Live Hearing)

**2020 Title IX Regulations**

Requires live hearing with cross examination by advisor

**Clery Act**

Clery is silent regarding live hearing

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### Written Determination



#### Title IX

- Identification of the allegations
- Procedural steps taken from receipt through determination
- Findings of fact supporting the determination
- Conclusions regarding the application of code of conduct to the facts
- Result (responsibility, rationale, sanctions, remedies for each allegation)
- Appeals procedures
- When results become final (post appeal)

#### Clery Act

- 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** 

<p><b>2020 Title IX Regulations</b></p> <ul style="list-style-type: none"> <li>• Must offer both parties an appeal</li> <li>• Based on specific grounds</li> </ul>	<p><b>Clery Act</b></p> <ul style="list-style-type: none"> <li>• Not required (but must provide notice if allowed along with appeal procedures)</li> <li>• Simultaneous written decision describing result, sanction, any changes to the result, when it becomes final</li> </ul>
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**Recordkeeping** 

<p><b>2020 Title IX Regulations</b></p> <ul style="list-style-type: none"> <li>• 7 years</li> </ul>	<p><b>Clery Act</b></p> <ul style="list-style-type: none"> <li>• 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)</li> </ul>
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## Policy and Procedures Considerations

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### Agenda

- Policy vs. Procedures
- Policy Considerations
- Policy Sections
- VAWA Components
- Additional Considerations
- Procedures

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## Policy vs Procedures



### 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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## Examples

### Policy statement

- 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.

### Internal procedure

- 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.

### 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. To provide the written response, use the following link: [submission link]."

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## Examples

### Policy statement

- 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.

### Internal procedure

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

### 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]."

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**Keys to a Strong Policy** 

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

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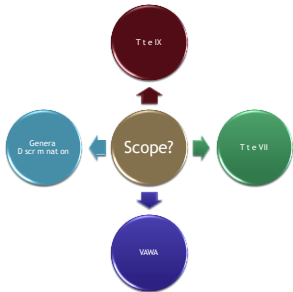
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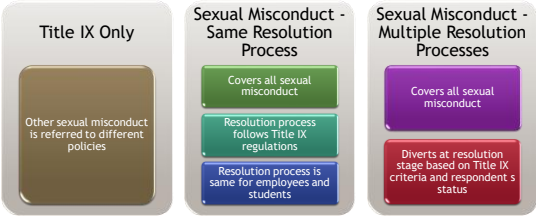
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Models



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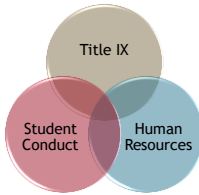
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Departmental Intersections



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Community Engagement



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### Writing Group Competencies



Laws and legal issues



Cultural competencies



Campus climate



Campus politics



Writing

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### Planning



Timeline



Approval

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**Policy Sections**

- Statement of Policy
- Related Policies
- Applicability / Jurisdiction
- Title IX Coordinator
- Employee Responsibilities
- Definitions
- Prohibited Conduct
- Reporting Options
- Supportive Measures
- Accommodations and Interpretive Services
- Interim Action
- Grievance Procedures
- Education and Prevention
- Record Management
- Interpretation and Revision

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**Statement of Policy**







Mission of the institution




Intent of the policy



Behaviors



Equitable treatment



Scope

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Related Policies 

Code of Conduct      Retaliation      Employee handbook

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Applicability/Jurisdiction 

 Who       Location       Educational program or activity

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Applicability – Individuals 

Students      Employees      Students in dual credit/enrollment programs      Students in institution-operated K-12 schools

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Title IX Coordinator



Role



Contact information



Additional coordinators/deputies

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Employee Responsibilities



Reporter



Witness



Advisor

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Define and/or Explain



Education Program or Activity



Actual Knowledge



Supportive Measures

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Define and/or Explain 



Formal Complaint



Complainant



Respondent

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Other Recommended Definitions 



Advisor



Decision-maker



Witness



Day



Employee



Student

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**Title IX  
Specific  
Prohibited  
Conduct**

- Sexual Harassment
- Sexual Assault
- Dating Violence
- Domestic Violence
- Stalking

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## Reporting Options



Institution

and/or



Law Enforcement

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**Reminder: Clery Obligations about Reporting**

1. Evidence preservation
2. How and to whom to report
3. Notification of options
4. Rights of complainants and responsibilities of institution
5. Existing resources
6. Options for available assistance and how to request changes
7. Confidentiality
8. Disciplinary procedures

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## Supportive Measures



Non-punitive



Counseling



Course-related



Modifications of work/class schedules



Campus escort services

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Accommodations and Interpretive Services



Disability resources



Interpretive services



Party's responsibility to request

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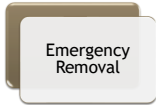
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Interim Action



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Grievance Procedures



- Notice
- Dismissal
- Consolidation of complaints
- Investigation
- Hearing
- Determination of responsibility
- Appeals
- Informal resolution

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## Education and Prevention



Primary and on-going



Bystander



Risk reduction

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## Record Management

### Records



All case materials



Training materials

### Considerations



Data custodian



Record retention policy



Duration



Access

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## Interpretation and Revision



Policy interpreter



Review process



Published date



Reports in progress

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**VAWA Disciplinary Proceedings**



A prompt, fair, and impartial process from the initial investigation to the final result

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**VAWA Disciplinary Proceedings Requirements**




How to file



All available proceedings



How the proceeding is determined

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VAWA Disciplinary Proceedings Requirements



Each step in the process



Anticipated timelines



Decision-making process

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VAWA Disciplinary Proceedings Requirements



Timely notice of meetings



Advisor of choice



Standard of evidence



Sanctions

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VAWA Disciplinary Proceedings Requirements



Notification of results



Appeals



Records

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**VAWA Disciplinary Proceedings Requirements**



No conflict of interest or bias



Annual training

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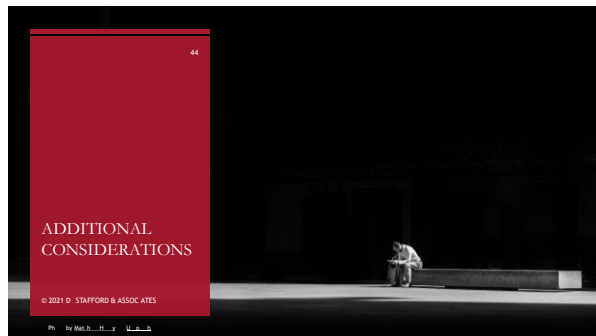
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**Technology**



Prohibited conduct includes technology based offenses



The institution may conduct investigations and resolution proceedings virtually



If the investigation/resolution is conducted virtually, participants must use both audio and video and if the party does not have access to such, the institution will make arrangements for them

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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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 Potential conflicts	 Preemption	<b>State and Local Laws</b>
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**STATE LAWS**

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Final Policy Review 

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

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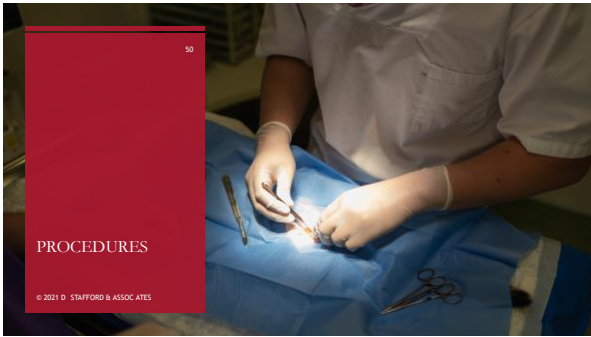
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Logistics 

-  Notice to parties
-  Scheduling and related logistics
-  Evidence requests
-  Templates
-  Providing parties with reports
-  Resolution logistics

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## Decisions and Implementation



- Supportive measures
- Assignment of personnel
- Individual risk analysis
- Deciding on conflict of interest/bias claims
- Sanctions and remedies
- Training

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### Case Study: Jurisdiction

You have received a report from a staff member alleging that a student, who is also employed in the department, has been sending the staff member sexually explicit text messages. Some of the messages also focus on the staff member's race.

1. How do you determine jurisdiction?
2. What policy/process would you use?
3. How would your offices work together on this matter?

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# Title IX Personnel

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## Agenda

- Title IX Institutional Responsibilities
- Title IX Coordinator
- Investigators
- Resolution Facilitators
- Advisors
- Other Considerations

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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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Athletics



Compliance



Governing Body

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Admission and Financial Aid



Review Data



Monitor Procedures and Practices



Review Gifts

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Pregnancy



Accommodations



Education



Policy

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Employment



Compliance



Collaboration



Review Materials and Data

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Discipline and Education



Policies



Data



Cases



Programming

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Title IX Coordinator The 2020 Regulations



- Must designate and authorize at least one employee to coordinate its efforts to comply with its responsibilities under this part, which the employee must be referred to as the "Title IX Coordinator"
- Name or title, office address, electronic mail address, and telephone number of the Title IX Coordinator to applicants, employees, unions
- Receive reports any time (including non-business hours) of sex discrimination in person, by mail, by telephone, or by electronic mail, or by any other means that results in the Title IX Coordinator receiving the person's verbal or written report
- Title IX Coordinator is responsible for coordinating the effective implementation of supportive measures

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**Title IX Coordinator Responsibilities** 

Coordinates all Title IX efforts	Disseminates policy	Receives reports and/or outreach to complainant
Accepts or signs formal complaints	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	Investigate?	Assign investigators
Informal resolution decisions	Update parties • Notice documents • Appeals process	Training	

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**Title IX Coordination** 

<b>1</b> Disseminate the policy	<b>2</b> Adopt and publish grievance procedures	<b>3</b> Receive reports ("Actual Knowledge")	<b>4</b> Outreach to the complainant	<b>5</b> Receive/sign complaints ("Formal Complaint")	<b>6</b> Outreach to the respondent
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# Title IX Coordination



