



D. STAFFORD
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Combined Sexual Misconduct and DVDVS Investigator Training Class

Presented by DSA Associates:

Cathy Cocks

Beth Devonshire

Adrienne Murray

Ann Todd

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Investigation of Sexual Misconduct and Dating Violence, Domestic Violence, and Stalking

Overview of Course Schedule

Module 1 The Investigator

- Being a Great Investigator
- Conflict of Interest and Bias
- Scenarios

Module 2 Overview of the Laws for Investigators

- Title IX
- The Clery Act
- Title VII

Module 3 Concurrent Investigations

- Roles and Responsibilities
- When Investigations Intersect

Module 4 Sexual Harassment Elements

- Sexual Harassment on Campus
- Quid Pro Quo
- Hostile Environment+
- The VAWA Offenses

Module 5 Unwelcome Conduct, Consent, and Alcohol and Other Drugs

- Unwelcome Conduct
- Consent
- Alcohol and Other Drugs

Module 6 Stress, Trauma, and Memory

- Understanding Stress and Trauma

Module 7 Investigative Processes

- Title IX Investigations
- Non-Title IX Investigations

Module 8 Investigative Strategy and Evidence Collection

- Investigation Roadmap
- Developing an Investigative Strategy
- Evidence Collection

Module 9 Interviewing

- Interviewing Basics
- The Interview
- Stress, Trauma, and the Interview
- Interview Practice

Module 10 Credibility

- Credibility
- Deception

Module 11 Reports and Relevancy

- Title IX Regulations
- Reports
- Determining Relevancy



Combined Course: Investigation of Sexual Misconduct and Dating Violence, Domestic Violence and Stalking

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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.

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



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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.



Catherine Cocks, 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 managed the student conduct process, which included managing all Title IX cases involving student respondents and chaired the University's student threat assessment team. Prior to that, she held several positions within Residential Life at the University of Connecticut and Roger Williams University.

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

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

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

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

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

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



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.

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



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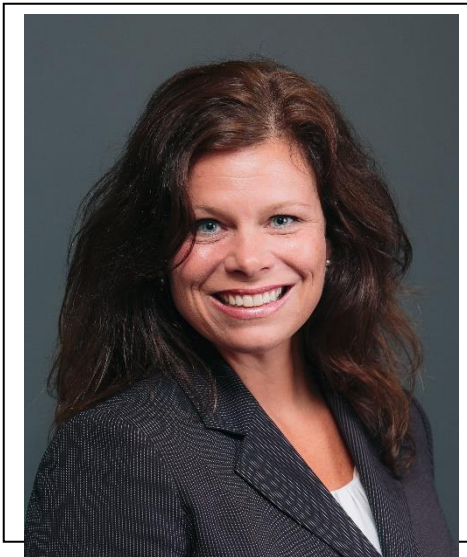
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Act compliance audits; assessments of Title IX compliance; Behavioral Intervention Team and Student Conduct Assessments and Training; and a host of other services related to security, safety and compliance for institutions of higher education.



Adrienne Meador Murray, Executive Director of Training and Compliance Activities



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

Drawing on her experiences as a trained criminal and civil rights investigator, Murray also oversees independent investigations of complex sexual misconduct cases; conducts audits of Title IX/VAWA Compliance; drafts institutional sexual misconduct policies and procedures; and conducts campus-based



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

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



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



ISSUANCE OF CERTIFICATES FOR COMPLETION OF DSA/NACCOP CLASSES

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

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

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

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

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



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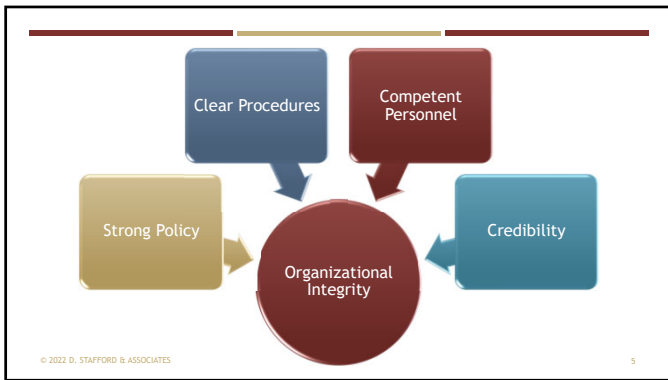
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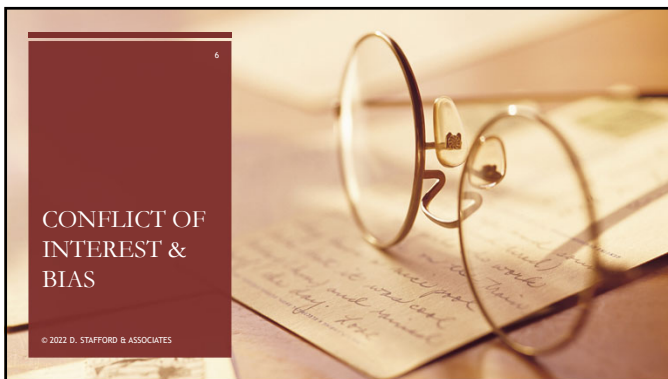
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Conflict of Interest or Bias





Generally




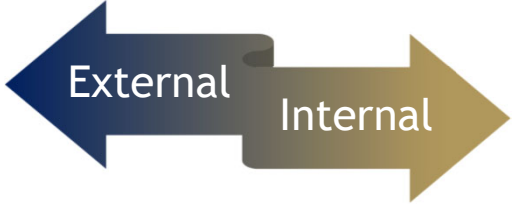
Individually

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Conflict of Interest





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Bias

- Being in favor of or against a particular person or thing in an unfair way
- Influences a person's judgment from being balanced
- Bias often comes from stereotypes or incomplete information

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Bias 

Personal experience Personal identity Social identity Theoretical perspective

Professional identity Religious perspective Political perspective

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Confirmation Bias	Confirmed preconceived opinion	Types of 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	
Identity Bias	More likely to believe one group over another	
Personal Experience Bias	Believe similar experience (or disbelieve the dissimilar)	

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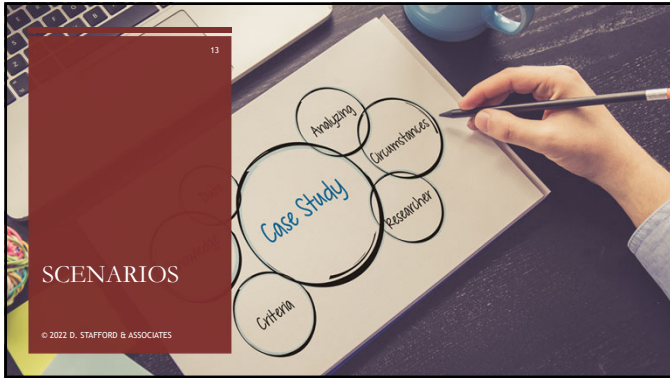
Avoiding Prejudgment of Facts 

Open mind Listen Objective Neutral

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Case Study: Your Partner

You have been assigned a dating violence case involving two individuals with the same gender and sexual identities. Your co-investigator belongs to a conservative church that has actively supported anti-LGBTQ political candidates and policies.

