



D. STAFFORD
& ASSOCIATES

Title IX Coordinator and Investigator Training Class

Presented by DSA Associates:

Cathy Cocks

Beth Devonshire

Adrienne Murray

Ann Todd

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Title IX Coordinator & Investigator Training

Online Course Agenda

11am-5pm EDT each day
Breaks: 1:00pm - 1:30pm; 3:30pm - 3:45pm

Day 1 - Understanding Title IX

- Module 1: Introductions and Definition of Terms
- Module 2: Title IX Overview
- Module 3: Clery for Title IX Practitioners
- Breakout room (if time)

Day 2 - Title IX Coordinator and Policy Development

- Review and Reflection
- Module 4: Policy Development
- Module 5: Title IX and Athletics
- Module 6: Campus-wide Education
- Breakout room (if time)

Day 3 - Process Considerations

- Review and Reflection
- Module 7: Consent and the Role of Alcohol and Other Drugs
- Module 8: Special Considerations
- Breakout room (if time)

Day 4 - Process Stages

- Review and Reflection
- Module 9: Intake and Supportive Measures
- Module 10: Evidence Collection and Investigatory Process
- Module 11: Interviewing
- Breakout room (if time)

Day 5 - Case Evaluation

- Review and Reflection
- Module 12: Credibility and Relevancy
- Module 13: Resolutions and Outcomes
- Final Activity



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 1st 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 45th 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.



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.



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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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.



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Introduction and Terms

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AGENDA


- Introductions
- Terms

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2

Introduction






Name



Institution

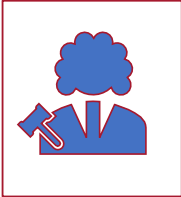


How long have you
been doing this work?

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3

Attorneys



- Not your attorney
- Consult with YOUR legal counsel

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The Laws



- Title VII of the Civil Rights Act of 1964
- Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act (1990)
 - Violence Against Women Reauthorization Act of 2013
- Title IX of the Education Amendments of 1972

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Language



- Civil Rights
 - Complainant vs. respondent (must use for Title IX)
 - Accuser vs. accused
 - Reporting party vs. responding party
- Criminal (for purposes of concurrent investigations)
 - Victim vs. suspect/perpetrator

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Parties 

- **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
- **Witness**
 - Any individual who has direct knowledge of an incident

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Outcomes 

- **Findings**
 - "Responsible" or "Not Responsible"
 - "In Violation" or "Not In Violation"
 - "Substantiated" or "Unsubstantiated"
 - "Founded" or "Unfounded"
- **Criminal Findings**
 - "Guilty" or "Not Guilty" (Innocent)

A False Report/False Allegation is not the same thing as a finding of "Not Responsible."

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Standard of Proof 

- **Preponderance of the Evidence**
Based on the evidence presented, it is more likely than not that...
- **Clear & Convincing Evidence**
Based on the evidence presented, it is highly probable that ...
- **Evidence Beyond a Reasonable Doubt**
Highest level of proof which is used in criminal cases and therefore, not applicable.

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Umbrella Terms



- **Sexual harassment** is a form of sex discrimination prohibited by Title IX
- **Sexual assault** means an offense that meets the definition of rape, fondling, incest, or statutory rape as used in the FBI's Uniform Crime Reporting program. Defined under the Clery Act
- **Sexual misconduct** is a term often used in school policies to adequately describe the spectrum of unwanted behaviors

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Terminology



Androgynous	Asexual	Bisexual	Cisgender	Gay	Gender dysphoria	Gender expression
Gender-fluid	Gender identity	Gender non-conforming	Gender queer	Intersex	Lesbian	LGBTQ+
Non-binary	Outing	Pansexual	Queer	Questioning	Sexual orientation	Transgender

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Title IX Overview

1



Agenda

- History
- Case Law
- The Law & Regulations

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2



HISTORY

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Law - Federal

Statute	Overview
Title IX 20 U.S. Code § 1681	Exceptions: ...3) religious organizations; 4) military services or merchant marines; 5) traditional single-sex institutions; 6) social fraternities or sororities and voluntary youth organizations; 7) Boy or girl conference; 8) Father-son/mother-daughter activities; 9) "beauty pageants."

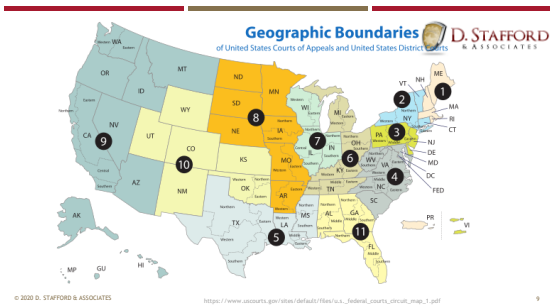
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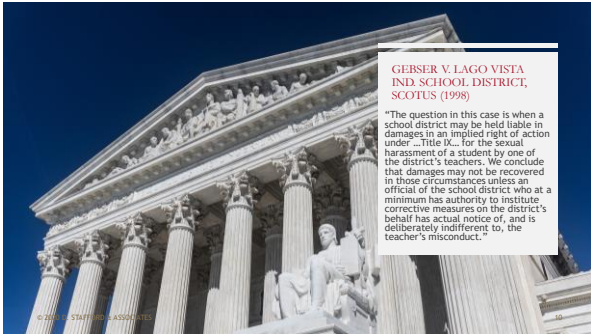


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**GERBER V LAGO VISTA
IND. SCHOOL DISTRICT,
SCOTUS (1998)**

"The question in this case is when a school district may be held liable in damages in an implied right of action under ... Title IX... for the sexual harassment of a student by one of the district's teachers. We conclude that damages may not be recovered in those circumstances unless an official of the school district who at a minimum has authority to institute corrective measures on the district's behalf has actual notice of, and is deliberately indifferent to, the teacher's misconduct."

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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 (2005)**

"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."

13



DOE V. CINCINNATI, 6TH 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."

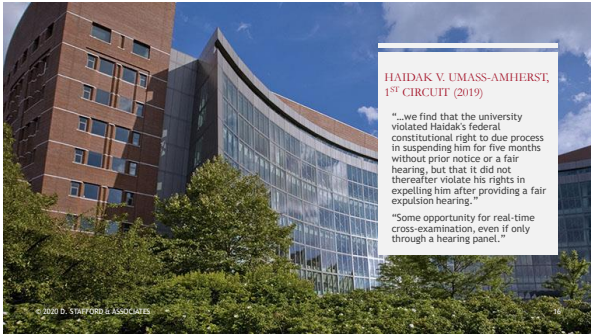
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DOE V. BAUM, 6TH CIRCUIT (2018)

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

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

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

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

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**DOE V. UNIVERSITY OF
THE SCIENCES,
3RD CIRCUIT (2020)**

"We hold that USciences's contractual promises of "fair" and "equitable" treatment to those accused of sexual misconduct require at least a real, live, and adversarial hearing and the opportunity for the accused student or his or her representative to cross-examine witnesses—including his or her accusers. We do not, however, attempt to prescribe the exact method by which a college or university must implement these procedures."