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# Title IX Determinations



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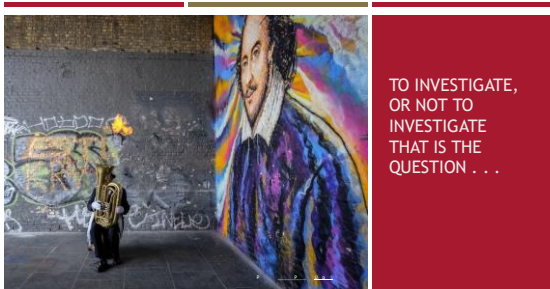
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**Decision-maker Categories** 



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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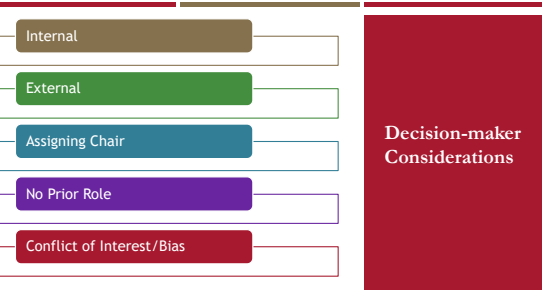
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**School-provided Advisors**

- 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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## When to Appoint

- Investigation stage
- Preliminary Report
- Final Report
- Hearing

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

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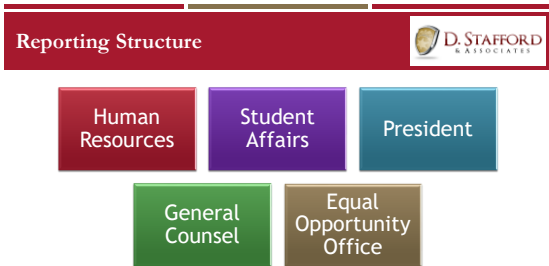
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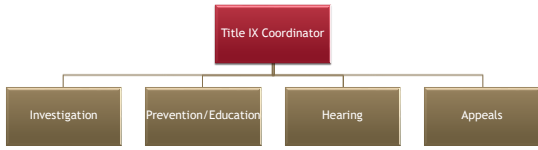
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### Title IX Coordinator Runs the Show



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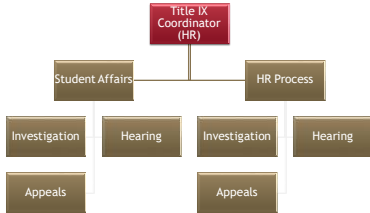
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### Title IX Coordinator Delegates



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### Multiple Coordinators



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# Defining Sexual Harassment

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## Agenda

- Sexual Harassment on Campus
- Quid Pro Quo
- Hostile Environment+
- Sexual Assault and the VAWA Offenses
- Additional Elements for Title IX Cases
- Consent

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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.

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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 1/2 the reports of penetration):
  - Women: 29.5%
  - TGQN: 42.9%
  - Men: 17.8%

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**Sexual Harassment Under Title IX**

 A red rectangular graphic containing three white icons and their corresponding labels:
 

- Icon: A hand holding a coin. Label: PRONG 1: QUID PRO QUO
- Icon: A blue cloud with a lightning bolt. Label: PRONG 2: HOSTILE ENVIRONMENT+
- Icon: Purple handcuffs. Label: PRONG 3: VAWA OFFENSES

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**Title IX MUST Be Sex Based**

 The logo for D. STAFFORD & ASSOCIATES, featuring a circular emblem with a shield and the text "D. STAFFORD & ASSOCIATES" to its right.

*"Sexual harassment means conduct on the basis of sex that satisfies one or more of the following. . ."*

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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:  
Definition  
Considerations**



Supervisors, Coaches, Faculty



Volunteers/Non-employees



Students

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**No to volunteers - not included in Quid Pro Quo**

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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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unwelcome conduct  
reasonable person  
severe, pervasive and objectively offensive  
effectively denies a person equal access  
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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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 instigated?
- 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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Put yourself in the person's shoes

Penal

anal  
oral  
object - penetration

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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 victims' 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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gender mutual pronouns

- Mr.
- Mrs.
- Miss
- MX. - non-binary

one time incidents - may not meet the definition of Hostile Environment.

Evaluate each complaint on the matter of that complaint only.

Binary is male or female...non-binary dont align with gender you are born.

- them, they  
Mx. - for non binary individual

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SEXUAL ASSAULT AND THE VAWA OFFENSES

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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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Check your policy for the correct definitions.

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**Sexual Assault: Definition Breadcrumbs**



**Title IX Regulations**  
"Sexual assault" as defined in 20 U.S.C. 1092(f)(6)(A)(v)

**TITLE IX  
FBI Reporting System (NIBRS)**

**Clery Act Statute 20 U.S.C. §1092(f)...**  
The term "sexual assault" means an offense classified as a forcible or nonforcible sex offense under the uniform crime reporting system of the Federal Bureau of Investigation.

**Clery Act Regulations 34 CFR § 668.46...**  
Sexual assault. An offense that meets the definition of rape, fondling, incest or statutory rape as used in the FBI's UCR program and included in Appendix A of this subpart.

**CLERY  
Clery Act Regulations Appendix A**

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Rape, fondling, statutory Rape, incest

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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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Penal  
anal  
oral  
object - penetration

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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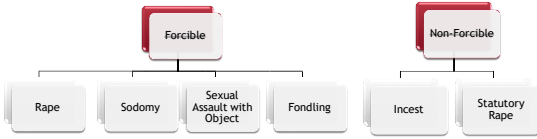
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## Rape FBI NIBRS Definition



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Statutory rape - when person is not old enough to consent eventhough willing

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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 is familia - parents children, uncle, aunts, brothers, sisters - check the state law

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**Incest and Statutory Rape: Definition Considerations**



Severity compared to "rape"



Over or under clothing



Forcible language

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**Fondling: Definition Considerations**



State law definitions



Complainant as non-student?



Conduct codes

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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. 12291(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 Regulations



- 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 Regulations**



- 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

(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 Regulations Definition



- (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



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### Stalking: Definition Considerations

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

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**Jurisdiction** 

- "If the conduct alleged in the formal complaint would not constitute sexual harassment as defined in 5 106.30 even if proved, did not occur in the recipient's education program or activity, or did not occur against a person in the United States, then the recipient must dismiss the formal complaint."
- "education program or activity includes locations, events, or circumstances over which the recipient exercised substantial control ... and also includes any building owned or controlled by a student organization that is officially recognized by a postsecondary institution."

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**Party Status** 

- "At the time of filing a formal complaint, a complainant must be participating in or attempting to participate in the education program or activity of the recipient with which the formal complaint is filed."
- "locations, events, or circumstances over which the recipient exercised substantial control over both the respondent and the context..."

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Event that happens off campus event sponsored by the College

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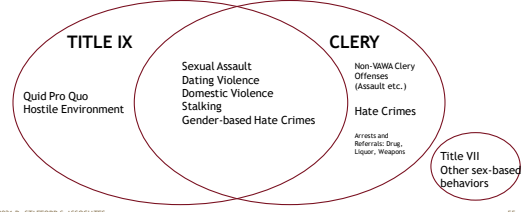
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# Overlapping Conduct Violations



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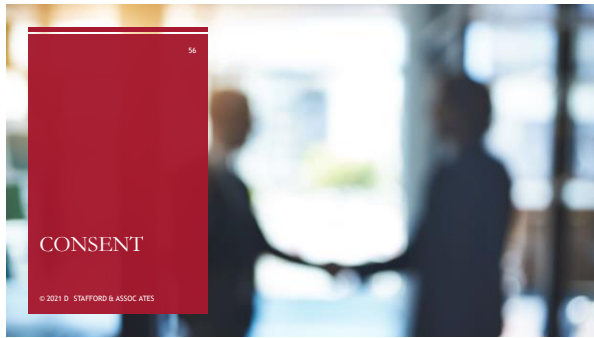
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Quid Pro cases cannot be dismissed but investigated.



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# Consent



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**Incapacitation** 

- Physical and mental impairment
- Temporary or permanent
- Decisions and judgment
- Unconscious, sleep, blackout
- Did the Respondent (or would a reasonable person) know?

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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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**Physical Force** 

- Holding down
- Forced to touch
- Level of violence

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## Coercion



Frequency +	Intensity +	Duration +	Isolation
?	Now	5 minutes?	Library
Twice	?	?	Bar
Fifty times	?	2 days?	?

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## Intimidation



Physical



Verbal

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## Incapacitation



- Physical and mental impairment
- Temporary or permanent
- Decisions and judgment
- Unconscious, sleep, blackout

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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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### 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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## Incapacitation Causes



Alcohol



Drugs



Disability



Other

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## Incapacitation Results



- Lacking understanding
- Physically helpless
- Blackout
- Unconscious

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## Two-Step Determination



Was the complainant incapacitated?

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

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**Discussion:  
What's  
Missing?**

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- 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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# Training and Education

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## Agenda

- Training Requirements
- VAWA Education Requirements
- Bringing Prevention to Campus
- Models of Prevention
- Athletics

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TRAINING  
REQUIREMENTS

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## Adjudicator Training - Clery Act



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## Title IX Community



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Need to get everyone trained - include other constituencies - such as counselors advisors, off-campus resources.

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TO TRAIN OR NOT TO TRAIN...

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§ 106.45 (1)(iii): Title IX Personnel Training



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Informal resolution facilities - new requirement for training

Training for All Title IX Personnel



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These are 4 categories that the regulations require definitions, scope of education program/activity - conduct and grievance process serve impartially.

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Additional Training - Investigators



Relevance



Investigative Report

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Investigators need training on relevance and training on how to write a report.

Additional Training - Decision-makers



Technology



Relevancy

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Tomorrow we will learn how to train.  
include technology training and training around relevancy.

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Materials



Can't rely on sex stereotypes



Address implicit and unconscious bias

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Be careful in the training materials, the Language can't rely on sex stereotypes

Address implicit and unconscious bias - not using to be overly bias  
Start by believing both - the complainant and the respondent.

