



D. STAFFORD
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Sexual Misconduct (Title IX) Investigation Class

Presented by: DSA Title IX Team Members

D. Stafford & Associates, LLC, 179 Rehoboth Avenue, #1121, Rehoboth Beach, DE 19971
202-438-5929

Dolores Stafford, President & CEO
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www.dstaffordandassociates.com



Have you joined NACCOP yet? If not, go to www.naccop.org to become a member of this professional association supporting Clergy Compliance Officers.

Once an institution is a member, individual membership is \$95.00. You can sign up your entire Clergy Compliance Committee for membership!

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Title IX/Sexual Misconduct Investigator Agenda

Two Full Day Virtual Course

(Course may also be broken up and covered over additional days)

Day 1

Introductions

Module 1: Overview of Title IX

Module 2: Overview of VAWA

Small Group Discussions: Institutional Policies, Procedures and Practices

Module 3: Special Considerations

Module 4: Consent

Day 2

Review and Reflection

Module 5: Evidence Collection and the Investigative Process

Module 6: Interviewing

Module 7: Credibility and Relevancy

Module 8: Report Writing

Case Study/ Q & A



TITLE IX

Copyright

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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 Clergy 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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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.



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



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

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

As the Executive Director of Training and Compliance Activities, Murray builds on her 17-year career in law enforcement in which she became a nationally recognized expert in the field of best practice postsecondary institutional response to the sexual victimization of college women in the United States and in Canada. She is also a trained civil rights investigator and is well respected throughout the country for her ability to aid institutions in understating how to do best practice criminal and civil rights investigations concurrently. She is well known for her work in having provided support, advocacy and criminal investigative services for victims of sexual assault, stalking and intimate partner violence and is a sought-out speaker and investigator. She has expertise in the construction of best practice law enforcement standard operating procedures and training police officers to respond in best practice and trauma-informed ways to victims of sexual assault and intimate partner violence. In her current role, Murray coordinates curriculum development and instruction for national classes, including basic and advanced sexual misconduct investigation classes; an investigation of dating violence, domestic violence and stalking class; and a Title IX Coordinator/Investigator class offered through D. Stafford & Associates. To date, Murray has trained more than 2,500 criminal and civil rights investigators throughout the U.S.



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Drawing on her experiences as a trained criminal and civil rights investigator, Murray also oversees independent investigations of complex sexual misconduct cases; conducts audits of Title IX/VAWA Compliance; drafts institutional sexual misconduct policies and procedures; and conducts campus-based trainings pertaining to the resolution of sexual misconduct offenses on college and university campuses. Murray frequently presents at regional and national conferences on topics such as the *Sexual Victimization of College Women, Understanding Consent and Incapacitation*, and *Responding to Sexual Assault on Campus: Clery Act and Title IX Implications*. Murray also conducts provincially specific sexual misconduct trainings throughout Canada.

Murray is a graduate of the University of Richmond, where she received her Bachelor's Degree in Applied Studies in Human Resource Management. Murray is also a graduate of the 235th session of the prestigious FBI National Academy where she was awarded a graduate certificate in Criminal Justice. She has authored numerous journal articles.



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



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

She is a faculty member for the Association for Student Conduct Administration's (ASCA) Donald D. Gehring Academy teaching on subjects such as ethics, governance, threat assessment, media relations, and higher education trends. She was an affiliated faculty

member for many years in the University of Connecticut's Higher Education and Student Affairs Master's program teaching "The Law, Ethics, and Decision-Making in Student Affairs."

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

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

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



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



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



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

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

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

Additionally, Beth has given multiple presentations on other legislation and legal issues effecting higher education, including FERPA, Clery and Alcohol and Other Drug Prevention. Beth is the former National Knowledge Community Public Policy Liaison for NASPA, and also the former Massachusetts Public Policy Liaison for MA NASPA. Beth also served as the Director of the Legislative Committee for The Association for Student Conduct Administrators (ASCA) for two years. In those roles, Beth was charged with keeping abreast of proposed and passed legislation and cases impacting higher education and communicating those changes to the membership.