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**THE LAW &
REGULATIONS**

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Interpreting Laws



Law



Regulations



Substantive guidance

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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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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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Only applies to US (and US territories)

Use other policy

No Clery conflicts

§106.8(d)
Application
Outside of the
United States

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

§106.8(d)
Application
Outside of the
United States

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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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§106.30 Definitions – Actual Knowledge 

- 
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



- *“... 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 – Formal Complaint



Signed formal
complaint



Title IX
Coordinator



Complainant **MUST**
be participating



Third party
reports

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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)(iv), "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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PRONG 1: Quid Pro Quo



Must be an employee (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 to Sexual Harassment; (a) General Response to Sexual Harassment



- 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 for Formal Complaints of Sexual Harassment (a) Discrimination



"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 for Formal Complaints of Sexual Harassment, (b) Grievance Process (1) Basic Requirement



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§106.45 Grievance Process for Formal Complaints of Sexual Harassment, (b) Grievance Process, (1) Basic Requirements



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§106.45 Grievance Process for Formal Complaints of Sexual Harassment, (b) Grievance Process, (2) Notice



Notice requirements

Additional allegations

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



Multiple respondents

More than one complainant against one or more respondent

One party against other party

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**§106.45
Grievance Process for Formal Complaints of Sexual Harassment, (b) Grievance Process, (5) Investigation**

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§106.45(b)(6) Hearings



Live hearing



Cross-examination

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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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Intimidation, threats, coercions, discrimination

May use same grievance procedure

1st Amendment

False reports

§106.71
Retaliation
Prohibited

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Title IX Personnel – Title IX Coordinator



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 Personnel – Decision-Maker



Only one role within a case (hearing officer or appeal officer)

May ask questions in hearing

Determine relevancy of questions in hearing

Issues written determination of responsibility

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Title IX Personnel – Investigator



Gathers relevant evidence

Collects for sharing all evidence obtained that is related...

Does not limit the ability of the parties to gather and share evidence

Drafts final investigative report

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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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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 investigation report

No training requirement

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Who does everything else?

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

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- **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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The Clery Act
FOR TITLE IX PRACTITIONERS

1



Agenda

- The Clery Act (with Title IX Intersections)
 - CSAs
 - Crimes
 - Geography
 - Campus Alerts
- VAWA
 - Amendments/Definitions
 - Procedural Requirements
 - Education 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)

- Provide Educational Programs and Campaigns on Dating/Domestic Violence, Sexual Assault, & Stalking
- Have Procedures for Institutional Disciplinary Action for DV/DV/SA/S
- If you have a campus police or security department: Publish Daily Crime Log
- If you have residential facilities: Fire Log, Fire Safety Report, Missing Persons Procedures

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COUNTING CRIME STATISTICS

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

Licensed, professional counselors. Includes individuals who are unlicensed and uncertified but acting under the supervision of an exempt counselor, e.g., a graduate student doing an internship.



Pastoral Counselors

NOTE: These positions are exempt only when acting within the scope of their duties as a counselor or trainee.

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REPORT



CSA FUNCTION

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

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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 Crimes)

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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

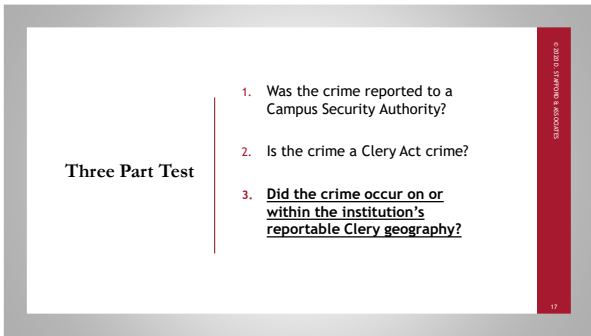
It is not the word used but the facts of the case that determine how it gets counted

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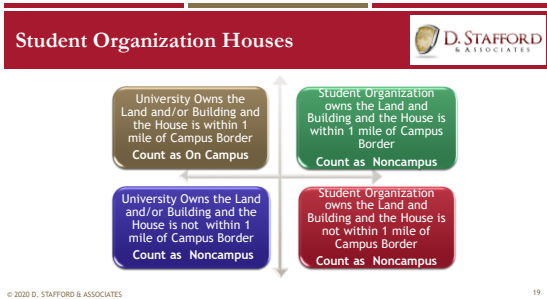
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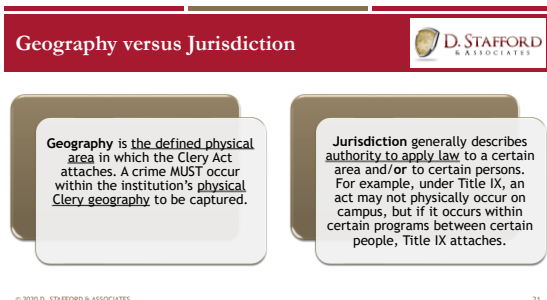


Impact of Location & Party

- 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 crimes, must use processes even if occurs off-campus

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Public Disclosures

Daily Crime Log

Annual Security Report (ASR)

Emergency Notifications/Timely Warning Notices

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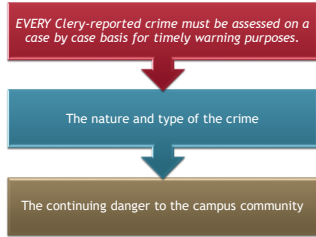
Timely Warning/Emergency Notification

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

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Timely Warning Decisions



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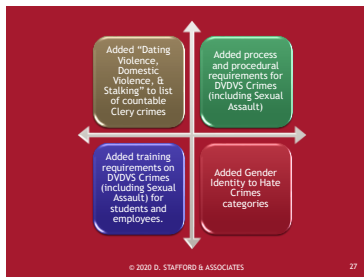
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Duties Under VAWA



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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 Crimes)

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Rape

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. This definition includes any gender of victim or respondent.

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Fondling

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

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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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Sexual Assault

INCEST

Non-forcible sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law

STATUTORY RAPE

Non-forcible sexual intercourse with a person who is under the statutory age of consent

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Domestic Violence

A felony or misdemeanor crime of violence committed by:

- a) a current or former spouse or intimate partner of the victim
- b) by a person with whom the victim shares a child in common
- c) by a person who is cohabitating with, or has cohabitated with the victim as a spouse or intimate partner
- d) 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
- e) 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 Violence

- Violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim.
- i. 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.
 - ii. For the purposes of this definition—
 - A. Dating Violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse.
 - B. Dating violence does not include acts covered under the definition of domestic violence.

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Stalking

- Engaging in a course of conduct directed at a specific person that would cause a reasonable person to—
- a) Fear for the person's safety or the safety of others; or
 - b) Suffer substantial emotional distress

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Stalking (related definitions)

- a) *Course of conduct* means two or more acts, including, but not limited to, acts 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.

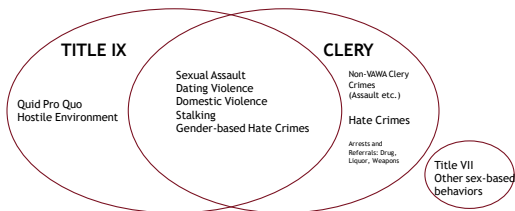
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Discussion: What's Missing?

- 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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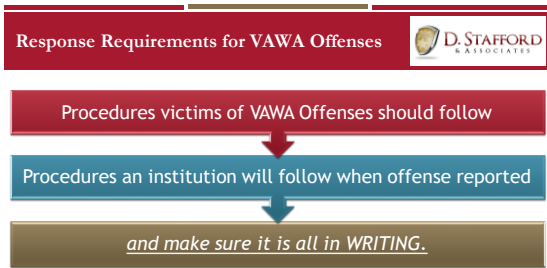
Overlapping Conduct Violations



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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



- 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 by paragraph (k)

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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 under Clery 



Advisor Requirement

- Advisor - individual who provides support, guidance, or advice
- Do not limit the choice of advisor
- May restrict participation if apply equally
- Provide timely notice of meetings
- May form a pool of people
- Can remove a disruptive advisor
- Could allow them to serve as a proxy
- Don't have to delay for them (but encouraged to be reasonable)

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Advisor Requirement 



[Blank space for notes]

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Standard of Evidence 



- 2020 Title IX Regulations
 - Either the preponderance of the evidence standard or the clear and convincing standard but 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 offense (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
 - notifications to the parties
 - interviews with parties and witnesses
 - site visits
 - methods used to gather other evidence
 - hearings held
- 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)

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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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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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Bias Free and Training for "Officials"



Title IX ("Title IX Personnel")