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Training Material Recordkeeping



7 years



All materials



Available on website

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Training materials must keep 7 years and transparent - can put on the website.  
Can use this material on our website.

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Education for student and employees

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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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Go read the VAWA regs and statues - kind of complicated.

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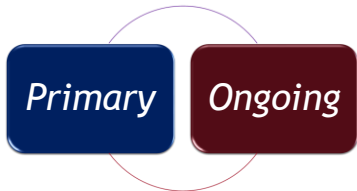
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Programs to Prevent VAWA Offenses 



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Must train students and employees for training - need to indicate that training is necessary but not mandatory. Must be offered to new employees and track it.

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Ongoing - everything else you do on campus - example - "Walk a Mile in her shoes" Make sure it is captures to go into the annual security report.

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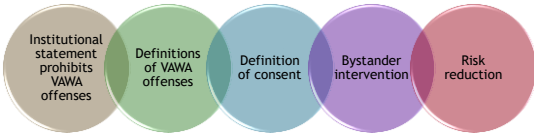
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## Primary Prevention Programs



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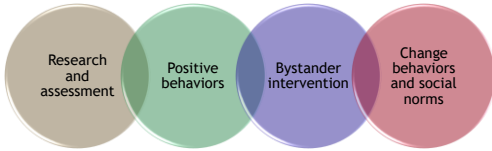
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## Primary Prevention Programs



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## Primary Prevention Programs



Delivery Options



Audience



Attendance

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No delivery option - can be on line,  
break audiences any way we want to do it.

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## Ongoing Prevention Programs



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Could have a poster campaign - place in bathrooms

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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



### Coordinated Strategies

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

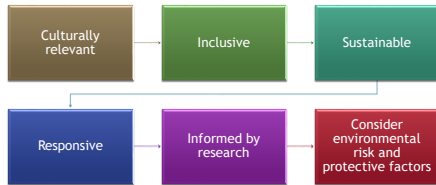
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Pull the Clery Handbook.

## 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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Think of who you partner with.



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**Training for Employees and Students** 



- Types?
- Who receives training?
- Who decides?

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"Everfy" software is used for employees and students training  
Have a mental wellbeing module.

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Supervisor training.

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**Essential Campus Components** 

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

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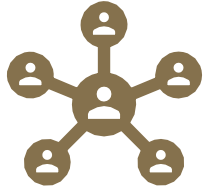
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## Coalition Building

- Collaboration
- Share knowledge
- “Check ins



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## Policy Analysis



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Primary prevention efforts

Program development



Different methods

Increased understanding



Data Collection

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**Inclusive** 

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

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**Male Involvement** 



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**SOCIAL MEDIA**

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



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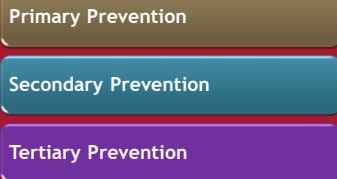
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## Different Prevention Efforts



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## The Public Health Approach



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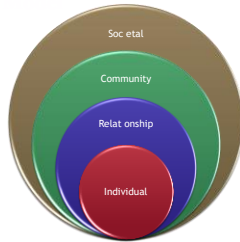
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## Effective Prevention Strategies



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(2019, January 16). The Social-Ecological Model: A Framework for Prevention. Retrieved from <https://www.cdc.gov/violenceprevention/publichealth/tissue/social-ecologicalmodel.html>

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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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(2019, January 16). The Social-Ecological Model: A Framework for Prevention. Retrieved from <https://www.cdc.gov/violenceprevention/publichealth/tissue/social-ecologicalmodel.html>

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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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Tea video

Clothesline Project

Take Back the Night

Walk a Mile in Our Shoes

It's on Us

Bystander

One Love

360 Stay Safe

## Examples

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The 2019 NCAA Tool Kit



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## Intake, Supportive Measures, and Emergency Removals

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### Agenda

- Review of Title IX and Clery Regulations
- Contacting the Complainant
- Contacting the Respondent
- Emergency Removals

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## Actual Knowledge



### Title IX

- "Actual knowledge" means notice of sexual harassment or allegations of sexual harassment to a recipient's Title IX Coordinator or any official of the recipient who has authority to institute corrective measures on behalf of the recipient, or to any employee of an elementary and secondary school."

### Clery Act

- Campus police, security, or official with significant responsibility for student and campus activities
- "Official" is any person who has the authority and the duty to take action or respond to particular issues on behalf of the institution.

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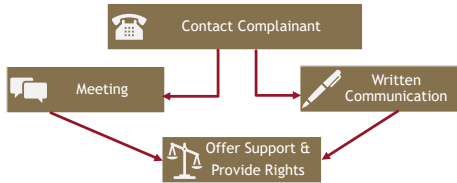
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## Actual Knowledge - Next Steps



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## Terminology



Clery Act	Title IX
<ul style="list-style-type: none"> <li>• Accommodations               <ul style="list-style-type: none"> <li>• Victim</li> </ul> </li> <li>• Protective Measures               <ul style="list-style-type: none"> <li>• Victim</li> </ul> </li> <li>• Support Services               <ul style="list-style-type: none"> <li>• Victim</li> <li>• Accused (not required)</li> <li>• Employees</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>• Supportive Measures               <ul style="list-style-type: none"> <li>• Complainant</li> <li>• Respondent</li> </ul> </li> </ul>

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### Title IX Supportive Measures



- Non-disciplinary, non-punitive individualized services
- Offered as appropriate, as reasonably available, and without fee or charge
- To the complainant and/or the respondent
- Before or after the filing of a formal complaint or where no formal complaint has been filed
- Designed to restore or preserve equal access to the recipient's education program or activity without unreasonably burdening the other party, including measures designed to protect the safety of all parties or the recipient's educational environment, or deter sexual harassment
- The recipient must maintain as confidential any supportive measures provided to the complainant or respondent, to the extent that maintaining such confidentiality would not impair the ability of the recipient to provide the supportive measures
- The Title IX Coordinator is responsible for coordinating the effective implementation of supportive measures

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### Title IX Supportive Measures



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 of certain areas of the campus	Other similar measures	

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### Clery Act Support Services and Resources



Counseling	Health	Mental health	Victim advocacy	Legal assistance
Visa and immigration assistance	Student financial aid	Other on-campus services	Other off-campus services	

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Clery Act Support Services and Resources



Accommodations



Protective Measures

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Title IX Formal Complaint



Filed/Signed



Alleging sexual harassment



Requesting an investigation (or informal option)

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Can create a form for the formal complaint

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Electronic Communications- email is acceptable.

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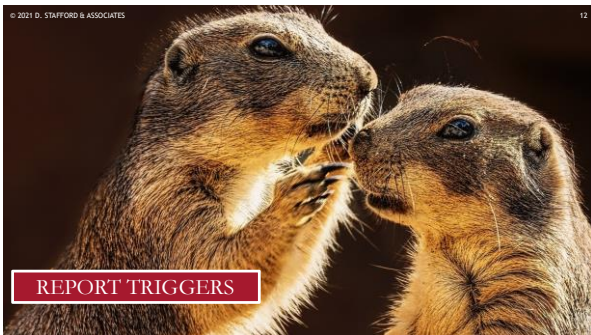
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**Clery Act Notifications to the Complainant** 

 Preserve Evidence	 Reporting Options	 Notification Options	 Existing Services
 Protective Measures	 No Contact and Restraining Orders	 Confidentiality	 Procedures

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For title IX will need to have a signed formal complaint.

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Confidentiality



Privacy

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Follow-Up Steps



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You must follow up. If you say you are going to do something then do it.

Five horizontal lines for writing notes.

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A signed formal complaint is permission from the complainant to give notice to the respondent that complaint has been filed.

its consent from the complainant

Five horizontal lines for writing notes.

CONTACTING THE RESPONDENT

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Construct a written notice document

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Five horizontal lines for writing notes.



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Follow-Up Steps



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IMPLEMENTING MEASURES

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Activity

You have received a report of an alleged rape on campus. Both the complainant and respondent are seniors and in the same academic program (vocal performance - opera). They are in three of the same classes and live in the Vocal Performance Living Learning Community in housing.

1. Create a checklist of what you need to review with each party (complainant and respondent).
2. Identify possible supportive or protective measures.

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What the Title IX regulations say... 

“(c) Emergency removal. Nothing in this part precludes a recipient from removing a respondent from the recipient’s education program or activity on an emergency basis, provided that the recipient undertakes an **individualized safety and risk analysis**, **determines that an immediate threat to the physical health or safety of any student or other individual arising from the allegations of sexual harassment justifies removal**, and provides the respondent with **notice and an opportunity to challenge** the decision immediately following the removal. This provision may not be construed to modify any rights under the Individuals with Disabilities Education Act, Section 504 of the Rehabilitation Act of 1973, or the Americans with Disabilities Act.”

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determin that an immediate threat to the physical health or safety of any student or other individual arising from the allegations of sexual harassment justifies removal

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Criteria 



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**Immediate vs. Imminent** 

<b>Immediate</b>	Poses a threat of instant harm or attack
<b>Imminent</b>	Poses a threat of impending or looming harm or attack

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**Risk vs. Threat** 

<b>Risk</b>	Effect of an occurrence on objectives Focuses on particular incidents and the effects Risk Assessment - Potential event that may occur and its effect
<b>Threat</b>	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

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Dating Violence/  
Domestic Violence?

  
Stalking?

**When do we do it?**

  
Sexual Assault?

  
Sexual Harassment?

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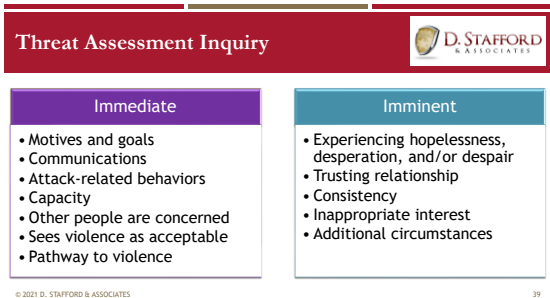
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What is the difference Confidentiality and Privacy

Confidentiality - may have to disclose certain information. dependent on the situation. (Mental health)

Private - agree to keep infor in a small group of people Explain to the complainant the difference.