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Case Study: The Interview

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

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Case Study: The Fan

A recent student sexual harassment case resulted in a finding of “not responsible.” The complainant has submitted an appeal claiming investigator bias. The appeal states that the investigator was biased against her because the investigator favored the respondent, a football player. The complainant referenced being interviewed in the investigator’s office which had school football paraphernalia displayed. The investigator, who is in Public Safety, frequently travels with the football team as part of their job.

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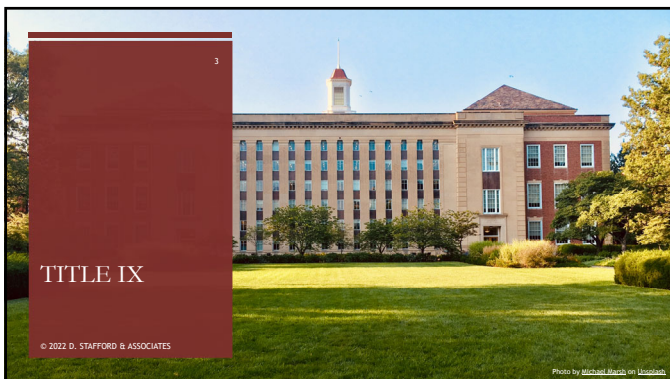
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1



2



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Training for Investigators 


 Definition


 Scope of program
or activity


 Investigation


 Impartiality


 Investigative
Report

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Definitions



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Parties/Witnesses 



Complainant

Respondent

Witnesses

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Definitions: Title IX Personnel





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

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Definitions: Advisor





- Parties may have an advisor of choice
- Can be accompanied to any related meeting or proceeding by the advisor of their choice
- Cannot limit the choice of advisor
- Institutions may establish equally applied restrictions regarding the extent to which the advisor may participate in the proceedings

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Definitions: Key Terms

- Actual Knowledge
- Formal Complaint
- Supportive Measures

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Report vs. Formal Complaint





Report




Formal Complaint

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Definition of Sexual Harassment




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

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

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Definitions - Consent



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

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Retaliation

- Cannot intimidate, threaten, coerce, or discriminate others
- MAY use the same grievance procedure
- First Amendment considerations

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Program & Activity

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Title IX Sexual Harassment Jurisdiction

- Occurred in the context of educational program or activities (Online)
- Occurred in the United States
- Control over the Respondent
- Effective denies a person equal access

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Scope of Program and Activity


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

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Jurisdiction of Person






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



The institution must exercise control over the Respondent



All regulations apply to students and employees

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POLICY REVIEW: Scope of Program and Activity

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Process

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Formal Complaint



Signed formal complaint



Complainant or Title IX Coordinator




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

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Dismissal of Formal Complaints



Must Dismiss

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



May Dismiss

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

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Notice Requirements

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

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Post-Notice Timeline

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    graph LR
      A[Investigation] --> B[Preliminary Report]
      B --> C[Parties may provide written response]
      C --> D[Final Investigative Report]
      D --> E[Parties may provide final written response]
      E --> F[Resolution hearing or informal resolution]
  
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Investigations and Evidence Gathering

- Burden of proof on the recipient
- Equal opportunity to present witnesses and facts
- No restrictions on discussing allegations

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Advisors 

<p>Investigation</p> <ul style="list-style-type: none"> ■ May accompany party to investigation meetings ■ Receives preliminary and investigative reports 	<p>Hearing</p> <ul style="list-style-type: none"> ■ Institutions must provide an advisor if a party does not have one at hearing ■ Conducts cross examination of witnesses and opposing party
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Hearings 


 <p>Live hearing</p>	 <p>Cross-examination</p>
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Written Determination 

- Determination regarding responsibility
 - Written by decision-maker(s)
 - Issued after the hearing
 - Contains steps, findings, sanctions, and remedies



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Appeals 

- Must off both parties an appeal from a determination regarding responsibility or from a dismissal of a formal complaint.
- Basis of an appeal:
 - Procedural irregularity that **affected** the outcome of the matter
 - New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made, that **could affect** the outcome of the matter
 - The Title IX Coordinator, investigator(s), or decision-maker(s) had a conflict of interest or bias for or against complainants or respondents generally or the individual complainant or respondent that **affected** the outcome of the matter.

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Evidentiary Standard 

<p>Clear and Convincing</p> <ul style="list-style-type: none"> Substantially more likely than not to have occurred High probability that a particular fact is true Higher than preponderance, but not as high as “beyond a reasonable doubt” 	<p>Preponderance of the Evidence</p> <ul style="list-style-type: none"> More likely than not 50% and a feather
--	---

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Recordkeeping (Seven Years) 



Case Materials



Training materials

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HOW ARE YOUR CASE FILES MAINTAINED?


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THE CLERY ACT

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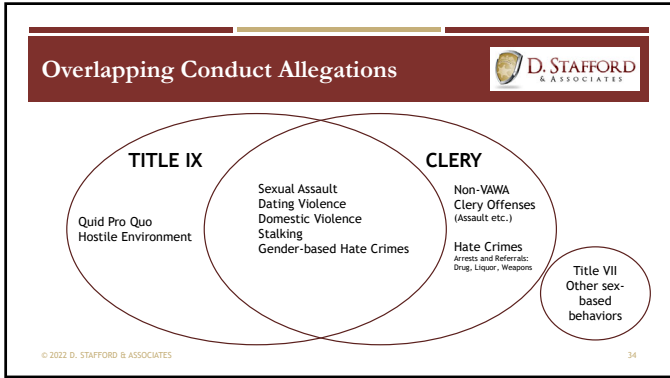
Clery Training Requirements (Officials) 



- Relevant evidence and how it should be used
- Proper interview techniques
- Basic procedural rules for conducting a proceeding
- Avoiding actual/perceived conflicts
- The issues related to dating violence, domestic violence, sexual assault, and stalking
- How to conduct an investigation and hearing process that protects the safety of the victims and promotes accountability

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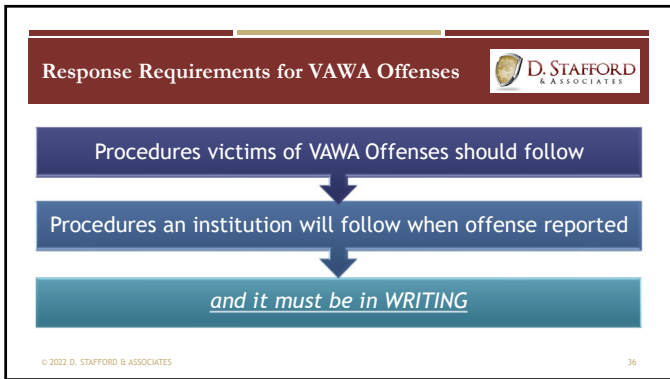
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Written Explanation of Rights and Options