- Training for all on...
 - definition of sexual harassment in § 106.30
 - the scope of the recipient's education program or activity
 - how to conduct an investigation and grievance process
 - how to serve impartially, including by avoiding prejudgment of the facts
- Decision Makers
 - training on any technology and on issues of relevance
- Investigators
 - relevance to create an investigative report that fairly summarizes
- Training materials must not rely on sex stereotypes


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Clery ("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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Appeals 

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

<p>2020 Title IX Regulations</p> <ul style="list-style-type: none"> • 7 years 	<p>Clery Act</p> <ul style="list-style-type: none"> • Retain all records used in compiling ASR for three years from the latest publication of the report to which they apply (in effect 7 years)
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VAWA Education Requirements



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Education and Prevention under Clery

-  Annual training for conducting "officials" (Investigators, Adjudicators, Appeals)
-  Primary Prevention and Awareness Programs for all incoming students and new employees
-  Ongoing Prevention and Awareness Campaigns for ALL students and employees
-  CSA Training and "Super" CSA Training

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Primary Prevention Best Practices



"Programming, initiatives, and strategies intended to stop dating violence...stalking... before they occur through the promotion of positive and healthy behaviors that foster healthy, mutually respectful relationships and sexuality, encourage safe bystander intervention, and seek to change behavior and social norms in a health and safe directions."

- Not required that all students take or attend (but mandate encouraged)
- Must show "good faith effort" to reach them with "active notification"
- Format and timeframe encouraging maximum attendance
- Equally important to prevent perpetration as it is to prevent victimization

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Primary Prevention & Awareness



"The institution's primary prevention and awareness programs for all incoming students and new employees, which must include..."



- Statement prohibiting dating DVDVSAS
- Definitions of DVDVSAS
- Definition of consent
- Safe and positive options for bystander intervention;
- Information on risk reduction

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Ongoing Prevention & Awareness



"Ongoing prevention and awareness campaigns for students and employees...must provide the same information as the primary awareness and prevention programs"



- Deeper dives
- Sustained over time
- Promote services
- Range of strategies/audiences
 - Social media, email, posters, ads
 - Take Back the Night
 - Sports teams, Greek, dorms
 - Student fairs or campus events
 - DV program for supervisors

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CSA Training (Recommendations, Not Requirements)



- Role of a CSA
- Provide Reporting materials
 - Map of Clery geography
 - Definitions of Clery crimes
 - Forms for documenting and reporting
- Importance of documentation
- Need for timely reporting
- "Super CSAs?"
- Personally Identifiable Information

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Drafting the Policy

1



Agenda

- Policy vs. Procedures
- Important considerations
- Policy sections
- Additional considerations

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POLICY VS. PROCEDURES

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Policy vs Procedure



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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Example



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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Example



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.

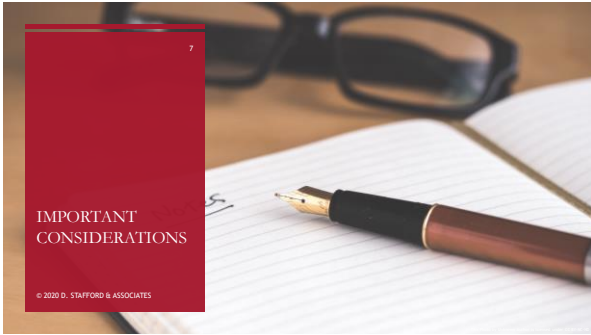
External process information

- "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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Important Considerations



Scope



MOUs



Multiple campuses



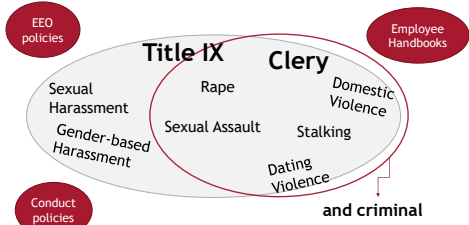
Jurisdiction

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Important Considerations



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When Multiple Policies May Apply



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LAW	WHO	WHAT	ENFORCEMENT
TITLE VI	STUDENTS	RACE, COLOR, OR NATIONAL ORIGIN	OCR
TITLE VII	EMPLOYEES	RACE, COLOR, RELIGION, SEX	EEOC
TITLE IX	STUDENTS/EMPLOYEES	BASIS OF SEX	OCR
504	STUDENTS	DISABILITIES	OCR
ADA/ADAA	EMPLOYEES (TITLE I) STUDENTS (TITLE II/III)	DISABILITIES	EEOC/DOJ
ADEA	EMPLOYEES	AGE (40+)	EEOC
PDA	EMPLOYEES	PREGNANCY/TITLE VII	EEOC
USERRA	EMPLOYEES	VETERANS	DOL/DOJ

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Discussion: Different Voices

- Who should be around the table when drafting the policy?

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Competencies



Laws and legal issues



Cultural competencies



Campus climate



Campus politics



Approval process

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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



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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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Definitions from Title IX Regulations



■ **Education Program or Activity:** Includes locations, events, or circumstances over which the institution exercises substantial control over both the respondent and the context in which the sexual harassment occurs, and also includes any building owned or controlled by a student organization that is officially recognized by a postsecondary institution. This does not include education programs or activities outside of the United States.

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Definitions from Title IX Regulations



■ **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, or to any employee of an elementary and secondary school.

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Definitions from Title IX Regulations



■ **Formal Complaint:** 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.

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Definitions from Title IX Regulations



- **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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Definitions from Title IX Regulations



- **Supportive Measures:** Nondisciplinary, 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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Other Recommended Definitions



- **Advisor:** Any person who accompanies a respondent or complainant during the investigatory process and/or hearing. Except for conducting cross-examination at a hearing, the advisor's role is limited to providing support and guidance to their advisee and the advisor may not speak or otherwise represent their advisee throughout the process. If an advisor of the party's choice does not attend the hearing, the institution will provide an advisor of the institution's choice for the sole purpose of conducting cross-examination on behalf of the party.

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Other Recommended Definitions



- **Decision-maker(s):** Annually trained University official(s) authorized to determine emergency removals, conduct hearings, and/or review appeals. Decision-maker(s) may only serve one role within a case and must be free of bias or a conflict of interest.
- **Witness:** Any individual who has direct knowledge of an incident. Character witnesses are not part of the Title IX grievance process.

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Decisions About Definitions



- **Day:** Identify that a day is “calendar day” if that is what you are using.
- **Employee:** Is there a definition of “employee” that is institutionally-accepted? Who interprets that definition?
- **Student:** Is there a definition of “student” that is institutionally-accepted? Who interprets that definition?

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Title IX Specific Prohibited Conduct

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

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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 victims 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



Counseling



Course-related



Modifications of work/class schedules



Campus escort services

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Accommodations and Interpretive Services



Disability
resources



Interpretive
services



Student
responsibility to
request

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Interim Action



Emergency
Removal

Administrative
Leave

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Grievance Procedures



Notice

Dismissal

Consolidation of complaints

Investigation

Hearing

Determination of responsibility

Appeals

Informal resolution

Retaliation

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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



Data custodian



Record retention policy



Duration



Access

Considerations

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Interpretation and Revision



Policy interpreter



Review process



Published date



Reports in progress


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Update References to Title IX 

Conduct code Minors on campus Inappropriate relationships

Vendor contracts Collective bargaining agreements

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 Potential conflicts  Preemption State and Local Laws

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Discussion:
First
Amendment

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- How does the First Amendment come into play with our processes?
- How do we reference it in the policy?

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Discussion:
Time
Implications of
Reports

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- How are you managing active cases?
- If a report is submitted for an incident that occurred prior to the implementation of the policy, what applies?

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Title IX and Athletics

1



Agenda

- Compliance
- Inclusion of LGBTQ+ student-athletes
- NCAA Sexual Violence policy
- Miscellaneous

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An athletics program can be considered gender equitable when the participants in both the men's and women's sports programs would accept as fair and equitable the overall program of the other gender. No individual should be discriminated against on the basis of gender, institutionally or nationally, in intercollegiate athletics.