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think through who is responsible to put out the notices

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### Agenda

- Types of Notice
- Party Rights

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**Remember!**

- Information about preserving evidence and immediate resources should not only be in your first notice letter.
- Do your first responders (Police, residential life, etc.) have written information available to provide to individuals identifying as victims?

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Information about preserving evidence - should not only be in your first notice letter.

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report may be from complainant or third party. May follow up on an initial phone call to inform the complainant. Make sure the information from complainants is documenting - protect the College and summarize things for students.

**Complainant**

**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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**NOTICE OF CLOSURE**  
 Must have a closure letter when complainant declined to sign a formal complaint. Complainant has not responded to outreach.

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**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

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This is pulled directly from the regulations

Information - notice of allegation

Sept 15, you were alleged that you touch someone

Respondent is presume not responsible

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

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Notice of Investigation can combine with notice of Allegation. Must have sufficient time to prepare for participation Provide date, time, location , and purpose of all meetings

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You cn contact

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)

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footer: this cannot be copied and shared etc

10 days to submit a written response ...

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

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Final report sent at least 10 days prior to the hearing.

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

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written determination could be as many as 30 pages.

have a one page cover letter with the decision and the sanctions attached you will find the full report.

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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

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Need a notice document for appeal.

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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

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**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

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Must create a dismissal notice (language of which policy you are preceding under.

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**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)

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Notices should come from the Title IX coordinator

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**Other Possible Notices** 

Case updates    No contact letters    Supportive measures

Conflict of interest    Consolidation

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Supportive measures should be kept confidential

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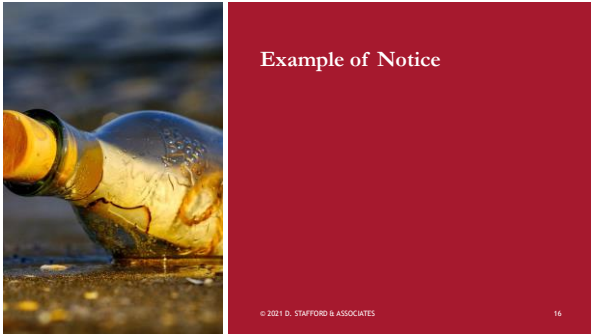
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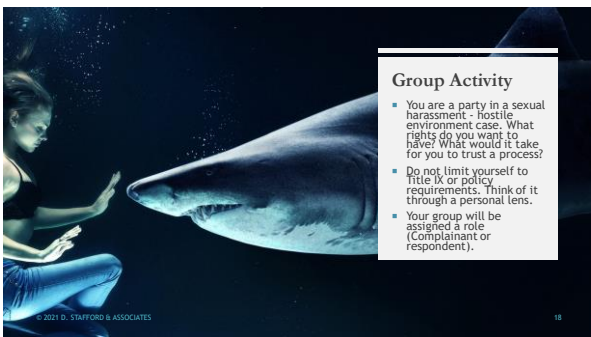
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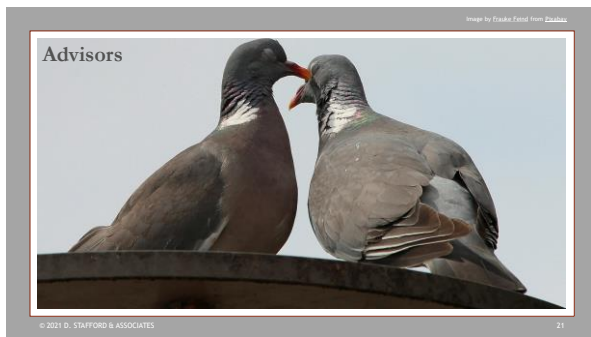
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# Informal Resolution

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## Agenda

- The Regulations
- Types
- Restorative Justice
- Additional Considerations

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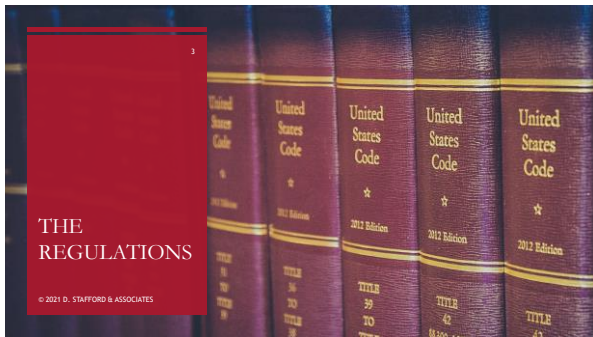
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§106.45(b)(9) Informal Resolution – General



Voluntary



Formal Complaint



Timing

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formal complaint - formal resolution, informal

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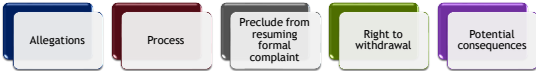
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§106.45(b)(9) Informal Resolution – Notice



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Cannot preclude anyone from going back to a formal resolution

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§106.45(b)(9) Informal Resolution – Written Consent



Agreement to participate in the process must be...



Voluntary



Written

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Written consent, how do we receive.  
"Would you like to proceed with formal or Informal resolution."

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§106.45(b)(9) Informal Resolution – Employee



- Student respondent - Student complainant
- Student respondent - Employee complainant
- Employee respondent - Employee complainant
- Employee respondent - Student complainant

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Cannot use informal resolution for student complaint and employee respondent

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Training



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

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People leading informal resolution will need training.

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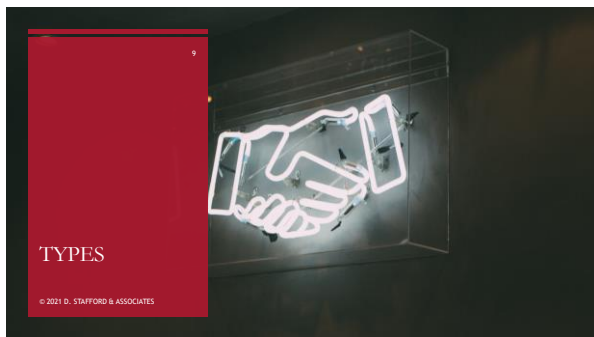
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**Informal Resolution** 

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

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Different types

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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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**Mediation** 



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

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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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Takes a lot of training and expensive to bring

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### Restorative Justice v. Mediation



	Restorative Justice	Mediation
Focus	<ul style="list-style-type: none"> <li>• Repairing harm</li> <li>• Making things right</li> </ul>	<ul style="list-style-type: none"> <li>• Problem-solving</li> <li>• Decision-making</li> </ul>
Preparation	<ul style="list-style-type: none"> <li>• Pre-conference meetings with all impacted parties</li> </ul>	<ul style="list-style-type: none"> <li>• No pre-conference meetings</li> </ul>
Requirements	<ul style="list-style-type: none"> <li>• Voluntary</li> <li>• Responsible party accepts responsibility for behavior</li> </ul>	<ul style="list-style-type: none"> <li>• Voluntary</li> </ul>

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<https://www.pathways2ic.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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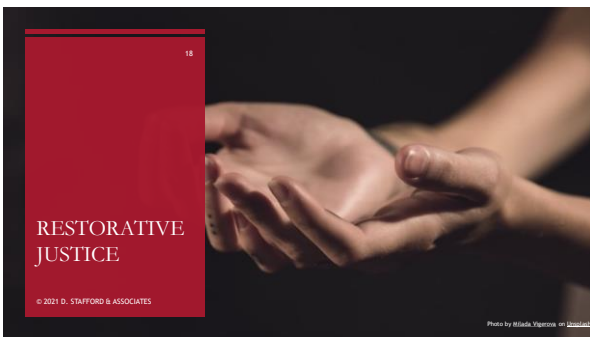
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### Restorative Justice v. Restorative Practice



Umbrella terms



Multiple functions



Community building

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### Where Does It Fit Into Process?



Informal Resolution



Sanction

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### Infusion into Process



Current activities



Program examples

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Benefits 



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Uses Outside of Higher Ed 



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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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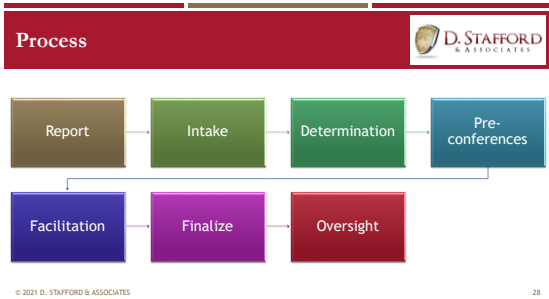
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Who is Responsible? 

Student Affairs

Title IX Coordinator

Human Resources

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### When Is It Appropriate?



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### Policy Considerations



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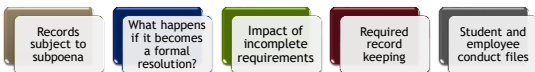
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### Policy Considerations



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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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## Formal Resolution: Investigation Stage

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D. Stafford & Associates do a 5 day investigation class

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### Agenda

- The Formal Title IX Process
- Overview of Investigations
- Evidence and Relevancy
- Reports
- Non-Title IX Investigations

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THE FORMAL  
TITLE IX  
PROCESS

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## Three Primary Stages



Intake



Investigation



Resolution

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Intaker = Title IX Coordinators

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Resolution = Decision Maker

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Investigation - Need investigators

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Do we have a policy on bullying?