Preserve evidence

Reporting options, including law enforcement

Institutional responsibilities

Services

Accommodations


Confidentiality


Disciplinary procedures

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Clery Requirements for Disciplinary Proceedings







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

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Advisors






- Provides support, guidance, or advice
- Institution cannot limit the choice
- May restrict participation
- Provide timely notice of meetings
- May use a pool of people
- Can remove if disruptive
- Could allow them to serve as a proxy
- Do not have to delay for them

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Standard of Evidence 



- Any standard of evidence ... must be included in policy
- Would not prohibit using different standards for different groups

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Formal Complaint Rights 




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

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Formal (Live Hearing) 





Clery is silent regarding live hearing

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Written Determination

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

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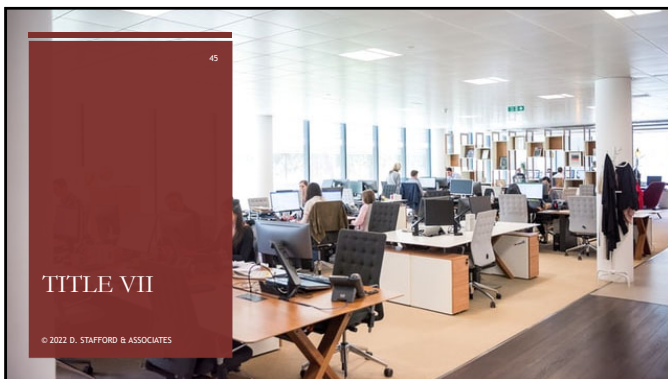
Recordkeeping




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

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TITLE VII

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Title VII of the Civil Rights Act of 1964 

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

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

- Section 703 (a) Employer practices
 - It shall be an unlawful employment practice for an employer -
 1. to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin; or
 2. to limit, segregate, or classify his employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual's race, color, religion, sex, or national origin.

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29 CFR § 1604.11 EEOC Guidelines 


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

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

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Basis of Sex




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

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Sexual Harassment Examples




- Unwelcome sexual advances
- Requests for sexual favors
- Verbal or physical harassment of a sexual nature
- Offensive comments based on sex

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Unwelcome Conduct





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


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Reasonable Person



More than petty slights



Conduct applications

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Retaliation

Right to be free of discrimination

"Protected activity"

Participation is protected

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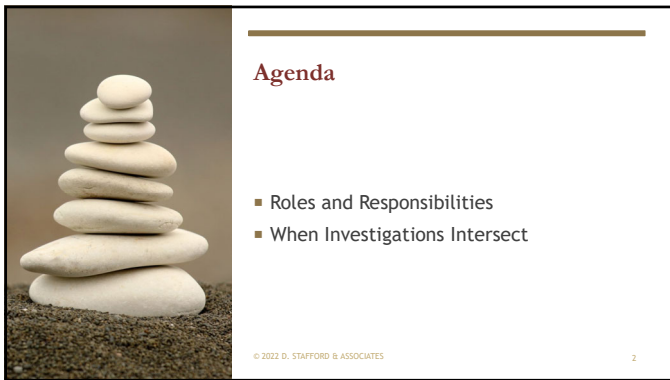
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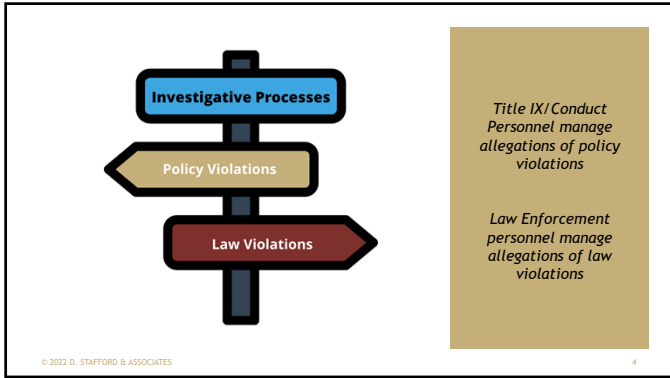
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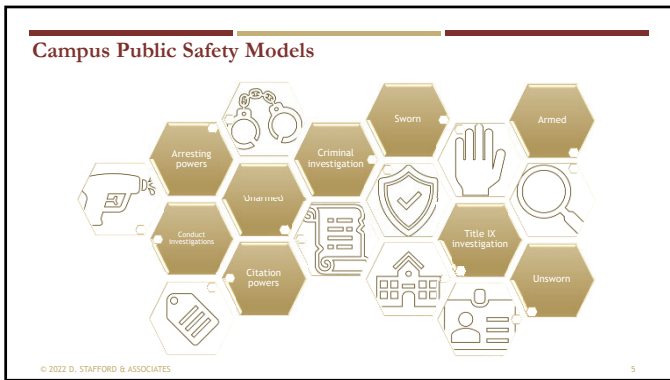
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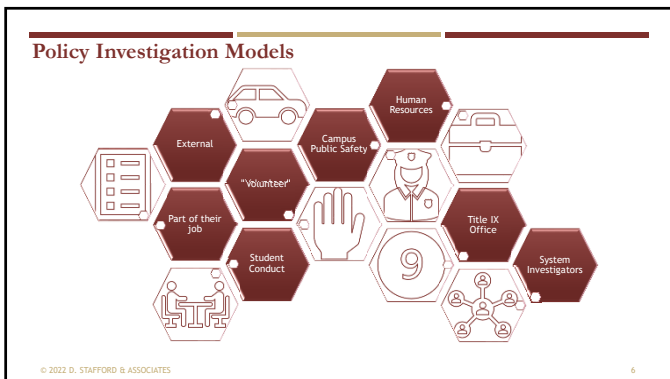
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Differences



Goals	SOP vs. policy	Party rights
Standard of evidence	Powers	Sanctions

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WHAT ARE THE SIMILARITIES?

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Response



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WHAT DO WE EXPECT FROM FIRST RESPONDERS?

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Response to a Report - Criminal Investigations




- **Responding officer**
 - Medical attention offered
 - Forensic evidence collection offered
 - Safety of scene and parties secured
 - Arrest if probable cause
 - Initial report drafted
 - Chain of Command notified
- **Officer/Detective/Investigator**
 - Evidence gathered
 - Investigation until probable cause
 - District Attorney communication

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Response to a Report - Policy Investigations





- **Designated Institutional Official (e.g., Title IX Coordinator)**
 - Supportive measures and resources offered
 - Rights and options explained
 - Jurisdiction assessment (refer to different department if needed)
 - Investigator assigned upon formal complaint
- **Investigator**
 - Evidence gathered
 - Report summarizing evidence is written
 - Submitted for institutional resolution

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Who Else is Involved?