NCAA Gender Equity Task Force, 1992

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Title IX Compliance 



Effective Accommodation of Interest and Abilities



Scholarships



Laundry List

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Participation 



Sport



Participation

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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

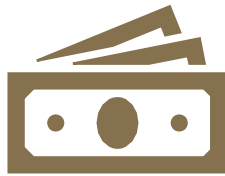
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Scholarships

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



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Equal Athletic Opportunities – Laundry List

- Equipment and supplies
- Scheduling
- Travel and per diem
- Tutors
- Coaching
- Facilities
 - Locker rooms, fields
 - Medical and training
 - Housing and dining
- Publicity
- Support services
- Recruiting

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Compliance Efforts



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Inclusion of LGBTQ+ Student Athletes

- Champions of Respect
- Importance of inclusivity
- Best practices
- Definitions and terms

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Inclusion of LGBTQ+ Student Athletes



- Transgender participation guidance
 - FTM taking testosterone can compete on men's team
 - MTF taking suppression medication can compete on men's team
 - If not taking medication, participation on assigned birth gender
 - FTM can participate on men's or women's team
 - MTF may not compete on women's team

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NCAA SEXUAL VIOLENCE POLICY

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NCAA Campus Sexual Violence Policy – 2014



History	Principles	Attestation Form	Investigations
<ul style="list-style-type: none"> • 2011 Summit • 2014 Resolution • 2017 Policy • 2017 and 2019 Toolkit 	<ul style="list-style-type: none"> • Policy and procedures • Education • Collaboration 	<ul style="list-style-type: none"> • Knows procedures • Policies available • Education requirements 	<ul style="list-style-type: none"> • Staff must cooperate

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NCAA Sexual Violence Policy – May 2020



- New Requirements regarding investigation, discipline, or criminal conviction
 - Student-athlete disclosure
 - Institutions must share information
 - Policy directing staff to information
- Effective date 21-22

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NCAA Sexual Violence Policy – The Tool Kit



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Regulation Implications

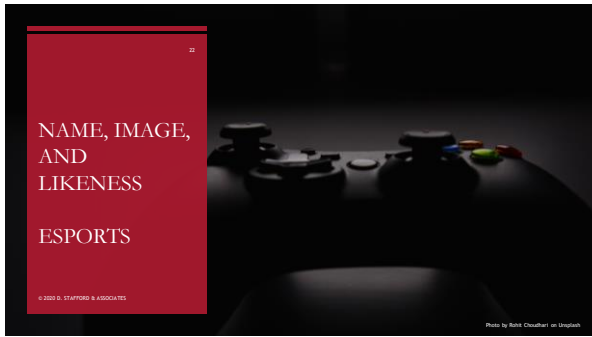


- Supportive measures - non-disciplinary
 - Communication restrictions
 - Fact-specific
 - Changing class schedule "more acceptable" than removal from sports team
 - Disciplinary if it is listed
- Emergency removal
 - Immediate threat to PHYSICAL health or safety

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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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**Discussion:
Moving
Forward**

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- Who is in charge of athletic compliance efforts on your campus?
- How can you work with athletics in terms of sexual violence?
- What strategies are effective?

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Education and Training

1



Agenda

- VAWA Training Requirements
- Title IX Requirements
- Bringing Prevention to Campus
- Models of Prevention

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VAWA
TRAINING
REQUIREMENTS

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From the VAWA Regulations...



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

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Programs to Prevent VAWA Crimes



Programs to prevent dating violence, domestic violence, sexual assault, and stalking include both primary prevention and awareness programs directed at incoming students and new employees and ongoing prevention and awareness campaigns directed at students and employees, as defined in paragraph (j)(2) of this section.

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Programs to Prevent VAWA Crimes

- Culturally relevant
- Inclusive
- Sustainable
- Responsive
- Informed by research
- Consider environmental risk and protective factors as they occur on the...
 - Individual
 - Relationship
 - Institutional
 - Community
 - Societal



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Primary Prevention Programs Requirements



- Institutional statement
 - Definitions
 - Bystander intervention
 - Risk reduction

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Primary Prevention Programs



- Informed by research and assessment
- Stop before they occur through the promotion of positive behaviors
- Encourage Bystander intervention
- Seek to change behavior and social norms

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Ongoing Prevention Programs



- Programs and campaigns that are:
 - Sustainable
 - Increased understanding
 - Range of strategies
 - Inclusive audience

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Awareness Programs



- 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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Clery Handbook Guidance

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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Primary Prevention Programs



Delivery Options

- In-person interactive workshops
- Theater performances
- Presentations
- Videos
- Online interactive training

Considerations: community college, campus is closed, adult learners, traditional aged students

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Coordinated Strategies:

- Communication
- Programming, such as TBTN, safe walks, etc.
- Coordination with campus groups
- Tabling
- Curriculum infusion

Ongoing Prevention & Awareness

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TITLE IX TRAINING REQUIREMENTS

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Campus Community: Who is included?



Students



Employees



"Mandatory Reporters"

Title IX
School policy
State law



Officials with authority to institute corrective measures

Deans
Supervisors
Other?



"Title IX Personnel"

Title IX
Coordinators
Investigators
Decision-makers
Informal Resolution
Facilitator

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Mandatory Reporters



- Institutions decide for student disclosures
 - Who are mandatory reporters?
 - No reporting obligation
 - Report with consent
 - No training requirement but... you should
- Different than state law regarding "mandated reporters"

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Title IX Personnel



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§ 106.45 (1)(iii): Title IX Training – Bias



- “Require that any individual designated by a recipient as a Title IX Coordinator, investigator, decisionmaker, or any person designated by a recipient to facilitate an informal resolution process, not have a conflict of interest or bias for or against complainants or respondents generally or an individual complainant or respondent.”
- Any materials used to train Title IX Coordinators, investigators, decision-makers, and any person who facilitates an informal resolution process, must not rely on sex stereotypes and must promote impartial investigations and adjudications of formal complaints of sexual harassment;
- The Department leaves recipients flexibility to decide the content of the training required for Title IX personnel under that provision, and nothing in the final regulations precludes a recipient from addressing implicit or unconscious bias as part of such training.

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§ 106.45 (1)(iii): Title IX Training



- “A recipient must ensure that Title IX Coordinators, investigators, decision-makers, and any person who facilitates an informal resolution process, receive training on
 - the definition of sexual harassment in § 106.30,
 - the 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, and
 - how to serve impartially, including by avoiding prejudgment of the facts at issue, conflicts of interest, and bias.”

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§ 106.45 (1)(iii): Title IX Training



- A recipient must ensure that decision-makers receive training on:
 - any technology to be used at a live hearing and
 - on 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, as set forth in paragraph (b)(6) of this section.
- A recipient also must ensure that investigators receive training on:
 - issues of relevance to create an investigative report that fairly summarizes relevant evidence, as set forth in paragraph (b)(5)(vii) of this section.

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Recordkeeping



- 7 years
- All materials used to train Title IX Coordinators, investigators, decision-makers, and any person who facilitates an informal resolution process. A recipient must make these training materials publicly available on its website, or if the recipient does not maintain a website the recipient must make these materials available upon request for inspection by members of the public.

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Training for Employees and Students



- Types?
- Who receives training?

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Who's Around the Table?



How many tables?



Who is at the table?