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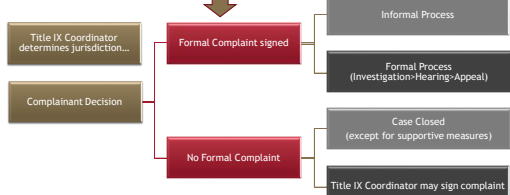


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## Title IX Case Flowchart Post Outreach



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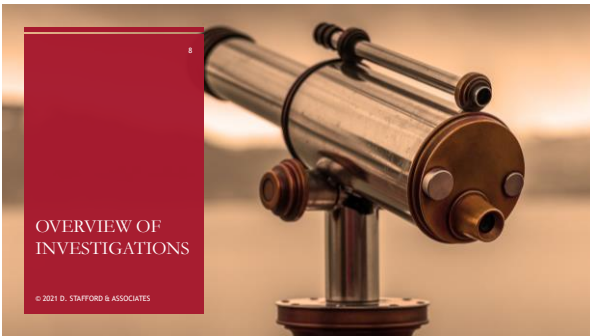
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Coordinator will give complaint to the Investigators.

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**Formal Process** 



Notice



Assign to Investigator



Investigation

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After a formal complaint notify both parties.

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Prefer to have 2 investigators on the case - sexual assault

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Basic step of the Investigator Role  
 Identify interview witnesses  
 collect Evidence  
 Draft the report

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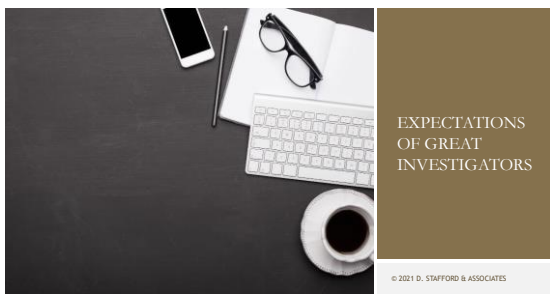
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What do you look for in an Investigator:  
 \*some college's have a position as investigator  
 \*team of people trained as investigators - look at personalities, and skills more so than title/roles  
 \*Need someone who is respected in the position their in

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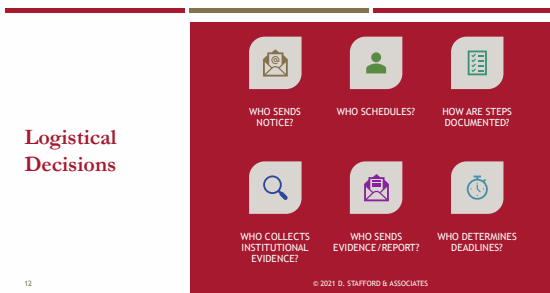
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Who sends notice - Title IX Coordinator  
 Who Schedules - Title IX Coordinator  
 documenting the steps - make sure investigators know needs to go on the report  
 Institutional evidence - go to title IX and say this is what I like to have...schedules,  
 who sends evidence/Report - Title IX coordinator will send out...give coordinator 10 days  
 Who determines the deadline -

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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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Fact Witnesses and Expert Witnesses - this is new in the law.

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Inculpatory - proves evidence and exculpatory - disproves  
Interviews the Complainant first

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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



Real evidence



Demonstrative



Documentary



Testimonial

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Real Evi - do get this type often,  
Demonstrative - diagram  
documentary - social media, text messages, etc  
testimonial - interviews

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## Statements



Investigator Interviews



Written Statements



Formal Complaint



Other

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statements - investigators interviews will help

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What does your information sharing look like.

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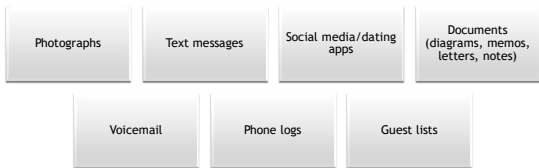
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## Other Sources of Evidence



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## Evidence Collection



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Information that is shared - directly related  
Past sexually behavior not admissible. - may not get shared at hearing but may be shared in everything collected.  
Relevant - summarize for the report.

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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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RElevancy - directly related to the issue and helps prove or disprove the issue

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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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### 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

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### 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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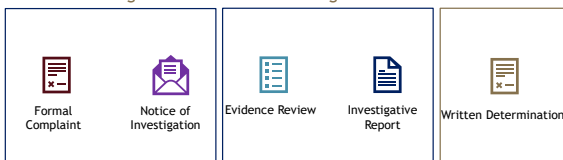
## Major Case Documents



### Pre-Investigation

### Investigation

### Decision



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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”



IMAGE BY JERRY GÓRECKI FROM PIXABAY

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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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- 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



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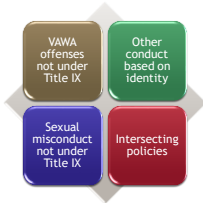
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## Other Types of Investigations



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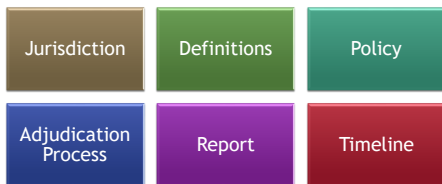
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## Possible Differences



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Likely Similarities



INTERVIEWS



EVIDENCE COLLECTION



ADVISORS

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Bias/Conflict of Interest Check In

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**Stress, Trauma, & Memory**

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**Agenda**

- Understanding Stress and Trauma
  - During the Traumatic Event: Neurobiology
  - After the Traumatic Event: Memory
  - Long-Term Response: Impact

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**UNDERSTANDING  
STRESS  
AND  
TRAUMA**

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**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?



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**What Is Trauma?** 



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**Comparison** 



Stress



Trauma

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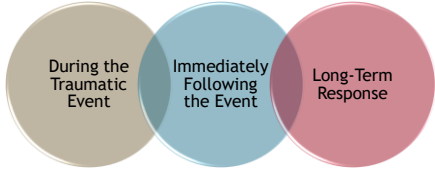
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# Impact of Trauma



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DURING THE TRAUMATIC EVENT:  
NEUROBIOLOGY

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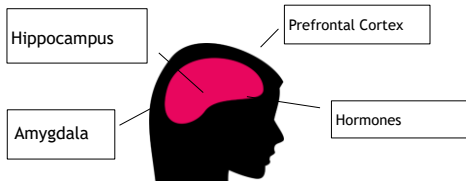
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# The Limbic System and Stress



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# The Body's Response to Fear



Heart



Lungs



Muscles



Brain



Eyes



Stomach



Skin



Nerves

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# Degraded Prefrontal Cortex



Alcohol



Age



Prolonged stress exposure

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# Response



Reflex



Habit

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IMMEDIATELY  
AFTER THE  
TRAUMATIC  
EVENT:  
  
MEMORY



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what was going through your mind at the time  
What were you thinking

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Memory 



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Memory Encoding 



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Trauma Memory Encoding



Sensory



Emotional



Flashbulb memories

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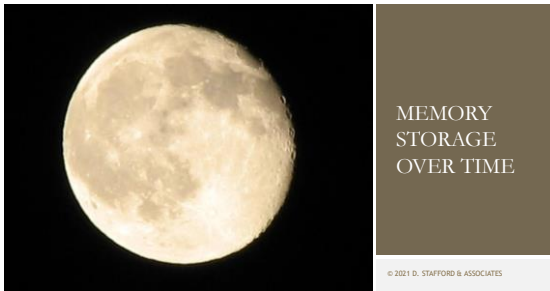
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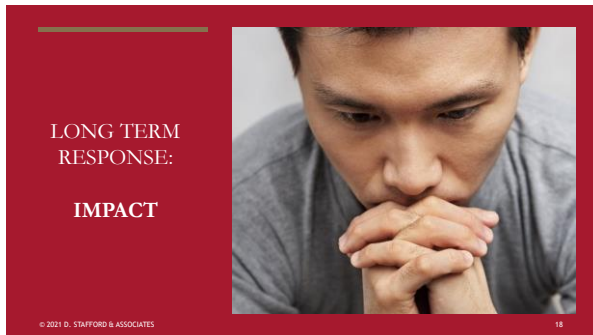
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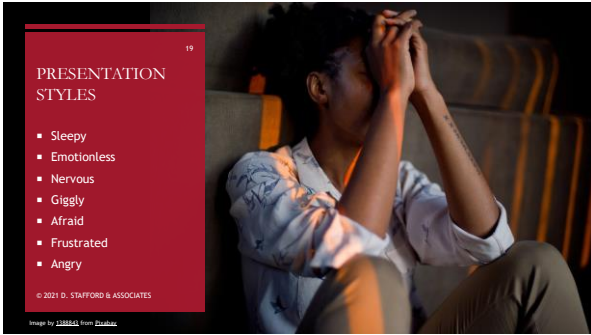
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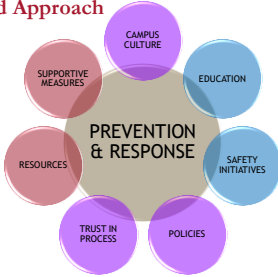
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### Multi-Pronged Approach



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## Formal Resolution: Hearing Stage

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### Agenda

- Structure
- Hearing Notices
- Hearing Preparation
- The Hearing

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### Three Primary Stages



Intake



Investigation



Resolution

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Decision-makers 

Board vs. Individual      Numbers      Consensus or Vote

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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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Recording



Introductions



Order of Questioning



Witness Management



Enforcing Rules of Decorum

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Chair-related Tasks

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### The Decision-makers

- Review the investigative report
- Ask questions
- Make relevancy determinations
- Assess credibility
- Make the finding
- Produce the written determination

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### Advisor

- 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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**Advisors of Choice**



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

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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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## Cross-examination – The Preamble



*The Department clarifies here that conducting cross-examination consists simply of posing questions intended to advance the asking party’s perspective with respect to the specific allegations at issue . . . (Fed. Reg. 30319)*

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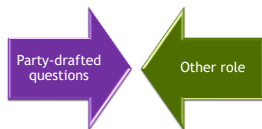
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## Appointed Advisor Role



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APPOINTED  
ADVISOR

WHO IS GOING TO HANDLE IF THE ADVISOR  
OF CHOICE DOESN'T SHOW UP TO THE  
HEARING?

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INVESTIGATORS & TITLE  
IX COORDINATORS AT  
THE HEARING

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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
	2 <sup>nd</sup> Advisor	Is a support person allowed? Union rep?