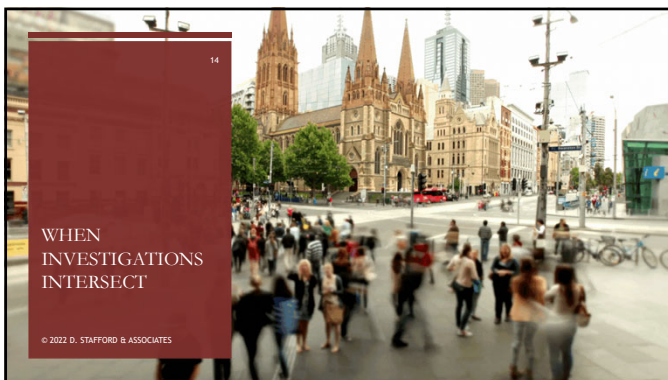


- Victim Advocate
- Forensic Nurse Examiner (FNE)/Sexual Assault Nurse Examiner (SANE)
- Institutional Personnel
- Campus Response Team
- Threat Assessment Team
- External

What interaction should an investigator have with these individuals/groups?

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WHEN INVESTIGATIONS INTERSECT

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The Courts on Concurrent Proceedings

*“Educational institutions have both a need and a right to formulate their own standards and to enforce them; such enforcement is only coincidentally related to criminal charges and the defense against them. To hold otherwise would, in our view, lead logically to the conclusion that civil remedies must, as a matter of law, wait for determination until related criminal charges are disposed of. . . Similarly, in the instant case, the complaining witness could not have redress for the assault on her, if proven, until the pending criminal charges had run their long course of trial and appeal. Nor would it be at all unusual for the temporary *1385 relief here sought to enable the plaintiff to complete his education, thus effectively completing an ‘end run’ around the disciplinary rules and procedures of the college.”*

- Nzuve v. Castleton State College, 133 Vt. 225, 335 A.2d 321 (1975).

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The Department of Education View

- Criminal and policy procedures are different
- Respond when there is actual knowledge
- Have reasonably prompt timelines
- May reasonably delay or pause

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“Pause” Factors




Has there been notice? What's reasonable?

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WHAT INFORMATION CAN BE SHARED?

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**When Law Enforcement Records
Become FERPA Education Records**

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Should sworn police be conducting Title IX investigations?

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21




1




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3

Understanding the Elements 




Elements
Actions
Conditions



Additional info
Clarifiers
Exceptions

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Elements of Sexual Harassment 

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

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Sexual Harassment Under Title IX



PRONG 1: QUID PRO QUO



PRONG 2: HOSTILE ENVIRONMENT+



PRONG 3: VAWA OFFENSES

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PRONG 1: Quid Pro Quo






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

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Quid Pro Quo: Respondents

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

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Prong 1: The Coach

Michael confides in another coach that he engaged in sexual activity with his soccer coach, Bob. He says it began consensually, but when he asked for it to stop, Coach Bob told him if he didn't continue to engage in the sexual activity, he would ensure he "never played again."

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

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

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

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PRONG 2: The *Davis* Standard





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

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

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Hostile Environment+ 




Sex
Gender-based



Unwelcome




Conduct
Severe
Pervasive
Objectively offensive



Impact on education (or employment)

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Hostile Environment+ 

ON THE BASIS OF SEX

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

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Hostile Environment+ 

UNWELCOME

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

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Hostile Environment+ 

SEVERE

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

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Hostile Environment+ 

PERVASIVE

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

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Hostile Environment+ 

OBJECTIVELY OFFENSIVE/REASONABLE PERSON

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

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Hostile Environment+ 

EFFECTIVELY DENIES ... EQUAL ACCESS ... EDUCATION PROGRAM

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

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Hostile Environment+ 





EFFECTIVELY DENIES

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

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Sexual Harassment+: Definition Considerations

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

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Prong 2: The Class

Pat reports to the Title IX Coordinator feeling uncomfortable in class because of “sexually harassing” comments and behaviors of other students.

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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THE VAWA OFFENSES

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PRONG 3: The VAWA Offenses


- Sexual Assault
- Dating Violence
- Domestic Violence
- Stalking

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Sexual Assault



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Rape - Clery




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

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Rape - FBI NIBRS



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

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

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

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

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Sex Offenses - NIBRS



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

- A. *Fondling* - The touching of the private body parts of another person for the purpose of sexual gratification, without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental incapacity.
- B. *Incest* - Sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.
- C. *Statutory Rape* - Sexual intercourse with a person who is under the statutory age of consent.

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Intimate Partner Violence



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



The term "dating violence" means violence committed by a person -
(A) who is or has been in a social relationship of a romantic or intimate nature with the victim; and
(B) where the existence of such a relationship shall be determined based on a consideration of the following factors:
(i) The length of the relationship.
(ii) The type of relationship.
(iii) The frequency of interaction between the persons involved in the relationship.

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Dating Violence – Clery Act



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

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

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



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

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Domestic Violence – Clery Act



A felony or misdemeanor crime of violence committed by

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

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What is a “Crime of Violence?”


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


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Important Considerations






Unique



Cycle of violence



Power and control

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Interview Considerations



Lack of cooperation

Fear/Intimidation

Cross-claims

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Primary Aggressor 

Past behaviors?	Self Defense?	Who is afraid?	Body language of each?
Witnesses?	What does the scene look like?	Excited utterances?	What are the extent of the injuries?

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Prong 3: The Ex

Alex reports that they have recently broken up with a partner who was verbally and physically abusive to them. The partner, Jordan, is alleged to have assaulted Alex by hitting them and damaging their vehicle during an altercation in an on-campus parking lot. Alex and Jordan are both employees who work in the same department on campus and until the recent breakup, lived together in an off-campus apartment. Alex has requested that the College intervene because they feel “unsafe” and “worried about what will happen next.”

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Stalking



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



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

- (A) fear for his or her safety or the safety of others; or
- (B) suffer substantial emotional distress.

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Additional Clery Act Definitions



(ii) For the purposes of this definition -

- (A) **Course of conduct** means two or more acts, including, but not limited to, acts in which the stalker directly, indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to or about a person, or interferes with a person's property.
- (B) **Reasonable person** means a reasonable person under similar circumstances and with similar identities to the victim.
- (C) **Substantial emotional distress** means significant mental suffering or anguish that may, but does not necessarily, require medical or other professional treatment or counseling.