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Essential Campus Components



Coalition Building



Policy Analysis



Data Collection



Inclusive Programming



Male Involvement



Social Marketing

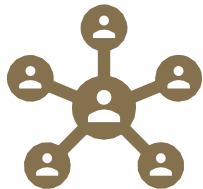
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Coalition Building

- Collaboration
- Share knowledge
- "Check ins"



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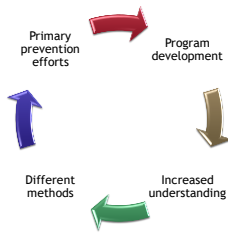
Policy Analysis



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Data Collection

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Inclusive of Marginalized Populations



- 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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MODELS FOR PREVENTION

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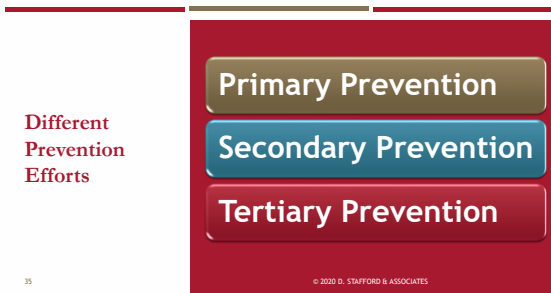
Effective Prevention Strategies



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The Public Health Approach



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Social-Ecological Model



Individual



Relationship



Community



Societal

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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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Other Strategies



Social Justice Paradigm

Root cause of sexual violence



Stop Sexual Violence

Strategies
Approaches

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Discussion: Different Populations

- What strategies do you consider based on population?
 - Students
 - Employees
 - Special Populations

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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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Ongoing Prevention -Employees



Name of Program	Date Held	Location Held	Complied with Section B a-e?	Which Prohibited Behavior Covered?
Faculty Spring Orientation	01/15/2013	Graduate School Faculty Conference Room	Yes	DoV, DaV, SA & 5*
Faculty Spring Orientation	03/18/2013	Arts & Sciences Conference Room	Yes	DoV, DaV, SA & 5*
Faculty Fall Orientation	8/25/2013	Moot Court Room	Yes	DoV, DaV, SA & 5*
Staff In-Service	9/11/2013	Human Resources	Yes	DoV, DaV, SA & 5*
Poster Campaign: "Challenging Myths and Stereotypes About Victims of Rape in HE"	11/01/2013-12/01/2013	Posters placed in Faculty lounges in Main Hall 81-85, King Hall, offices of advisers	Yes	DoV, DaV, SA*
Web-based Training: "The Role of Faculty in Assisting Students Who Disclose Abuse"	04/10/2013	Provost Smith	Yes	DoV, DaV, SA & 5*

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Final Thoughts



Develop a plan



Clery requirements



Primary and ongoing programs



Prevention



Documentation

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- When is touching ok?
- When is sexual touching ok?
- How do you know if you have consent?
- How do you know when consent is withdrawn?

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Affirmative Consent

Yes means Yes!



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§106.30 Definitions – Consent



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

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Key Elements




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

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Consent Is Absent when... 

Force

- Physical
- Coercion
- Intimidation
- Threat

Incapacitation

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Physical Force 

Holding down **Forced to touch** **How much?**

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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

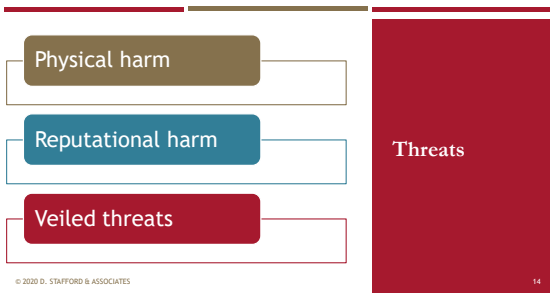


Verbal

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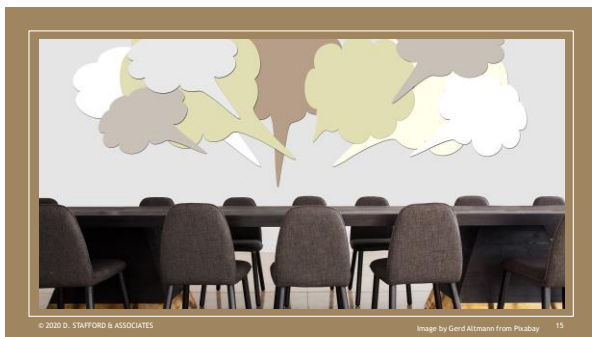
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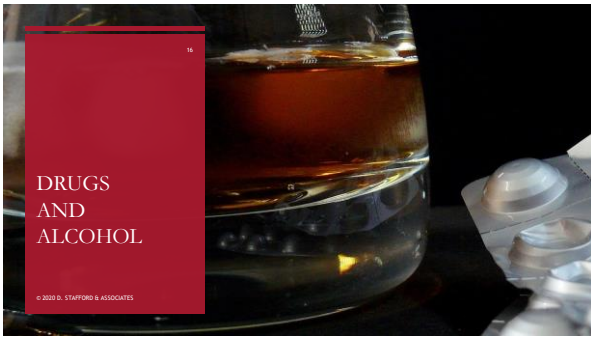


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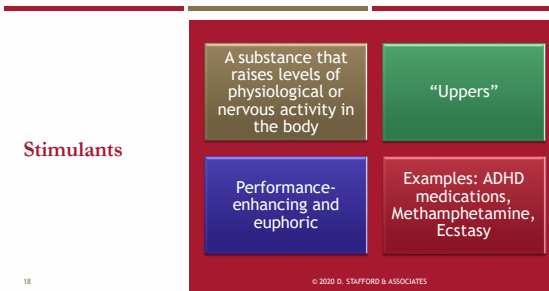
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Depressants


Inhibit the function of the central nervous system	"Downers"
Relaxing, decreased inhibitions	Examples: "benzos," sleeping pills, marijuana


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Other Drugs





Hallucinogens



Opioids

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What is a Drink?





12 OZ BEER



4-5 OZ OF WINE



1.5 OZ 80 PROOF

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What is a Drink in College?



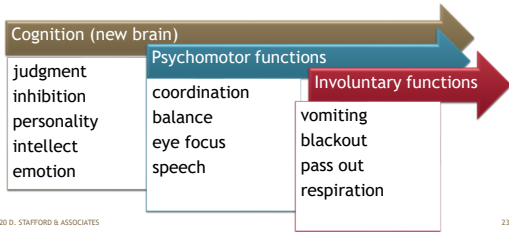
- Water bottle
- Boxed wine
- Solo cups

Photo by iStockphoto.com/ChrisL...
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Impact of Alcohol Consumption Levels

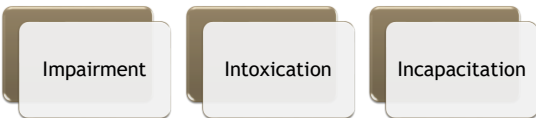


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Levels of Consumption



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Impairment

- The state of being diminished or weakened due to the consumption of alcohol.
- Alcohol is a nervous system depressant.
- Impairment begins as soon as alcohol enters the bloodstream.
- Impairment increases with consumption of alcohol.

Question: Can two initially IMPAIRED people legally have sexual intercourse?

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Intoxication



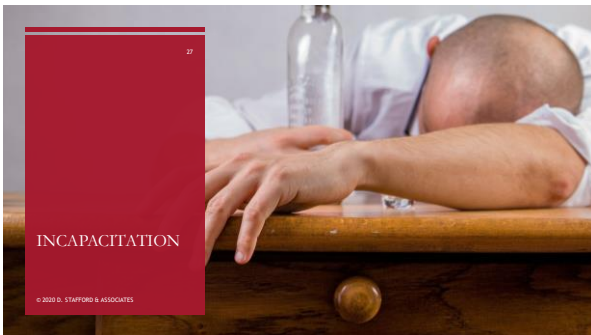
- An act or instance of inebriation; drunkenness.
- Intoxication is legally met when an individual's blood alcohol level reaches .08 or greater.

Question: Can two INTOXICATED people legally have sexual intercourse?

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Incapacitation 

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

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Incapacitation – Not Alcohol Related 



Physical



Mental

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Incapacitation 



Unconscious



Sleep



Blackout

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Incapacitation Questions



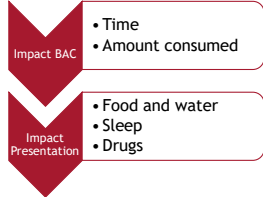
- Were any parties or witnesses INCAPACITATED?
- Were any parties or witnesses IMPAIRED to a degree that it would impact memory and actions?
- Were any parties impaired during the interview to a degree that it would impact recall and judgement?