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



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



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Ann Todd

Consultant, Equity Compliance and Civil Rights Investigations



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

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 Portability and Accountability Act of 1996 —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 for Civil Rights—the unit of the Department of Education that oversees Title IX Compliance.
- RE:** Responsible Employee as defined by Title IX (OCR)
- 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.

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...

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.



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D. Stafford & Associates Online Sexual Assault Investigations Recertification (SAIR) Training Program

The Clery Act, as amended by the 2013 Reauthorization of the Violence Against Women Act, requires that investigators (criminal, civil rights/Title IX/conduct) and hearing board members receive annual training on the issues related to sexual assault, domestic violence, dating violence, and stalking. They are required to receive annual training about how to conduct an investigation and hearing process that protects the safety of the victim and promotes accountability.

Attendees of the D. Stafford and Associates training programs, "Investigation of Sex Crimes for Campus Police and Public Safety Agencies" and "Title IX Coordinator/Investigator Class" are eligible to participate in the Online Sexual Assault Investigations Recertification training classes at a nominal cost, which will fulfill the annual training requirement under the Violence Against Women Act requirements of the Clery Act. DSA will produce a minimum of one required class per year (each class has at least two modules) for attendees to maintain their certification and each class will have featured quizzes to measure and assess learning.

The online training is delivered via a Learning Management System that can be accessed anytime. Attendees receive a certificate following the completion of the required on line class.

(NOTE: The on line training class is reserved for and limited to individuals who have graduated from the D. Stafford & Associates Investigation of Sex Crimes for Campus Police and Public Safety Agencies Class or the Title IX Coordinator/Investigator Class. DSA staff will verify that the person has graduated from one of these two classes prior to providing the registrant with a login and password to the system). The SAIR Recertification Program is available to graduates of the courses listed above at an annual cost of \$89.00/person.

If you already attended or plan to attend our DSA Investigation of Dating Violence, Domestic Violence, and Stalking for Campus Police, Public Safety and Civil Rights (Conduct/Title IX) Investigators Class and you sign up for the Online Sexual Assault Investigations Recertification Training Program and Online Domestic/Dating Violence and Stalking Investigations Recertification Training Program, the cost for both On Line Recertification Programs is reduced to an annual cost of \$158.00/person. Otherwise, the individual cost of both Recertification Programs is \$89.00. You can take advantage of the savings for both any time after you attend the DSA Investigation of Dating Violence, Domestic Violence, and Stalking for Campus Police, Public Safety and Civil Rights (Conduct/Title IX) Investigators Class.

That said, check out the DSA Investigation of Dating Violence, Domestic Violence, and Stalking for Campus Police, Public Safety and Civil Rights (Conduct/Title IX) Investigators Class—it is the “sister class” to the Sexual Assault Investigation Class

To Review Additional Information or to sign up for the Recertification Program,
<http://www.dstaffordandassociates.com/training>



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D. Stafford & Associates Online Domestic/Dating Violence and Stalking Investigations Recertification Training Program

The Clery Act, as amended by the 2013 Reauthorization of the Violence Against Women Act, requires that investigators (criminal, civil rights/Title IX/conduct) and hearing board members receive annual training on the issues related to sexual assault, domestic violence, dating violence, and stalking. They are required to receive annual training about how to conduct an investigation and hearing process that protects the safety of the victim and promotes accountability.

Attendees of the D. Stafford and Associates training program, "Investigation of Dating Violence, Domestic Violence, and Stalking for Campus Police, Public Safety and Civil Rights (Conduct/Title IX) Investigators" are eligible to participate in the Online Domestic/Dating Violence and Stalking Investigations Recertification Training Program at a nominal cost, which will fulfill the annual training requirement under the Clery Act. DSA will produce a minimum of one required class per year (each class has at least two modules) for attendees to maintain their certification and each class will have featured quizzes to measure and assess learning.

The online training is delivered via a Learning Management System that can be accessed anytime. Attendees receive a certificate following the completion of the required on line class.

(NOTE: The on line training class is reserved for and limited to individuals who have graduated from the D. Stafford & Associates Investigation of Dating Violence, Domestic Violence, and Stalking for Campus Police, Public Safety and Civil Rights (Conduct/Title IX) Investigators Class. DSA staff will verify that the person has graduated from this class prior to providing the registrant with a login and password to the system).