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Substantial Emotional Distress

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


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Stalking - Special Considerations

Stalking	and Intimate Partner Violence
Stalking	and disability considerations
Stalking	under Title IX

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Prong 3: The Lab Partner

Sam reports to their faculty member that a previous lab partner has been repeatedly texting, calling, and showing up after Sam rebuffed her requests to be more than lab partners. Sam says that they have asked repeatedly for the behavior to stop, but the previous lab partner “just won’t stop” and that Sam can’t concentrate and does not want to go to lab any longer.

STALKING: “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 to suffer substantial emotional distress.”

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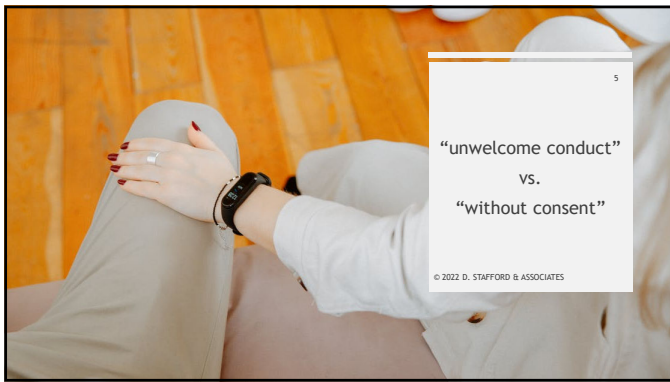
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Testing for Unwelcomeness

Subjective

Objective

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CONSENT

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Consent

Sexual Permission

Verbal or Nonverbal

Defined by Policy

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Consent



Mutually agreed upon

Informed and freely given

Initiator responsibility

Positions of power

Silence and prior relationships


Verbal consent

Withdrawal

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Consent cannot be given due to...




Force

Incapacitation

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Force



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Force 



Physical



Coercion



Threat



Intimidation

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Physical 

Any physical force that injures someone or puts someone's health in danger

SHAKING	BURNING	CHOKING	HAIR-PULLING
HITTING	SLAPPING	KICKING	WEAPON

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Coercion 

Undue amount of nonphysical pressure used to make a person participate in a sexual activity

Wearing you down by asking for sex again and again or making you feel bad, guilty, or obligated	<p>•“If you really loved me, you’d do it.”</p> <p>•“You don’t know what you do to me.”</p>
Making you feel like it’s too late to say no	<p>•“But you’ve already gotten me all worked up.”</p> <p>•“You can’t just make someone stop.”</p>
Telling you that not having sex will hurt your relationship	<p>•“Everything’s perfect. Why do you have to ruin it?”</p> <p>•“I’ll break up with you if you don’t have sex with me.”</p>

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Threat

Declaration of an intention or determination to inflict punishment, injury, etc., in retaliation for, or conditionally upon, some action or course

- Physical harm
- Reputational harm
- Veiled threats

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Intimidation

- Physical
- Verbal

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Incapacitation



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Incapacitation

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

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Incapacitation Causes




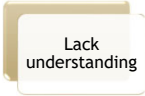
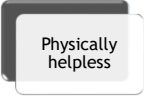

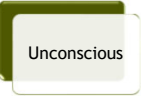
 Alcohol  Drugs  Disability  Other

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Incapacitation Results



 Lack understanding  Physically helpless  Blackout  Unconscious

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Incapacitation

- 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?
 - Whether they can say no.

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Incapacitation Results



Lacking understanding

Physically helpless

Blackout

Unconscious

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Two-Step Determination



Was the complainant incapacitated?

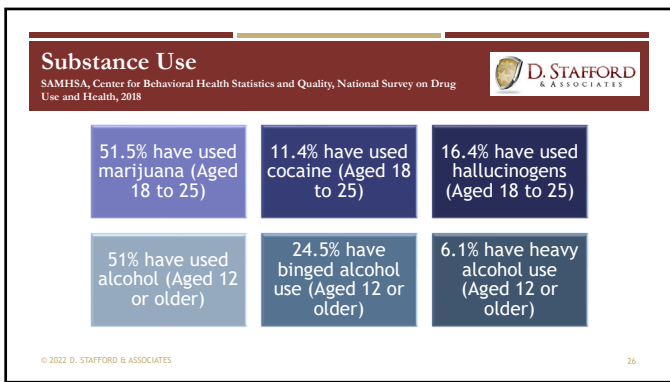
Did the respondent (or would a reasonable person) know?

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26

27

Stimulants (Uppers) 

Raises levels of
physiological or
nervous activity in
the body

Sense of euphoria,
increased energy,
attention, and
alertness

■ Examples: ADHD medications, Methamphetamine, Ecstasy

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Depressants (Downers) 


Inhibits the
function of the
central nervous
system


Relaxing,
decreased
inhibitions

■ Examples: benzos, sleeping pills, marijuana


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Other Drugs 



Hallucinogens





Opioids

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Alcohol Standard Measurements






12 OZ BEER



4-5 OZ OF WINE



1.5 OZ 80 PROOF

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HOW DO COLLEGE STUDENTS "MEASURE" THEIR DRINKS?

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Blood Alcohol Content






Number of drinks



Body weight



Time


Factors that can impact BAC:

- Gender
- Metabolic rate
- Type of build
- Amount of body fat
- Food consumption
- Pace of drinking
- Percentage of alcohol in a drink
- Type of alcohol
- Container size
- Time of last drink

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Impact of Alcohol Consumption Levels



Cognition (new brain)

- judgment
- inhibition
- personality
- intellect
- emotion

Psychomotor functions

- coordination
- balance
- eye focus
- speech

Involuntary functions


- vomiting
- blackout
- pass out
- respiration

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Levels of Consumption



Impairment

Intoxication

Incapacitation

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Impairment

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

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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

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Incapacitation

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

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Context Clues

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

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Blackouts

Fragmentary Blackout

- Also known as “grayout” or “brownout”
- Gaps in memory with some level of recollection

En Bloc Blackout

- No recollection of events

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How do you talk to the parties about alcohol/drug use?

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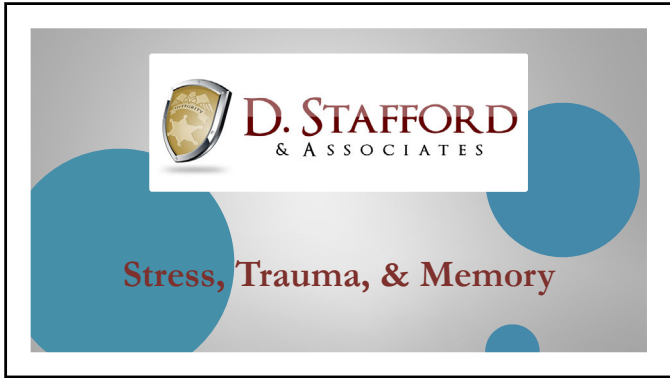