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Incapacitation



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Blood Alcohol Content



Number of drinks



Body weight



Time

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Incapacitation

- Smell
- Slurred speech
- Bloodshot eyes
- Cannot stand
- Cannot walk
- In and out of consciousness
- Blackout
- Vomiting
- Behavior

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- Lack the ability to determine:
 - Who is having sex with them?
 - When are they having sex?
 - Where are they having sex?
 - What is the sexual act?

Incapacitation

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Two-Step Determination



Was the Complainant Incapacitated?

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

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Blackout v. Pass Out



Fragmentary blackout

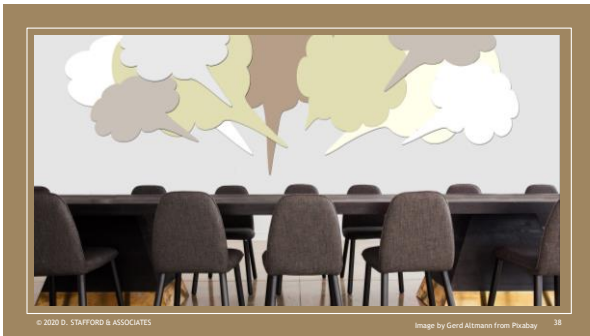
En Bloc blackout

Pass out

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Conflicts of Interest



Roles on campus



Past employment



Volunteering



Social media presence

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Recognizing Bias



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Discussion: Bias

What is the difference between *implicit bias* and *explicit bias*?

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Bias 

- Parties
- Race
- Gender
- Gender Identity
- Sexual orientation
- Nationality

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Bias 

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

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Disability Considerations 

- Bias
- Limited data is available
- Accessibility
- Accommodations

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Additional Considerations



- Low reporting
- Who is reporting?
- More reports of stranger rape than acquaintance rape
- More likely to report when a different race

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Barriers to Reporting



- Race
- Sexual Orientation
- Disabilities

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Impact on Reporting



- Race
- Sexual Orientation
- Disability

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Employee/Student Relationships 



Policy



Power dynamics



Reporting

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Issues for IPV Cases 



Cooperation



Predominant aggressor



Cross-claims



Threat teams



Safety plans

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Issues for Stalking Cases



Recognize behaviors



Duration



Frequency



Safety plan

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Retaliation



Identify behaviors

Which policy?

Remedies

What qualifies?

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UNDERSTANDING STRESS AND TRAUMA

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Keep in Mind



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Comparison



Stress



Trauma

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NEUROBIOLOGY

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Impact on Memory 



Details



Time and Context

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Response 



Reflex



Habit

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Interviewing 



Consistent application



Ask clarifying questions



Avoid bias

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Intake and Supportive Measures

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Agenda

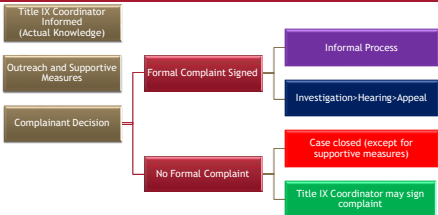
- Review Title IX and Clery Regulations
- Contacting the Complainant
- Contacting the Respondent

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Title IX Case Flowchart

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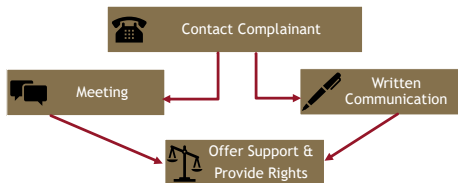
Actual Knowledge 

- 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
 - 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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Actual Knowledge - Next Steps 



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Terminology 

<p>Clery</p> <ul style="list-style-type: none"> • Accommodations <ul style="list-style-type: none"> • Victim • Protective Measures <ul style="list-style-type: none"> • Victim • Support Services <ul style="list-style-type: none"> • Victim • Accused (can but not required) • Employees 	<p>Title IX</p> <ul style="list-style-type: none"> • Supportive Measures (2020 Title IX Regulations) <ul style="list-style-type: none"> • Complainant • Respondent
--	---

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2020 Title IX Regulations - 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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2020 Title IX Regulations - 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	and other similar measures	

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Clery 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 Accommodations and Protective Measures



Clery Accommodations



Clery Protective Measures

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Title IX Formal Complaint



Filed/Signed



Alleging sexual harassment



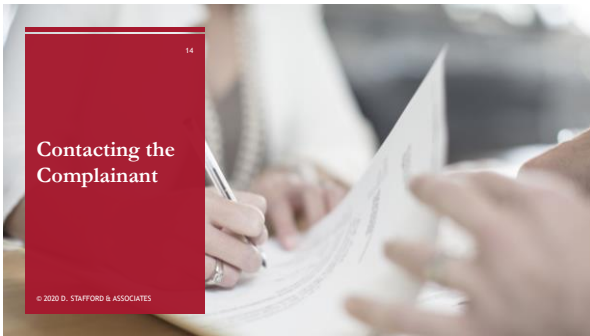
Requesting an investigation (or informal option)

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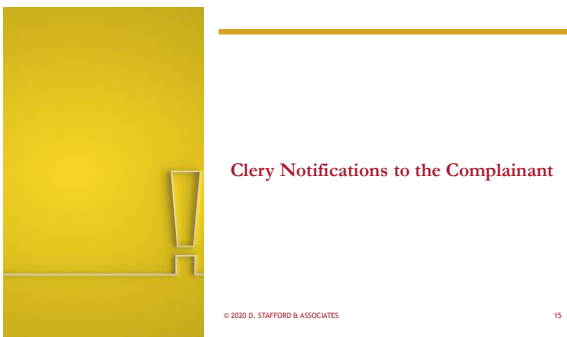
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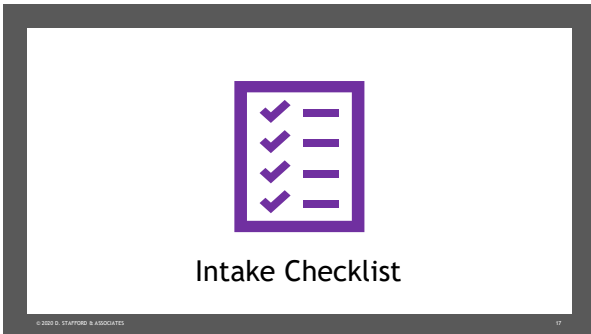
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What is the Difference? 



Confidentiality



Privacy

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Follow-Up Steps 



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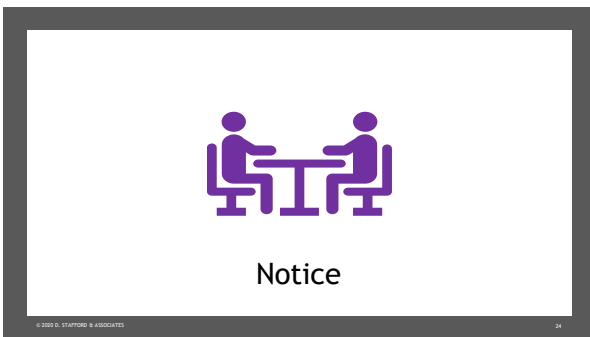
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Outline of Rights

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Meeting Review

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Follow-Up Steps



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Evidence Collection and the Investigatory Process

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Agenda

- Investigators
- Developing an Investigative Strategy
- Breaking Down the Definitions
- Evidence Collection

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INVESTIGATORS

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QUALITIES OF GREAT INVESTIGATORS

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Investigation Case Management



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DEVELOPING AN INVESTIGATIVE STRATEGY

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Investigative Strategy

- Scope
- Methodology
- Challenges
- Pre-Work
- Roadmap

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Scope



- Notice of Allegation
- Notice of Investigation
- Policy Definitions
- Rights of the Parties

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Methodology (and who does what?)