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**Don't Forget the Parties and Witnesses!**

- 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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HEARING  
SETUP

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**Live Hearing**



Cross-examination - directly,  
orally, and in real time



Option for separate rooms with  
technology to hear/see or virtual

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## See and hear (Regulations)



“...enabling the decision-maker(s) and parties to simultaneously see and hear the party or the witness answering questions”

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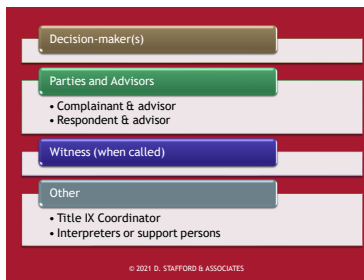
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## Hearing Space Needs



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## Other Location Considerations



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Audio



Video



Transcript

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## Final Report



### Written report

Sent to parties  
Sent to advisors



### Review

10 Days  
Written response



### Hearing Notice

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## Notice of Hearing, Part 1

"Provide, to a party whose participation is invited or expected, written notice of the date, time, location, participants, and purpose of all hearings, investigative interviews, or other meetings, with sufficient time for the party to prepare to participate"



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## Notice of Hearing, Part 2

"At the request of either party, the recipient must provide for the live hearing to occur with the parties located in separate rooms with technology enabling the decision-maker(s) and parties to simultaneously see and hear the party or the witness answering questions"



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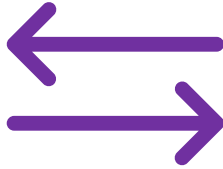
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**Notice of Hearing, Part 3**

Name and contact information for decision-makers with options for stating bias or conflict of interest




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**Notice of Hearing, Part 4**

Options to request accommodation or interpretive services for the hearing




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**Timing Considerations**



<p><b>01</b></p> <p>Parties have ten days to provide written response to report</p>	<p><b>02</b></p> <p>Decision-maker reviews report prior to hearing</p>	<p><b>03</b></p> <p>Hearing</p>
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- Appoint alternate decision-maker if conflict
- Change from in-person to virtual
- Extensions due to accommodation etc.

Additional  
Timing  
Considerations

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HEARING  
PREPARATION

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Live Hearings – Institution Specific

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

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### Rules and Process (from the Regulations)

*Recipients may adopt rules that govern the conduct and decorum of participants at live hearings so long as such rules comply with these final regulations and apply equally to both parties.*

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**Who does what?**

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Does your Title IX Coordinator manage the logistics of the hearing process or is it delegated to a hearing chair/officer?

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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

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## Decision-maker Pre-work



Review report



Review allegations



Review policy



Draft relevant questions

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## Decision-maker Predrafted Questions

- Credibility
- Corroboration
- Clarifications
- Admissions

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THE HEARING

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## Hearing/Cross Purpose from the Preamble



- *“to reach factually reliable determinations”*
- *“goal of a fair, truth-seeking process”*
- *“truth-seeking function of cross-examination”*

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**From the Preamble...**

*The Department reiterates, however, that the essential function of cross-examination is not to embarrass, blame, humiliate, or emotionally berate a party, but rather to ask questions that probe a party's narrative in order to give the decision-maker the fullest view possible of the evidence relevant to the allegations at issue.*

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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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### Decision-maker Questions (from the Regulations)

*“The degree to which any inaccuracy, inconsistency, or implausibility in a narrative provided by a party or witness should affect a determination regarding responsibility is a matter to be decided by the decision-maker, after having the opportunity to ask questions of parties and witnesses, and to observe how parties and witnesses answer the questions posed by the other party.”*

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### Decision-maker Questions (Regulations)



- Permit the decision-maker on the decision-maker's own initiative to ask questions and elicit testimony from parties and witnesses, as part of the recipient's burden to reach a determination regarding responsibility based on objective evaluation of all relevant evidence including inculpatory and exculpatory evidence
- Thus, the skill of a party's advisor is not the only factor in bringing evidence to light for a decision-maker's consideration

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### Decision-maker Questions



Statement of Accuracy



Credibility



Clarity

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## Impartial Hearings



Consistent application



Ask clarifying questions



Avoid bias

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Question  
• By Advisor

Relevancy Determination  
• By Decision-maker

Answer  
• By party or witness

Questioning  
by the  
Advisors

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## Order of Questioning/Statements



Fairness

Equality

Logic

Common Sense

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## Relevancy Determination

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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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✘  
 Past sexual history

✘  
 Privileged information

✘  
 Repetitive question

✘  
 New information

✘  
 Not probative of material fact

### Relevancy and Admissibility Determinations

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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



*APPEAL GROUND: "New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made, that could affect the outcome of the matter"*



Allow



Disallow



Stop Hearing

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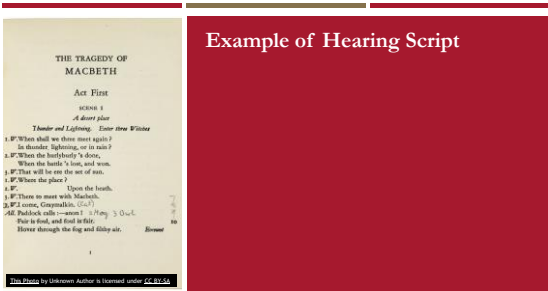
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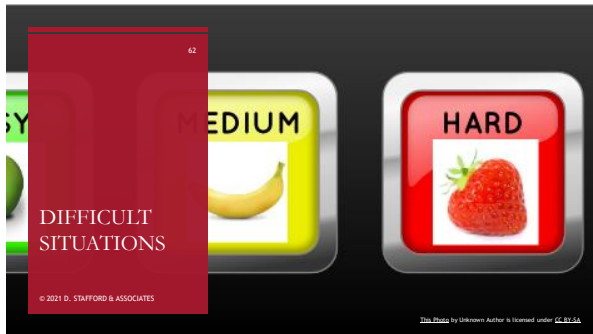
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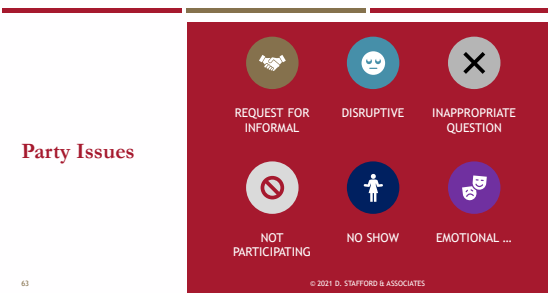
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## Managing Emotions



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## Participation (Regulations)



“If a party or witness does not submit to cross-examination at the live hearing, the decision-maker(s) must not rely on any statement of that party or witness in reaching a determination regarding responsibility.”

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## Attendance (Regulations)



“The decision-maker(s) cannot draw an inference about the determination regarding responsibility based solely on a party’s or witness’s absence from the live hearing or refusal to answer cross - examination or other questions.”

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## Advisor Issues



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## Removal of an Advisor (Regulations)



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## Decision-maker Issues (Appeal Grounds)



Procedural Error



New Evidence



Bias/Conflict

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Situational Issues



Safety



Disability



Length



Phrasing

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## Findings and Appeals

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### Agenda

- Weighing the Evidence
- Credibility Assessments
- Elements of a Violation
- Findings, Sanctions, and Remedies
- Written Determination
- Appeals and Other Decision-makers

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WEIGHING  
THE  
EVIDENCE

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Relevancy 



Relevant Question

Relevant Evidence

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*From the Regulations...*

*“must objectively evaluate all relevant evidence (inculpatory and exculpatory) but retains discretion, to which the Department will defer, with respect to how persuasive a decisionmaker finds particular evidence to be”*

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Evidence 

**Inculpatory**  
Evidence demonstrating culpability for an act

**Exculpatory**  
Evidence tending to excuse, justify, or absolve the act

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### Not Relevant (from the Regulations)



#### Past Sexual Behavior

- Complainant's sexual predisposition or prior sexual behavior 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

#### Privileged Information

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

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### Also Cannot Rely On...



- Statements by party/witness not subjected to cross
- Sex stereotyping



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### Decision-maker Determinations on Evidence



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# Relevance



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# Weight



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# Weight/Relevance?



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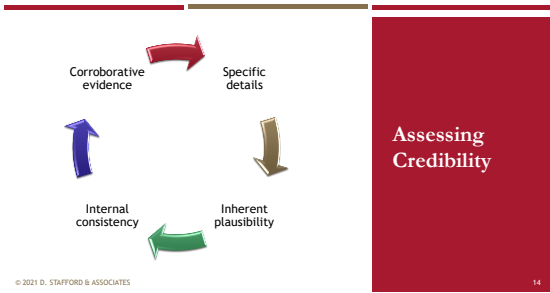
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The Credibility of the Storyteller



Ability to Perceive

Ability to Remember

Bias

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Faulty memory

Inaccurate facts

Omissions

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False Statements

Truthfulness

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Truthfulness



Omission

Embellishment

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Truthfulness



Repeat v. Reconstruct



Consistency



Details

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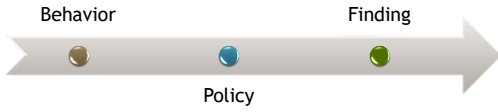
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### SEXUAL HARASSMENT QUID PRO QUO

- Is the respondent an employee?
- What was the behavior?
- Was it unwelcome sexual conduct?
- Did it condition the provision of an aid, benefit, or service?

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### SEXUAL HARASSMENT HOSTILE ENVIRONMENT

- Was the conduct unwelcome and based on the complainant's sex?
- Was it severe?
- Was it pervasive?
- Was it objectively offensive?
- Did it deny the complainant equal access to their education program or activity?

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### SEXUAL ASSAULT

- What were the behaviors?
- What, if any, were the words or actions to indicate consent?
  - Force, coercion, intimidation, threats, incapacitation
  - If incapacitation - two steps
    - Was the complainant incapacitated?
    - Did the respondent or would a reasonable person know?

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### DATING/DOMESTIC VIOLENCE

- What were the behaviors?
- What is the nature of the relationship?