The DVDVS Recertification Program is available to graduates of the courses listed above at an annual cost of \$89.00/person. If a registrant is also a registrant of the Online Sexual Assault Investigations Recertification Training Program, the cost is reduced to an annual cost of \$69.00/person.

NOTE: If you already attended or plan to attend either the DSA Investigation of Sex Crimes for Campus Police and Public Safety Agencies Class or the Title IX Coordinator/Investigator Class and you sign up for the Online Sexual Assault Investigations Recertification Training Program and Online Domestic/Dating Violence and Stalking Investigations Recertification Training Program, the cost for both On Line Recertification Programs is reduced to an annual cost of \$158.00/person. Otherwise, the individual cost of both Recertification Programs is \$89.00. You can take advantage of the savings for both any time after you attend either the DSA Investigation of Sex Crimes for Campus Police and Public Safety Agencies Class AND the Title IX Coordinator/Investigator Class.

That said, if you have not signed up yet for the DSA Investigation of Sex Crimes for Campus Police and Public Safety Agencies Class—it is the "sister class" to the DSA Investigation of Dating Violence, Domestic Violence, and Stalking for Campus Police, Public Safety and Civil Rights (Conduct/Title IX) Investigators Class —so check out the website for one of the three classes currently scheduled in 2015.

To Review Additional Information or to sign up for the Recertification Program,
<http://www.dstaffordandassociates.com/training>



Title IX Overview

1



Agenda

- History
- Case Law
- The Law & Regulations

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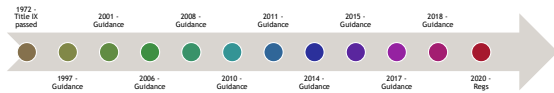
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3

Sexual Harassment Guidance Timeline



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5

Law - Federal

Statute	Overview
Title IX 20 USCA § 1681	No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance, except that:

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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."

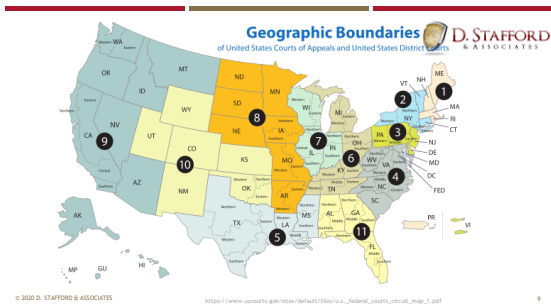
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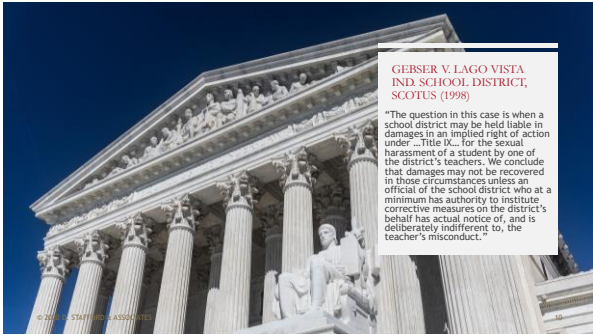


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https://www.courts.gov/sites/default/files/tcrs_federal_courts_circuit_map_1.pdf

9

9



**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."

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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."

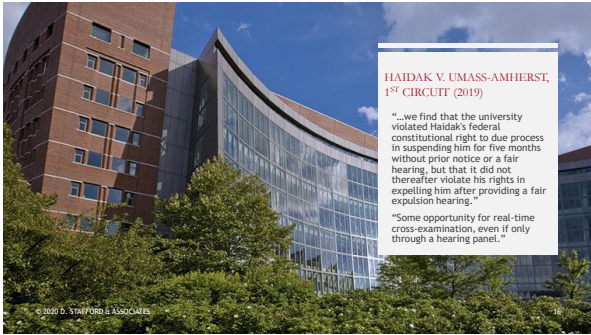
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DOE V. BAUM, 6TH CIRCUIT (2018)

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

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

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

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

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

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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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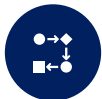
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2020 Regulations



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



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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