- Liaisons
- Logistics
- Internal Communications

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Challenges: Evidence Considerations



- Testimonial Evidence
- Non-Testimonial Evidence

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Challenges: Other



What issues could come up given the facts of the case?

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Pre-Work



- Draft Questions
- Initial Evidence Collection

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Investigation Roadmap

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BREAKING DOWN THE DEFINITIONS

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Sexual Harassment under Title IX

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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PRONG 1: Quid Pro Quo

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

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PRONG 2: Hostile Environment +

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

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PRONG 3: Sexual Assault

***Rape** is 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.*

***Fondling** is the touching of the private body parts of another person for the purpose of sexual gratification, without the consent of the victim*

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PRONG 3: Intimate Partner Violence

Dating Violence: Violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim.

Domestic Violence: A felony or misdemeanor crime of violence committed by a current or former spouse or intimate partner of the victim. . .

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PRONG 3: Stalking

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

Stalking is defined as engaging in a course of conduct directed at a specific person that would cause a reasonable person to—

- *Fear for the person's safety or the safety of others; or*
- *Suffer substantial emotional distress*

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Retaliation

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Types of Evidence



Real evidence



Demonstrative



Documentary



Testimonial

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Ability to Utilize Evidence



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Research



Websites



Organizations



Calendars



Schedules

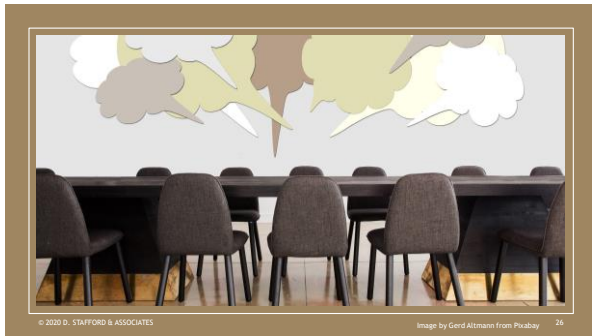


Party "directory information"

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Initial Evidence Collection



Other "statements"

Evidence from campus sources

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Other Sources of Evidence



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Floorplans



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Diagrams



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Investigation Timeline



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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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The Regs on Evidence



- Any evidence obtained
 - directly related to the allegations
 - 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 a party can meaningfully respond

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Evidence Collection



Everything Collected

Directly Related

Relevant

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Everything BUT...



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

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“Directly Related”: in the comments



- “interpreted using their plain and ordinary meaning”
- We note that “directly related” in § 106.45(b)(5)(vi) aligns with requirements in FERPA, 20 U.S.C. 1232g(a)(4)(A)(i). (“information directly related to a student.”)
- “directly related” may sometimes encompass a broader universe of evidence than evidence that is “relevant.”

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Agenda

- Interviewing Basics
- The DSA Interview Outline
- Stress, Trauma, and the Interview
- Sample Questions

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What are Interviews



**PART OF EVIDENCE
(TESTIMONIAL)**



CONVERSATION



STRUCTURED

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Interview Golden Rules



Preparation

Environment

Flexibility

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Interview Preparation



Research
 The incident
 The policy
 Topics of inquiry



Pre-draft questions
 Background questions
 Narrative question
 Case Specific Questions



Preliminary Info
 Procedural
 Recordkeeping
 Notice

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INTERVIEW –
WHAT TO
BRING

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Flexibility 



I pledge to...
Be open-minded
Consider different theories of a case
Roll with the surprises
Adapt to the room

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The DSA Interview Outline


- Preliminaries
- Background
- Narrative
- Clarification
- Case Questions
- Closing

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PRELIMINARIES:
You do the talking



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BACKGROUND:
Build the Rapport



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NARRATIVE:
The Big Question



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CLARIFICATION:
Filling in the holes



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CASE QUESTIONS:
The Pre-Drafted
Must Asks



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CLOSING:
Loose Ends



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EVALUATION



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Interrupting

Two questions at once

Not listening for the answer

Avoiding the hard questions

Lost focus on elements

**Interviewing
Bad Habits**

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STRESS,
TRAUMA, AND
THE
INTERVIEW



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Re-traumatization



Safety and Wellbeing



Maintain privacy and confidentiality



Kept up to date



Empathy and respect

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Question Format



Tone



Phrasing



Open-ended



Safe



Judgment-free

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Witness Interviews



Follow same interview structure



Assess credibility



Confidentiality/Privacy



How do they "know"?

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**RESPONDENT -
POTENTIAL
DEFENSES**

① Victim consented and is now lying (Regret? Guilt?).

🍷 Victim consented but does not remember due to intoxication.

👉 The sexual misconduct did not occur (victim was mistaken).

👤 The sexual misconduct occurred but a different assailant.

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**RECREATE
THE SCENE**

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Physical Space



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Sensory



SMELLS



TEMPERATURE



TOUCH



SOUNDS



LIGHT



TASTE

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Harassment Questions



- WHO, WHAT, WHEN, WHERE, AND HOW
- RESPONSE
- IMPACT
- WITNESSES
- EVIDENCE

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Elements of the Policy Violations

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

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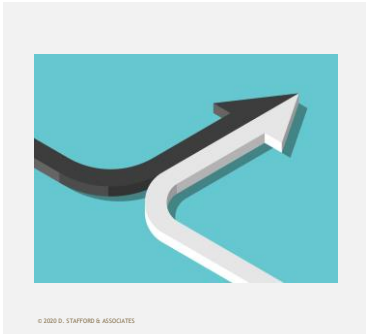
Consent



- Consent cues
- Force, Coercion, Intimidation, Threats
- Incapacitation
- Policy definition

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QUESTIONING
THE PARTIES

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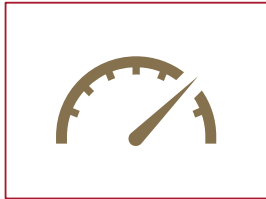


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Deception 

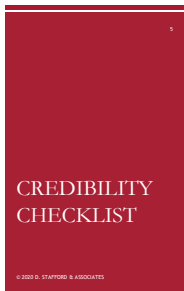


What is the percentage of people who cannot go 10 minutes without lying??

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Credibility Checklist 

Truthfulness	Past behaviors	Post-assaultive behaviors	Corroborating evidence	Ability to perceive
Ability to remember	Plausibility	Demeanor	Motivation	Bias

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Truthfulness 



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Truthfulness 



Repeat v.
Reconstruct



Get them to
talk



Consistency



Details

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Past and Post Behaviors 



Past behaviors









Post assaultive

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Corroborating Evidence

-  Physical
-  Contemporaneous documentation
-  Personal documents
-  Admissions
-  Eyewitness
-  Outcry

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Ability to Perceive






-  Distance
-  Knowledge
-  Credentials
-  Competence

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Ability to Remember

-  Passage of time
-  Alcohol
-  Blackout
-  Peripheral details
-  History of memory

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Plausibility



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Demeanor

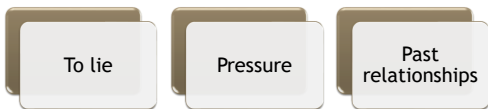


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Motivation



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Bias



Personal preference



Impartiality



Internal Biases

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Confirmation Bias • Confirmed preconceived opinion	Bias
Availability Bias • Most important to the memory immediately recalled	
Hindsight Bias • See things as more predictable than they were	
Foresight Bias • Ability to predict future events	
Gender Bias • More likely to believe one gender over another	
Race • More likely to believe one race over another	

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Other Factors that Impact Credibility



Memory and trauma

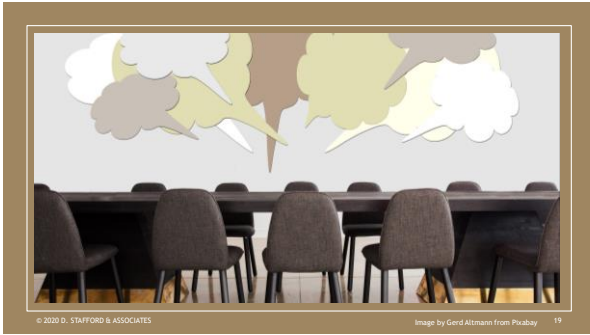


Cross-cultural issues

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Decision-maker determines



Built-in pause



Cannot be pre-screened

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What Does Relevancy Mean?