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### STALKING

- What were the behaviors?
- Were the behaviors based on the complainant's sex?
- Was there a course of conduct that would cause a reasonable person to ...
  - fear for their safety of the safety of others OR
  - suffer substantial emotional distress?

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**Formal Resolution – Making a Finding** 



Policy language - Alleged violations



Weighing the evidence



Determine behaviors



Standard of evidence

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**Disciplinary Sanctions and Remedies** 



Sanctions



Remedies

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Formal Resolution – Disciplinary Sanctions 

A recipient may impose disciplinary sanctions upon a respondent after a grievance process that complies with § 106.45.

“The Department does not prescribe whether disciplinary sanctions must be imposed, nor restrict recipient’s discretion in that regard. As the Supreme Court noted, Federal courts should not second guess schools’ disciplinary decision, and the Department likewise believes that disciplinary decisions are best left to the sound discretion of recipients.”

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Formal Resolution - Disciplinary Sanctions 

- Status • Expulsion, separation, probation
- Prevention • Protective measures, restrictions, separation
- Educational • Action plans, restorative justice

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Formal Resolution – Disciplinary Sanctions 



Aggravating factors



Mitigating factors

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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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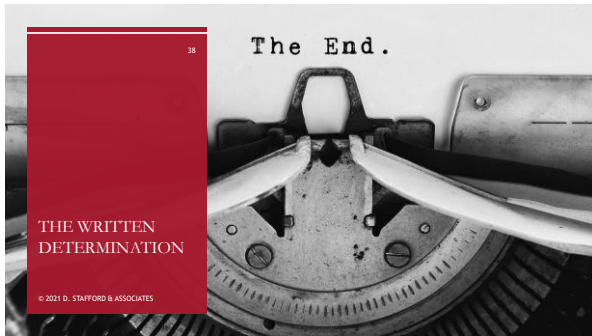
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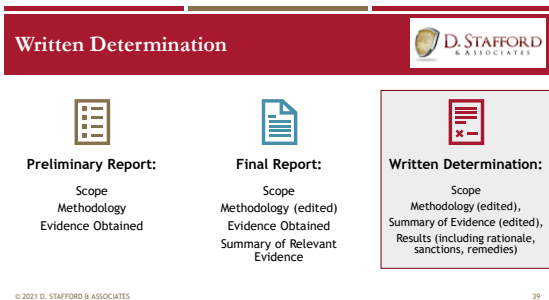
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**Determination Regarding Responsibility** 

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Allegations

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Procedural steps

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Findings of fact

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Conclusion/application

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Rationale

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Appeal procedures

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**Written Determination Considerations**

**IN**

- Relevant information
- Hearing or report

**OUT**

- Bias
- Sex stereotyping
- Inadmissible information

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Other Decision-makers 



Appellate  
Decision-maker



Appeal of Case  
Dismissal



Appeal of  
Emergency  
Removal

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**Title IX Required Appellate Grounds**

1. Procedural irregularity that affected the outcome of the matter
2. New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made, that could affect the outcome of the matter
3. The Title IX Coordinator, investigator(s), or decision-maker(s) had a conflict of interest or bias for or against complainants or respondents generally or the individual complainant or respondent that affected the outcome of the matter.

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**Appeals** 

- Grounds apply to appeal of finding and of dismissal
- Additional grounds permitted
- Decision-maker can have no other role
- Reasonably prompt time frame

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**Appeals**

- Notification
- Equal opportunity to respond
- Written determination
- Provided simultaneously to parties

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**Role of Appellate Decision-maker** 

-  Follow the Appellate Basis
-  Not A Substitute of Judgment
-  Respect the Credibility of Previous Decision-maker

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& ASSOCIATES**

# Organizational Integrity

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### Agenda

- Serving Impartially
- Organizational Integrity

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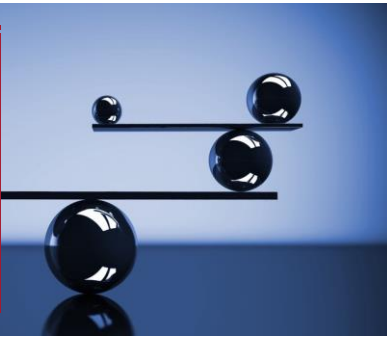
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**SERVING  
IMPARTIALLY**

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Conflict of Interest or Bias



Generally



Individually

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Procedural Challenges



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



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Conflicts of Interest



Roles on campus



Past employment



Volunteering



Social media presence

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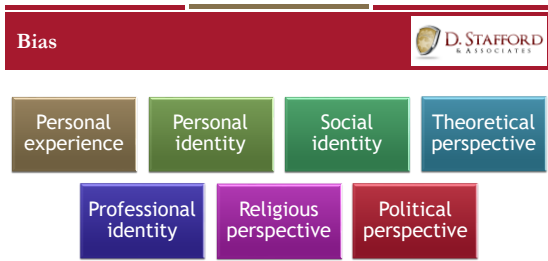
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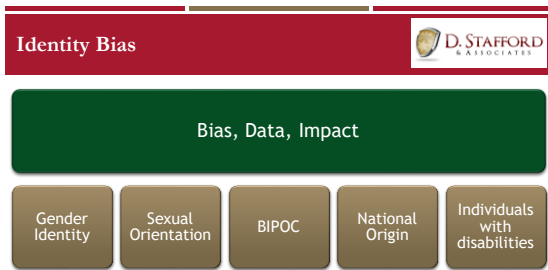
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## REPRESENTATION MATTERS



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<b>Confirmation Bias</b>	Confirmed preconceived opinion	<b>Types of Bias</b>
<b>Availability Bias</b>	Most important to the memory immediately recalled	
<b>Hindsight Bias</b>	See things as more predictable than they were	
<b>Foresight Bias</b>	Ability to predict future events	
<b>Identity Bias</b>	More likely to believe one group over another	
<b>Personal Experience Bias</b>	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 conservative 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 panels 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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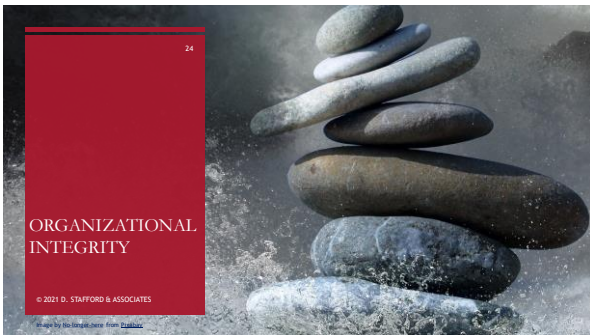
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ORGANIZATIONAL INTEGRITY

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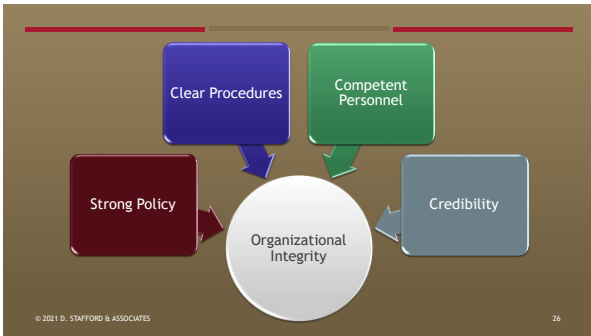
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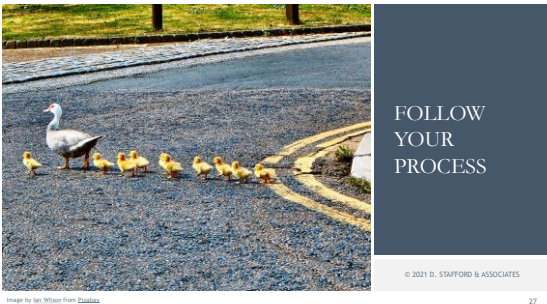
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Photo by Wang Sashi on Unsplash

STAY IN YOUR LANE

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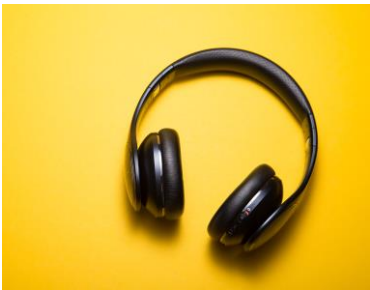


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MANAGE THE "NOISE"

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Rushworth Kidder, Moral Courage (2006).

LEAD WITH MORAL COURAGE

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**Final Note** 

<b>1</b> Run a fair, thorough, and impartial process	<b>2</b> Let your morale compass guide you	<b>3</b> Do what your policy says you will do	<b>4</b> Do what the regulations tell you to do
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### Sample Notice of Report Letter

#### COMPLAINANT NOTICE OF REPORT/REQUEST FOR INTAKE, FOLLOW-UP

*This is a follow-up to our recent communication on DATE or you have not responded to my recent communication (phone email) of DATE. I have received a report of an incident that may be a violation of our University's Title IX Policy. The report states that what alleged on date at location. The report I received named RESPONDENT as the individual accused of the misconduct.*

At our University, the Title IX Coordinator has oversight for investigating incidents where a (student/employee) may have violated the Title IX Policy. The report I received indicated that you were the individual harmed, and therefore, I am requesting to talk with you to offer supportive measures and explain University procedures including the option to file a formal complaint. This is not an investigative interview - it is only an opportunity for me to provide you with your options and resources moving forward.

*I am available \_\_\_\_\_ or you may call my office to schedule or I have set an initial time ...*

You are welcome to bring an advisor to the meeting and to any future meeting in which you attend. If you need any other accommodation or assistance during this meeting, please contact me and I will assist in providing this.

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. I am available to assist you in connecting with these resources and/or to assist you in any further reporting should you decide to do so. You may also review our full policy and resource information, including confidential resources, available on our website at \_\_\_\_\_.

If you are unable or do not wish to attend this meeting, please let me know. If I do not hear from you by DATE, I will interpret that to mean you do not wish to receive support or proceed with the University's process at this time. You may also contact me if any question. I may be reached at \_\_\_\_\_.