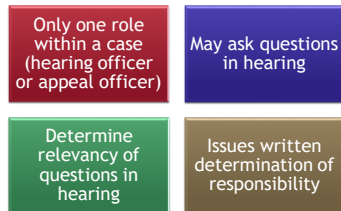


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Title IX Personnel – Decision-Maker



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Title IX Personnel – Investigator



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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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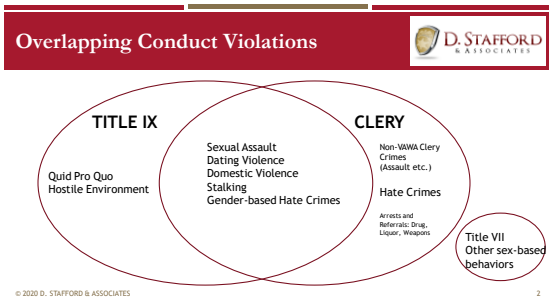
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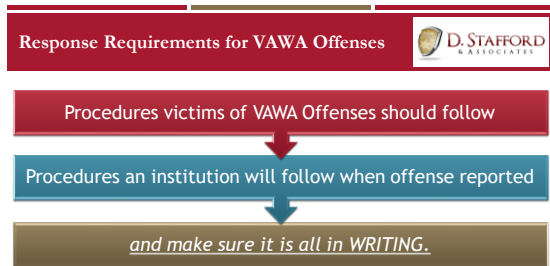
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Written Explanation of Student or Employee's Rights

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

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Written Explanation of Rights and Options



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

Written Explanation of Rights and Options



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

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Written Explanation of Rights and Options



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

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Written Explanation of Rights and Options



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



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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)

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

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



2020 Title IX Regulations

- Must offer both parties an appeal
- Based on specific grounds

Clery Act

- 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



2020 Title IX Regulations

- 7 years

Clery Act

- 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..."



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- Statement prohibiting dating DVDSAS
- Definitions of DVDSAS
- 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)



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- 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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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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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

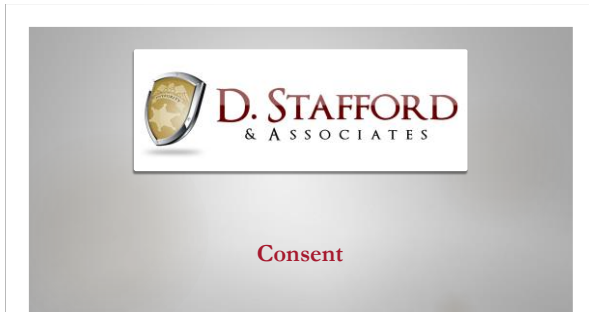
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- When is touching ok?
- When is sexual touching ok?
- How do you know if you have consent?
- How do you know when consent is withdrawn?

4

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

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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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Physical harm