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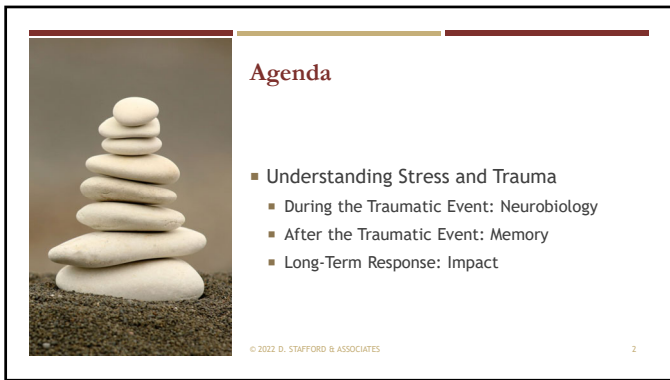


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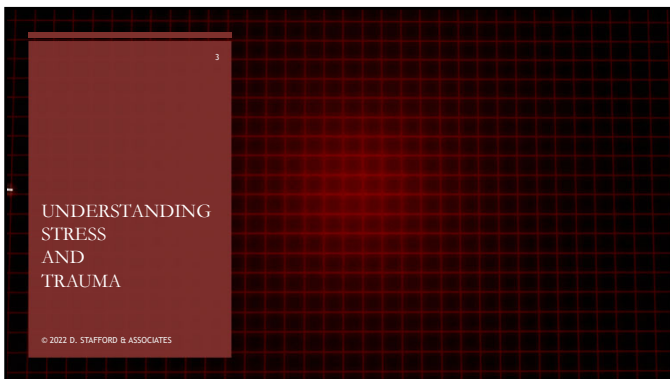
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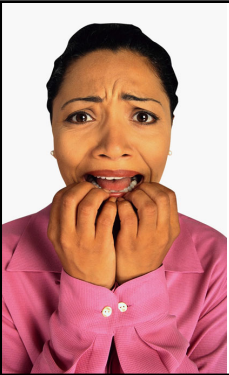
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Let's Talk Stress and Anxiety

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

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WHAT IS STRESS?

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WHAT IS TRAUMA?

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Types of Trauma







ACUTE




CHRONIC



COMPLEX



SECONDARY




ACE

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Comparison





Stress




Trauma

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Impact of Trauma



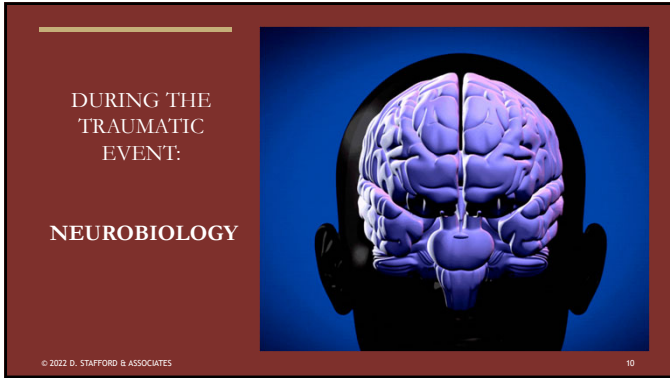
During the
Traumatic
Event

Immediately
Following
the Event

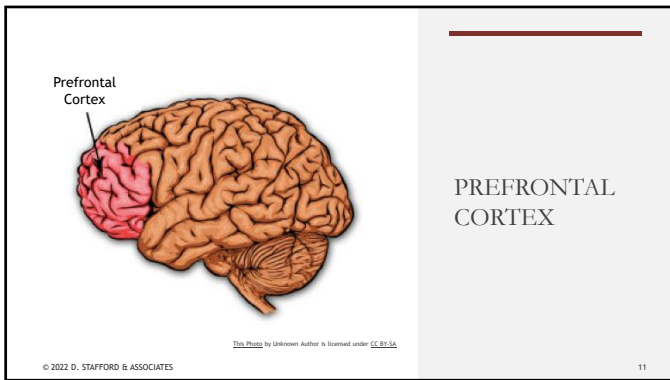
Long-Term
Response

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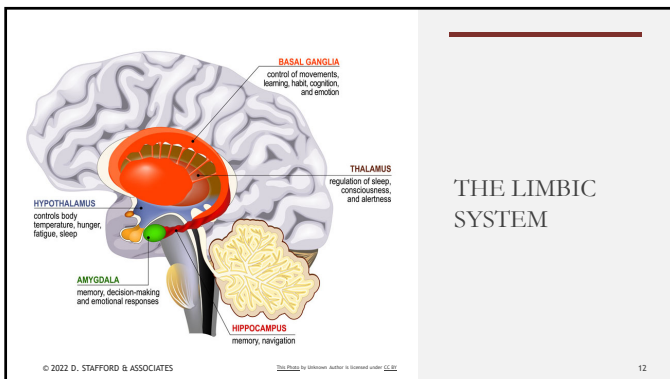
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The Body's Response to Fear 

- **Heart** - pumps harder, beats faster (strength, blood flow to brain and muscles)
- **Lungs** - deep, quick breaths - oxygen to brain improving alertness, may cause dry mouth (sensory)
- **Muscles** - sugar is released for strength (but see tensing and eventual tremors)
- **Prefrontal cortex** - shuts down as it takes too long to "process" danger
- **Eyes** - dilate (lets in more light and improves eyesight)
- **Stomach** - digestion slows/stops (divert energy to need for survival); also impacted by hormones
- **Skin** - sweating (cools body, releases scent, improve friction)


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Degraded Prefrontal Cortex 



Alcohol




Age



Prolonged stress exposure

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Response 



Habit



Reflex

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IMMEDIATELY
AFTER THE
TRAUMATIC
EVENT:

MEMORY

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Memory

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Memory Encoding


Central Details Peripheral Details Time and Context


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Trauma Memory Encoding



 Sensory

 Emotional

 Flashbulb memories

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MEMORY STORAGE OVER TIME

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LONG TERM RESPONSE:
IMPACT



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PRESENTATION STYLES

- Sleepy
- Emotionless
- Nervous
- Giggly
- Afraid
- Frustrated
- Angry

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Post-Traumatic Response

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

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How can this impact the investigation?