- Directly related to the issue and helps prove or disprove the issue AND fact must be material to an issue in the case
- Makes something more/less true or more/less false
- The tendency to make a fact more or less probable than the fact would be without the evidence
- Questions are irrelevant when they are not related to the issue at hand

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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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Relevancy Exceptions

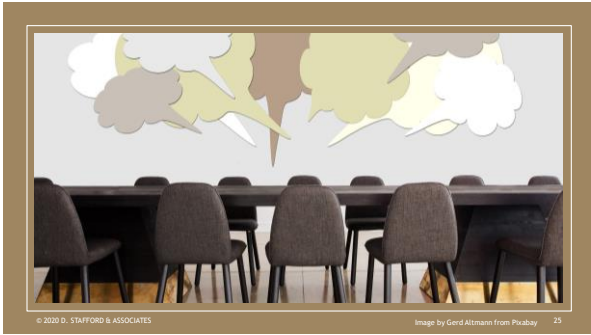


"Questions and evidence about the complainant's sexual predisposition or prior sexual behavior are not relevant, unless such questions and evidence about the complainant's prior sexual behavior are offered to prove that someone other than the respondent committed the conduct alleged by the complainant,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

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Agenda

- Informal resolution
- Formal resolution
- Sanctions and remedies
- Appeals

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2

We are Here... 



Intake



Investigation

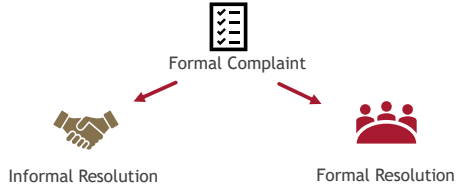


Resolution

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Resolution Options



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§106.45(b)(9) – Informal Resolution

“However, at any time prior to reaching a determination regarding responsibility the recipient may facilitate an informal resolution process, such as mediation, that does not involve a full investigation and adjudication...”

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Informal Resolution



Notice



Voluntary



Not allowed for
Employee
Respondent/Student
Complainant

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Informal Resolutions – Conduct Conferences



Both parties must
agree



Acceptance of
Responsibility



Sanctions

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Informal Resolution Recordkeeping Considerations

Records subject
to subpoena

What happens
if it becomes a
formal
resolution?

Incomplete
requirements

Required
record keeping





Is it considered
"conduct
history?"

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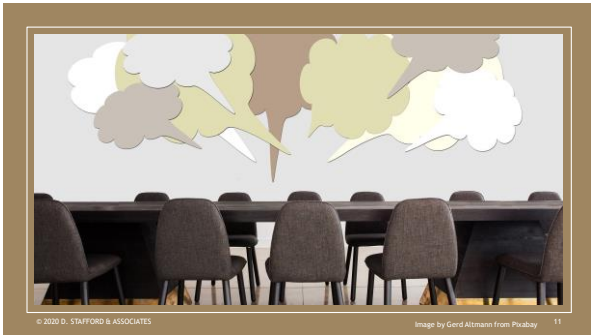
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Informal Resolution

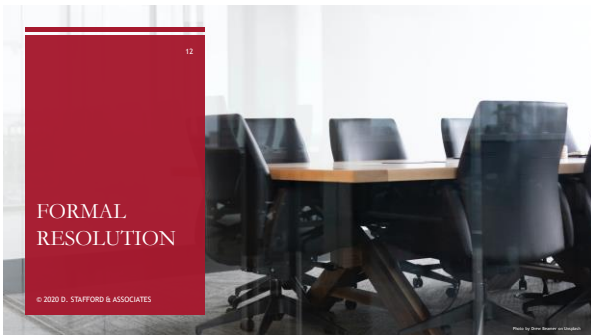
-  Mediation
 -  Restorative Justice
 -  Educational efforts
 -  Other
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Single Adjudicator Model



“Combining the investigative and adjudicative functions in a single individual may decrease the accuracy of the determination regarding responsibility, because individuals who perform both roles may have confirmation bias and other prejudices that taint the proceedings, whereas separating those functions helps prevent bias and prejudice from impacting the outcome.”

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Formal Resolution – Considerations

- Scheduling
- Decision maker(s)
- Advisors
- In person or virtual

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Live Hearings



- Must provide for a live hearing
- At the request of either party, the recipient must provide for a 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
- Must create an audio recording or transcript and make available.

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Advisors 



"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 



"At the live hearing, the decision-maker(s) must permit each party's advisor to ask the other party and any witnesses all relevant questions and follow-up questions, including those challenging credibility. Such cross-examination at the live hearing must be conducted directly, orally, and in real time by the party's advisor of choice and never by a party personally..."

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Relevancy 



"Only relevant cross-examination and other questions may be asked of a party or witness. 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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Relevancy

- Prior sexual history
- Privileged information
- Duplicative
- Why are you asking the question?

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Participation







"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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Formal Resolution – Making a Finding

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

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Disciplinary Sanctions and Remedies 



Sanctions



Remedies

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Formal Resolution – Disciplinary Sanctions 

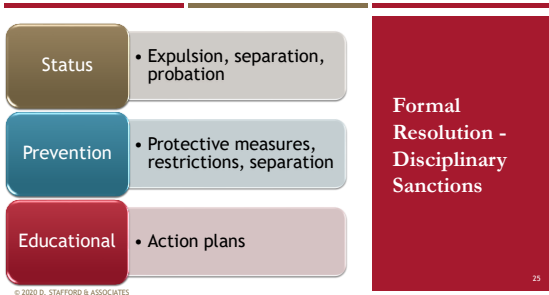
A recipient may impose disciplinary sanctions upon a respondent after a grievance process that complies with § 106.45.

“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.”

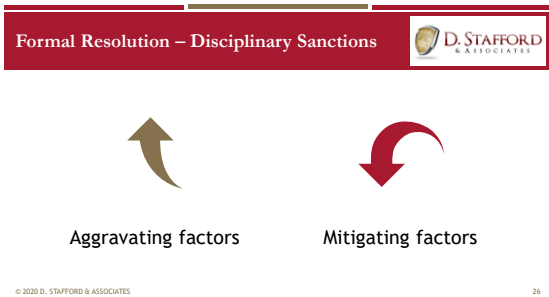
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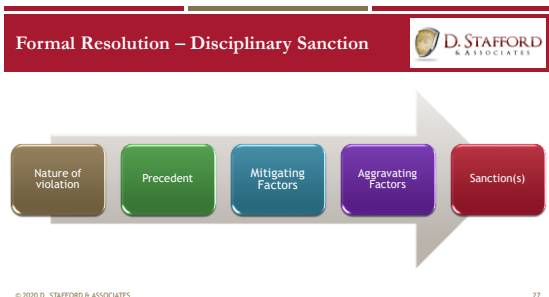
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Formal Resolution – Remedies



Make permanent supportive measures



One-sided no contact orders



Restrictions from locations



Restrictions from activities

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Written Outcome



Allegations

Procedural steps

Findings of fact

Conclusion/application

Rationale for each allegation (determination, sanctions, remedies)

Appeal procedures

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Live Hearing Recording or Transcript



Recording



Transcript

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Appeals

- Must offer
- Three bases
 - Procedure
 - New evidence
 - Conflict or bias
- Additional grounds permitted
- No other role for appeal officer

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Appeals

- Notification
- Comply with appeal standards
- Equal opportunity to respond
- Issue written decision with rationale and simultaneously

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When is the Decision Final?

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