Reputational harm

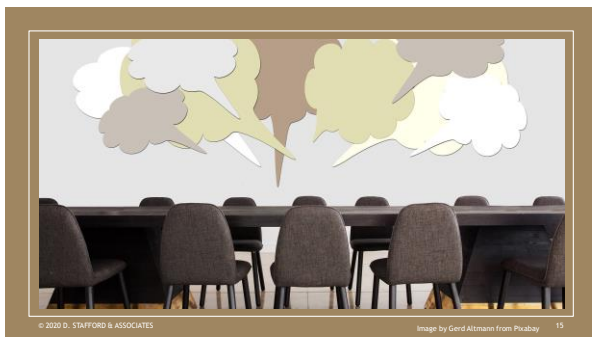
Veiled threats

Threats

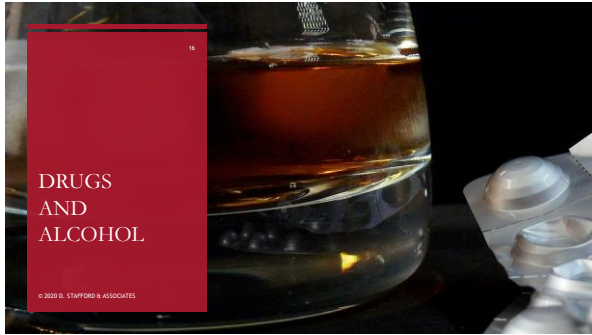
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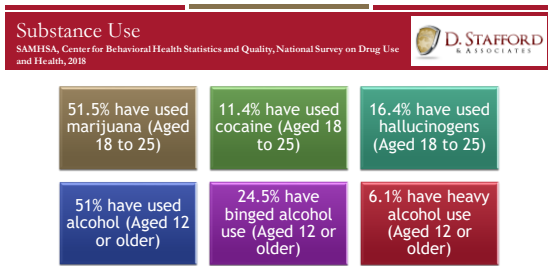
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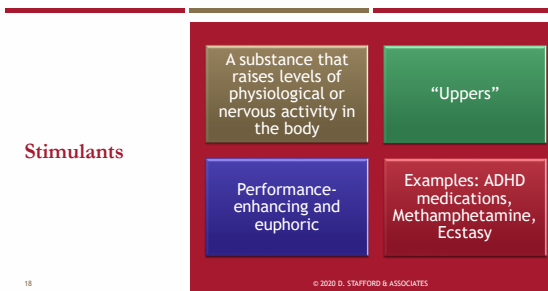
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Depressants

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?



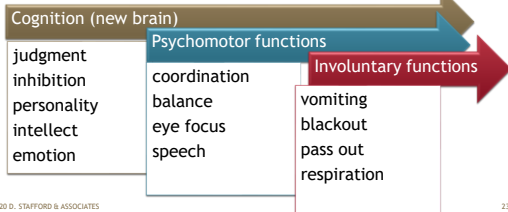
- Water bottle
- Boxed wine
- Solo cups

Photo by Jeffery S. Brown for D. STAFFORD & ASSOCIATES
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Impact of Alcohol Consumption Levels

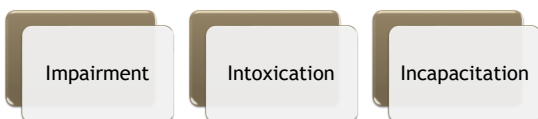


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Levels of Consumption



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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



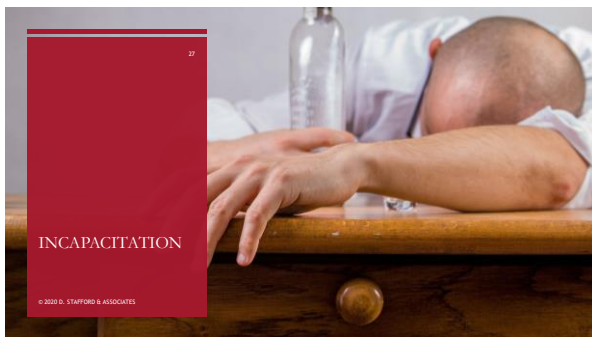
- An act or instance of inebriation; drunkenness.
- Intoxication is legally met when an individual's blood alcohol level reaches .08 or greater.

Question: Can two INTOXICATED people legally have sexual intercourse?

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Incapacitation



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Incapacitation – Not Alcohol Related



Physical



Mental

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Incapacitation



Unconscious



Sleep



Blackout

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Incapacitation Questions



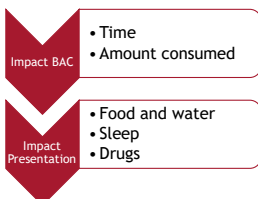
- Were any parties or witnesses INCAPACITATED?
- Were any parties or witnesses IMPAIRED to a degree that it would impact memory and actions?
- Were any parties impaired during the interview to a degree that it would impact recall and judgement?

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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

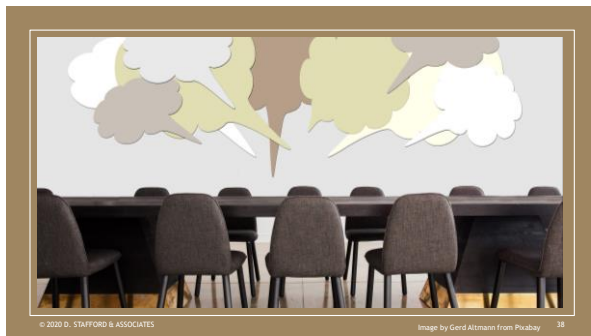
En Bloc blackout

Pass out

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Evidence Collection and the Investigatory Process