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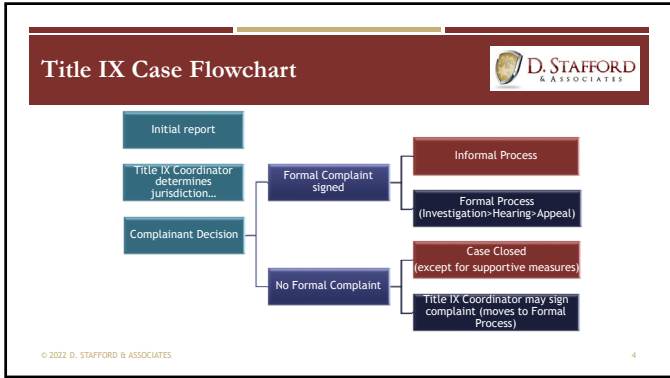
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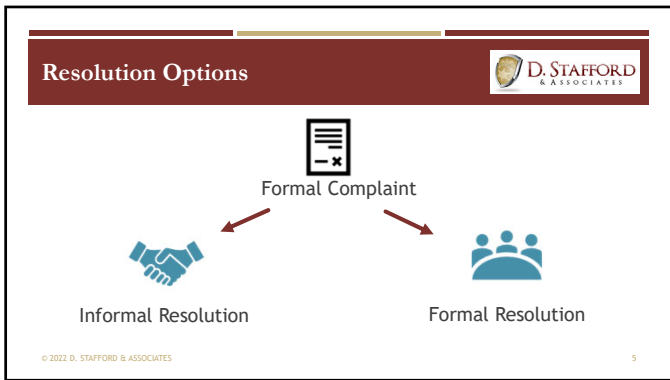
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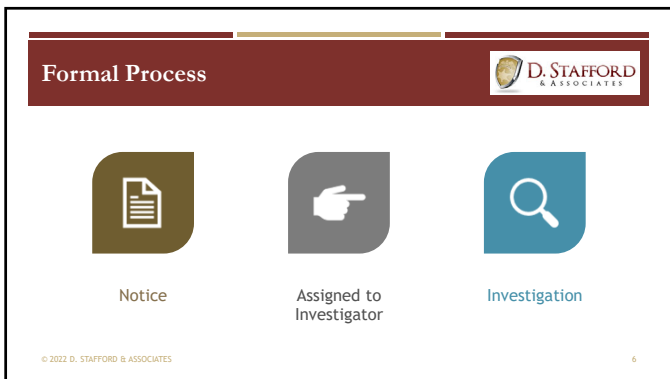
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Notice of Allegation

- Sufficient details known at the time including
 - the identities of the parties involved if known
 - the conduct allegedly constituting sexual harassment
 - the date and location if known
- Statement that the respondent is presumed not responsible
- Determination regarding responsibility is made at the conclusion of the grievance process

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Notice of Allegation

- May have an advisor of their choice, who may be, but is not required to be, an attorney
- May inspect and review evidence
- Inform the parties of any provision in code of conduct that prohibits knowingly making false statements or knowingly submitting false information

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Amended Notice

- In the course of the investigation, the institution decides to investigate allegations about the complainant or respondent that were not included in the notice (must provide notice of the additional allegations to the parties) or
- There are errors in the letter

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Notice of Investigation/ Interview/ Meetings

- Date, time, location of meeting
- Participants at the meeting
- Purpose of meetings
- Provide sufficient time for the party to prepare
- Recommended practice to also include:
 - Name of Investigator(s)
 - How to file an allegation of bias/conflict of interest

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Basic Role of the Investigator

1

Interview Parties

2

Identify and Interview Witnesses

3

Collect Evidence

4

Draft Report(s)

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Logistical Decisions

WHO SENDS NOTICE?

WHO SCHEDULES?

HOW ARE STEPS DOCUMENTED?


WHO COLLECTS INSTITUTIONAL EVIDENCE?

WHO SENDS EVIDENCE/REPORT?

WHO DETERMINES DEADLINES?

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Title IX Investigations 

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

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Inspect and Review Stage 

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

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Investigative Report 

Create an investigative report that fairly summarizes relevant evidence


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Inspect and Review Stage 



Send to party and advisor




At least 10 days before hearing



Allow review and written response

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NON-TITLE IX INVESTIGATIONS 



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Other Types of Investigations 

VAWA offenses not under Title IX

Other conduct based on identity


Sexual misconduct not under Title IX

Intersecting policies

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Possible Differences



Jurisdiction	Definitions	Policy
Adjudication Process	Report	Timeline

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Likely Similarities



 INTERVIEWS	 EVIDENCE COLLECTION	 ADVISORS
---	--	---

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Investigative Strategy and Evidence Collection

1

Agenda

- Investigation Roadmap
- Developing an Investigative Strategy
- Evidence Collection

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2

Investigation Roadmap

```
graph LR; A[Investigative strategy] --> B[Research and initial evidence collection]; B --> C[Interviews]; C --> D[Report writing]; D --> E[Additional evidence collection]; E --> A;
```

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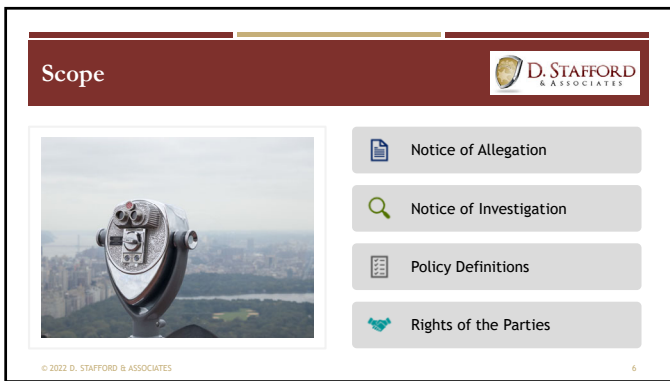
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5



6

Methodology










-  File Management
-  Liaisons
-  Logistics
-  Internal Communications

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Preparation

-  Review Complaint
-  Research
-  Draft Questions
-  Initial Evidence Collection

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What challenges could you face?

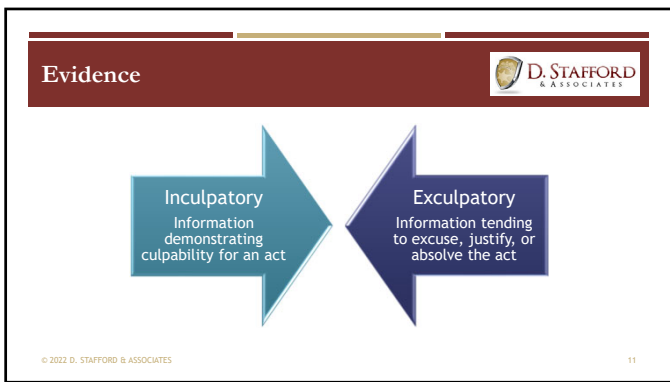
What can we do to prepare?