This would follow a first communication attempt in those cases in which the report did not come in directly from the Complainant or is the first communication when the report has come in with the support of the Complainant (via Maxient, through a Responsible Employee etc.)

The rights at this stage include:

- Right to supportive measures
- Right to advisor
- Right to information about process including formal complaint
- Right to explanation of rights and options (Clery)

If you have a disability services office, you may want to indicate that as a resource for an accommodation right at the beginning of the process.



## TITLE IX HEARING SCRIPT

Everyone has their own style. This script is to provide guidance on the hearing and the key areas that need to be covered. The italicized portions of the script are examples as to how to word these statements. They do not need to be read verbatim.

### OPENING

*Good morning/afternoon, I am [NAME/TITLE/ROLE]. This hearing has convened on DATE to review the case CASE IDENTIFIER. Please note that today's hearing is being recorded and either party may review the recording upon request.*

### INTRODUCTIONS

*At this time, I would ask that everyone present introduce themselves and their role in today's hearing."*

- Decision-maker(s)
- Complainant
- Complainant Advisor
- Respondent
- Respondent Advisor
- Other
  - Title IX Coordinator
  - Support person(s)
  - Interpreters
  - Stenographer (if not recorded)
  - General Counsel
  - Technology Staff (ideally outside room or only on call or Zoom)

### STATEMENT OF RIGHTS AND PROCESS

*I will now go over the rights of the parties in the hearing and the process.*

- 1) *Other than the parties, their advisors, the decision-makers and \_\_\_\_\_, no other persons will be permitted into the hearing except for witnesses. Each witness invited to the hearing will be allowed in only for their interview.*
- 2) *FOR ZOOM: We are using waiting rooms and only persons that have been invited to the hearing will be admitted from the waiting room.*

- 3) *This is an administrative hearing - it is not a court of law. Judicial rules of evidence do not apply. Questions will be asked by the decision-maker and the advisors will be allowed to cross examine the other party and witnesses.*
- 4) *The Decision-makers have been given a copy of the report and have reviewed it. They will be asking for you to confirm the accuracy of your statements in the report and may ask follow-up questions from the summary of relevant evidence.*
- 5) *Only relevant evidence will be considered in making a finding of responsibility and the decision-makers will not rely on any evidence in making a finding of responsibility that is not permissible either by policy or by law.*
- 6) *This is a formal administrative hearing and rules of decorum will apply. We expect professionalism and respect for all parties and participants. Failure to follow these rules will result in your removal.*
- 7) *The decision-maker has made no predetermination of responsibility. At the conclusion of the hearing, after weighing relevant evidence, the decision-makers will make a finding regarding responsibility based on the (insert standard of evidence).*
- 8) *This determination will be provided to both parties within \_\_\_\_\_ days of the hearing.*

*I will now address a few items to the parties.*

- 1) *FOR ZOOM: Must keep camera on for us to see you for the duration of the hearing unless prompted to do otherwise by the decision-maker. What you choose to listen to or watch is up to you although we ask your advisor to be able to hear all of the statements. If you decide to mute the hearing at any point, your advisor is responsible for letting you know when to rejoin.*
- 2) *FOR IN PERSON: If at any point you do not want to hear a party or witness, you may choose to step out for the duration of that portion by letting the decision-maker know. Your advisor is responsible for letting you know when to rejoin.*
- 3) *Order of questioning - Complainant, Respondent and then Witnesses. The Decision-maker will start with questions and then the party's advisor will be allowed to cross. The Decision-maker may ask additional follow up questions after cross-examination. No additional cross will be allowed except at the discretion of the decision-maker.*
- 4) *During cross examination, each question must be reviewed by the decision-maker prior to you answering the question. The decision-maker will prompt you when you may answer the question.*
- 5) *You may refuse to answer a question on cross-examination and the Decision-maker will not make a determination regarding responsibility solely on your refusal to answer a question. However, refusing to answer a question may limit the Decision-maker in their ability to rely on other statements you have made.*
- 6) *As a reminder, the University prohibits false information in the Student Code of Conduct. Information presented is expected to be truthful and complete.*

*Finally, the last items are for the advisors.*

- 1) *Your role is to ask the cross-examination questions. Your questions should be the questions that come from the party. You are to have no other role in the process. You may not advise the party on how to respond, interrupt either party, or respond on their behalf.*

- 2) *FOR ZOOM: If you need to take a break and talk privately, you may do so by letting the decision-maker know and then muting yourself or requesting to be put in a breakout room. While this will be permitted, excessive requests that unduly delay the process will not be allowed.*
- 3) *FOR IN PERSON: If you need to take a break or talk privately, you may do so by letting the decision-maker know. While this will be permitted, excessive requests that unduly delay the process will not be allowed.*
- 4) *You may only ask relevant questions. These are questions regarding the facts outlined in the "Summary of Relevant Evidence" in the Investigative Report.*
- 5) *If your party pre-submitted questions, we will provide those that have been approved for relevancy to you to ask at the appointed time.*
- 6) *New evidence, not in the investigative report, will generally not be allowed unless it was not reasonably available at the time of the investigation and only at the discretion of the decision-maker.*
- 7) *All cross-examination questions will be reviewed first by the decision-maker who will review the question to determine if it is relevant and will explain any decision to exclude a question as not relevant.*
- 8) *Any questions or evidence about privileged information such as medical or psychological records is not permitted without written waiver.*
- 9) *Questions and evidence about the complainant's sexual predisposition or prior sexual behavior are not relevant unless an exception applies. Do not ask a question along those lines unless you know an exception applies.*
- 10) *Questions must be asked in a respectful manner at all times. Failure to adhere to these rules will result in a warning. If the behavior continues, the advisor will be removed and a new advisor will be appointed by the University.*

### **ORDER OF QUESTIONING**

(Witnesses may appear in the order they are available or in the order preferred by the Decision-maker).

- |  |   |
|--|---|
| <ol style="list-style-type: none"> <li>1) Complainant             <ol style="list-style-type: none"> <li>i. by Decision-maker</li> <li>ii. by Respondent Advisor</li> <li>iii. by Decision-maker</li> </ol> </li> <li>2) Respondent             <ol style="list-style-type: none"> <li>i. by Decision-maker</li> <li>ii. by Complainant Advisor</li> <li>iii. by Decision-maker</li> </ol> </li> <li>3) Complainant Witnesses:             <ol style="list-style-type: none"> <li>i. by Decision-maker</li> <li>ii. by Respondent Advisor</li> <li>iii. by Complainant Advisor</li> <li>iv. by Decision-maker</li> </ol> </li> </ol> | <ol style="list-style-type: none"> <li>4) Respondent Witnesses:             <ol style="list-style-type: none"> <li>i. by Decision-maker</li> <li>ii. by Complainant Advisor</li> <li>iii. by Respondent Advisor</li> <li>iv. by Decision-maker</li> </ol> </li> <li>5) Other Witnesses:<br/>(alternate advisor who starts)             <ol style="list-style-type: none"> <li>i. by Decision-maker</li> <li>ii. by Advisor</li> <li>iii. by Advisor</li> <li>iv. by Decision-maker</li> </ol> </li> </ol> |
|--|---|



## DECISION-MAKER QUESTIONS – CONFIRMATION OF ACCURACY

- **Confirmation of Accuracy of statements and investigative interview.**
  - 1) *Have you read through the summary of your investigative interview?*
  - 2) *Do you have any corrections or changes to what you stated in your interview or in your written statement?*
  - 3) *Is it a fair and accurate representation of the truth as provided in your interview(s) with the investigators?*
  
- **Confirmation of Accuracy of evidence (walk through each type of evidence)**
  - 1) *What evidence was provided by you to the investigators?*
  - 2) *Are these emails/letters/texts a fair and accurate copy of the communication?*

## ADVISOR CROSS EXAMINATION OF THE PARTIES

- **Cross Examination**
  - *(If have pre-vetted questions) The Respondent/Complainant voluntarily submitted questions that have been approved for relevancy. The Advisor may ask any of those questions at this time.*
  - *Does the Respondent/Complainant, through the advisor, wish to ask any additional questions of the witness?*
  - *If yes. The Advisor may submit the first question for determination of relevancy.*
  - *Advisor asks question.*
    - *The question is relevant, and the witness may answer the question*
    - *The question is not relevant \_\_\_\_\_ (refer to list of reasons below) \_\_\_\_\_*
    - *I do not understand the relevancy of that question. Will you please clarify how or why it is relevant, otherwise we will disregard the question.*

## DECISION-MAKER EXAMINATION OF THE PARTIES AND EVIDENCE

- **Direct Examination**
  - 1) Questions about statements
  - 2) Clarifications about where a party/witness learned of something.
  - 3) Questions regarding credibility

## Relevancy

- **Past Sexual History of Complainant:** *That question is not relevant per the policy and the Title IX Regulations. If you can show why an exception applies, you may explain that, otherwise that question is not permitted, and any further questions of this type may result in the advisor being removed.*
  - **From the Regulations...** Questions and evidence about the complainant's sexual predisposition or prior sexual behavior are not relevant.
    - **Exceptions:** 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
  
- **Privileged Information:** *That information is privileged and not considered not relevant per the policy and the Title IX Regulations.*
  - **From the Regulations...** Cannot access, consider, disclose, or otherwise use a party's records that are made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in the professional's or paraprofessional's capacity, or assisting in that capacity, and which are made and maintained in connection with the provision of treatment to the party
    - **Exception:** Unless the recipient obtains that party's voluntary, written consent to do so for a grievance process under this section
  
- **Repetitive question:** *You have already asked that question/pursued that topic.*
  - **From the Preamble...** nothing in the final regulations precludes a recipient from adopting and enforcing (so long as it is applied clearly, consistently, and equally to the parties a rule that deems duplicative questions to be irrelevant)
  
- **New information:** *That information is not in the investigative report and has not been previously raised. Why is that information only being shared now?*
  
- **Not relevant:** *That information is not probative of any material fact concerning the allegations. Can you explain why that topic is relevant?*



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