1



Agenda

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

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2

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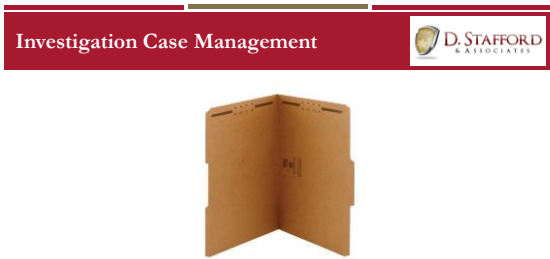
INVESTIGATORS

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6

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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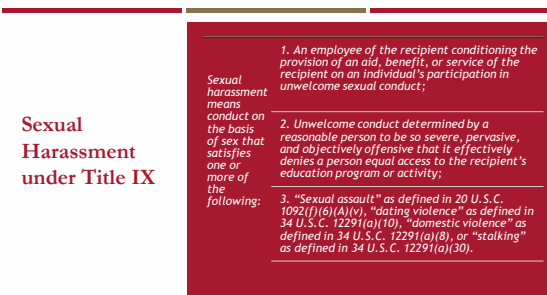
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PRONG 1: Quid Pro Quo

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

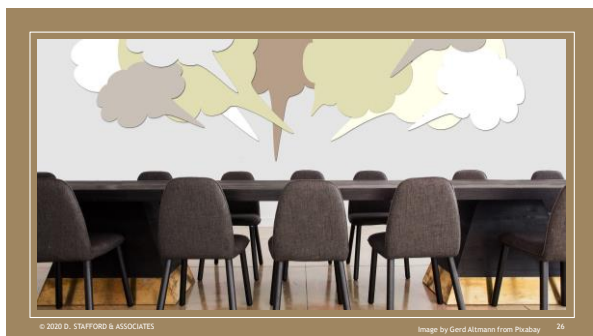


Party "directory
information"

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Initial Evidence Collection



Other "statements"

Evidence from campus sources

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Other Sources of Evidence



Photographs

Text messages

Social media/dating
apps

Documents
(diagrams, memos,
letters, notes)

Voice mail

Phone logs

Guest lists

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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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Interviewing

1



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 INTERVIEW

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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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SAMPLE QUESTIONS

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RECREATE THE SCENE

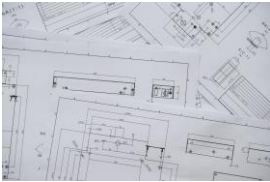


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Physical Space





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SENSORY

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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

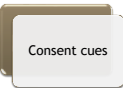
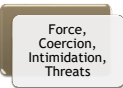
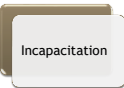
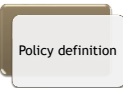
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Consent

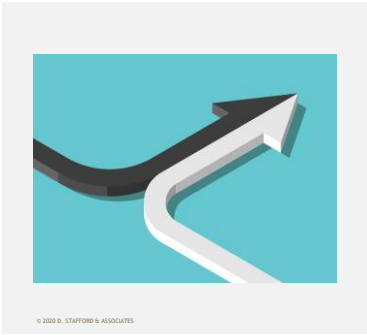


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QUESTIONING
THE PARTIES

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Credibility and Relevancy

1

Agenda

- Detecting deception
- Credibility checklist
- Relevancy

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DETECTING DECEPTION

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Deception





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

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CREDIBILITY CHECKLIST





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Credibility Checklist

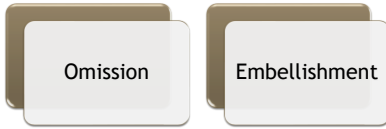


Truthfulness	Past behaviors	Post-assaultive behaviors	Corroborating evidence	Ability to perceive
Ability to remember	Plausibility	Demeanor	Motivation	Bias

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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



Believability

Perspective

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Demeanor



Baseline

Discomfort

Emotions

Shame

Anger

Defensive

Fear

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Motivation



To lie

Pressure

Past relationships

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Bias





Personal preference



Impartiality



Internal Biases

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Bias



- Confirmation Bias**
- Confirmed preconceived opinion
- Availability Bias**
- Most important to the memory immediately recalled
- Hindsight Bias**
- See things as more predictable then 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

Bias

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Other Factors that Impact Credibility





Memory and trauma

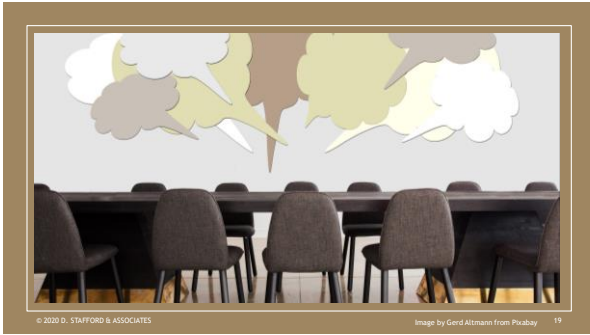


Cross-cultural issues

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Relevancy

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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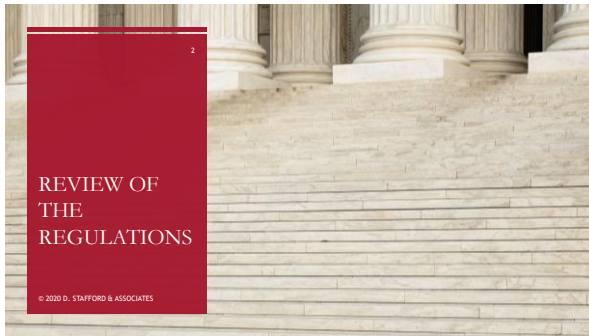
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3

Gather Evidence/ Present Evidence

“burden of gathering evidence sufficient to reach a determination regarding responsibility rest on the recipient”

“equal opportunity for the parties to present witnesses, including fact and expert witnesses, and other inculpatory and exculpatory evidence”

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Party Evidence



Witness List



Evidence Submission



Expert Testimony

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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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Written Determination



- (A) Allegations potentially constituting sexual harassment
- (B) Description of the procedural steps taken from the receipt of the formal complaint through the determination:
- notifications to the parties
 - interviews with parties and witnesses
 - site visits
 - methods used to gather other evidence
 - hearings held
- (C) Findings of fact supporting the determination

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Written Determination



- (D) Conclusions regarding the application of the recipient's code of conduct to the facts
- (E) A statement of, and rationale for, the result as to each allegation
- determination regarding responsibility,
 - disciplinary sanctions on the respondent,
 - remedies to the complainant
- (F) The recipient's procedures and permissible bases for the complainant and respondent to appeal

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Evidence Collection



Everything Collected

Directly Related

Relevant

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9

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
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 - unless voluntary, written consent

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"Directly Related": in the comments



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- "directly related" may sometimes encompass a broader universe of evidence than evidence that is "relevant"

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"Relevant" in the Comments



- "The parties should have the opportunity to argue that evidence directly related to the allegations is in fact relevant"
- "The investigator would then consider the parties' viewpoints ... and on that basis decide whether to summarize that evidence in the investigative report."
- "A party who believes the investigator reached the wrong conclusion about the relevance of the evidence may argue again to the decision-maker (i.e., as part of the party's response to the investigative report, and/or at a live hearing) about whether the evidence is actually relevant."

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Considerations in Drafting





Institutional Policy

Preliminary vs. Final
Process for comment
Mandated sections



Who views

General Counsel
Title IX
Human Resources/Dean of Students
Complainant and Respondent
Advisors
Decision-Maker



How shared

Electronic format
Hard copy

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Report Writing Golden Rule





What does your policy say and
FOLLOW YOUR POLICY!

(oh, yeah, and make sure your policy is compliant)

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Report Writing Goals



Compilation of
Evidence

Summary of
Facts

Documentation
of Process

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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:

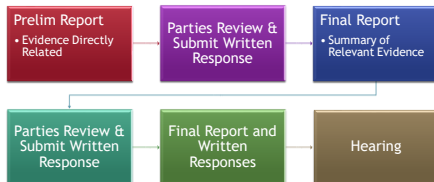
Scope
Methodology (edited),
Summary of Evidence (edited),
Results (including rationale,
sanctions, remedies)

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Report Steps



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