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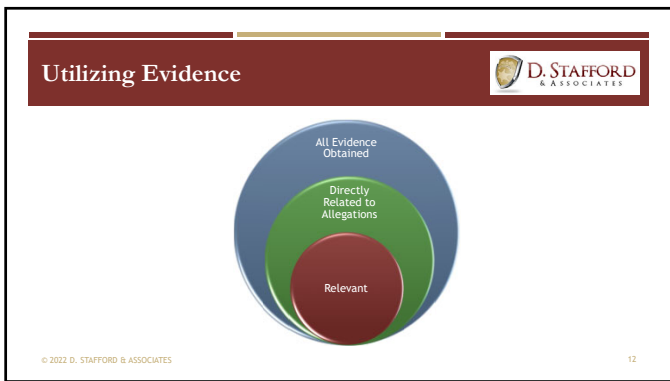
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Types of Evidence 



Real evidence



Demonstrative




Documentary




Testimonial


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Providers of Evidence 




Parties



Witnesses




Institution



Investigators

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Initial Evidence Collection 


Complaint






Other "statements"

Evidence from campus sources

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Research 

 Websites
  Organizations
  Calendars
  Schedules
  Party "directory information"

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Other Sources of Evidence 


Photographs Text messages Social media/dating apps Documents (diagrams, memos, letters, notes)

Voicemail Phone logs Guest lists

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Floorplans 



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Diagrams

During the Complainant's interview, the Complainant drew a model demonstrating the movements of the parties:

1. The Respondent arrived and went over to the Complainant who was at her desk.
2. The Respondent and Complainant moved to the couch and watched a movie.
3. The Complainant woke up as the Respondent was carrying her to her bed.
4. The roommate was in her bed across the room.

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Photo by airfocus on Unsplash

Investigation Timeline

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Case Study: The Dance

"I went to a dance in the Student Union on October 31st. I was pretty drunk because my friends and I had pre-gamed (played beer pong) at Kevin's room in South Hall. I don't remember if Barry was there. At the dance, Barry and I talked and danced. A group of us, including Barry, left the dance around 1am and walked to the North Campus dining hall to get something to eat. I don't remember much else after that except that my suitemate TJ walked me back to my room because I was having trouble walking because I was drunk. At some point, I woke up to find Barry penetrating me. I was so scared that I couldn't say anything. When Barry finished, Barry got up and left my room. I think he lives in West Hall.

The next morning, I found photos from the dance and some texts from Barry asking to be let in. I didn't let him into my room."

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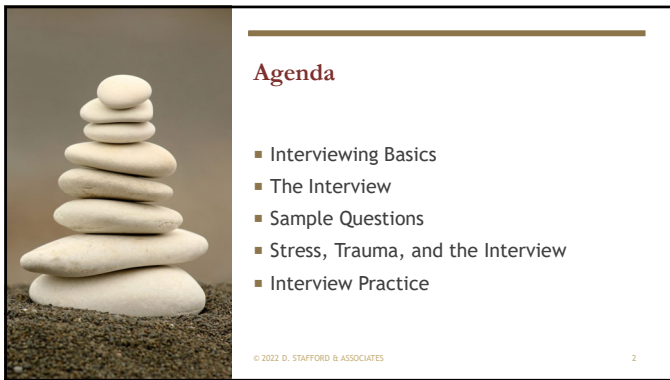
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1



2



3

What are Interviews? 



Testimonial Evidence




Conversation



Structured

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Interview Golden Rules 


Be prepared


Create a comfortable environment

Be flexible


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Interview Preparation 



Research
The incident
The policy
Topics of inquiry



Pre-draft questions
Background questions
Narrative question
Case Specific Questions



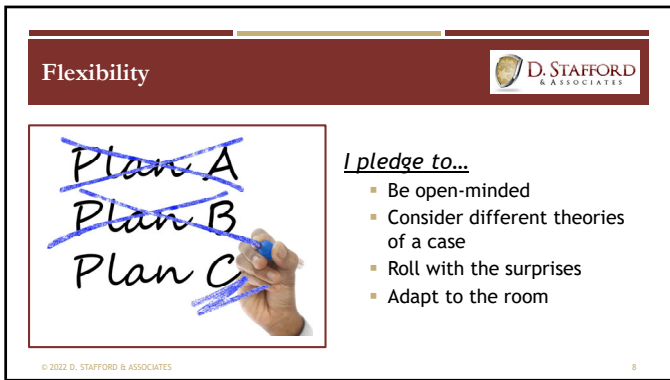
Preliminary Info
Procedural
Recordkeeping
Notice

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7



8



9




The DSA Interview Outline

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

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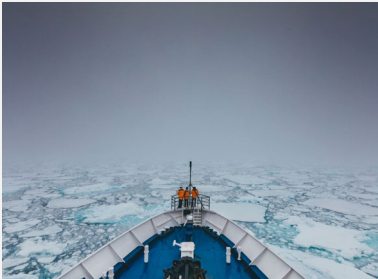
PRELIMINARIES: You do the talking



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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:
How Did It Go?**



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**Interviewing
Bad Habits**

- Interrupting
- Two questions at once
- Not listening for the answer
- Avoiding the hard questions
- Lost focus on elements

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Witness Interviews 



Follow same interview structure




Confidentiality/
Privacy







How do they "know"?

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Respondent - Potential Responses 

-  Complainant consented and is now lying (Regret? Guilt?).
-  Complainant consented but does not remember due to intoxication.
-  The sexual misconduct did not occur (Complainant was mistaken).
-  The sexual misconduct occurred but a different assailant.

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SAMPLE
QUESTIONS

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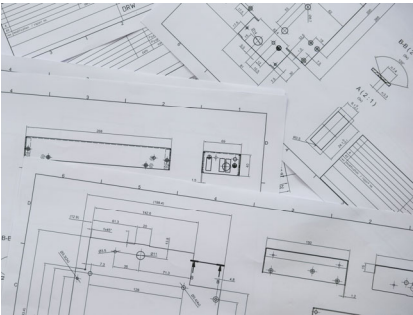
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Recreate the Scene

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Physical Space

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Sensory

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Harassment Allegation 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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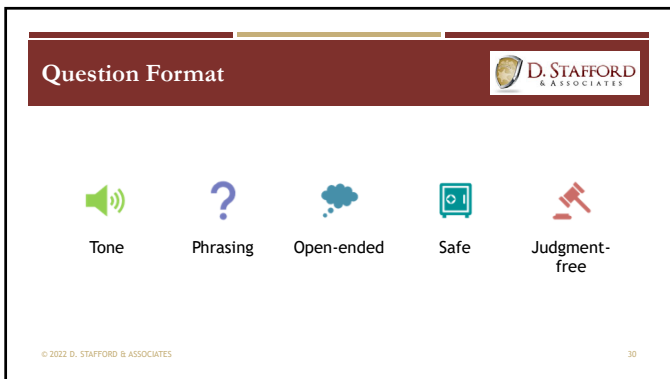
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Interview Techniques



- Clarify linear information
- Use sensory prompts
- Ask for feelings and emotions
- Understand statement variations

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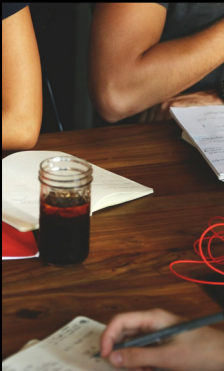
Impartial Investigations



- Consistent application
- Ask clarifying questions
- Avoid bias

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Interview Practice

You will be divided into pairs

Interviewee - Think of difficult case/issue that you have managed.

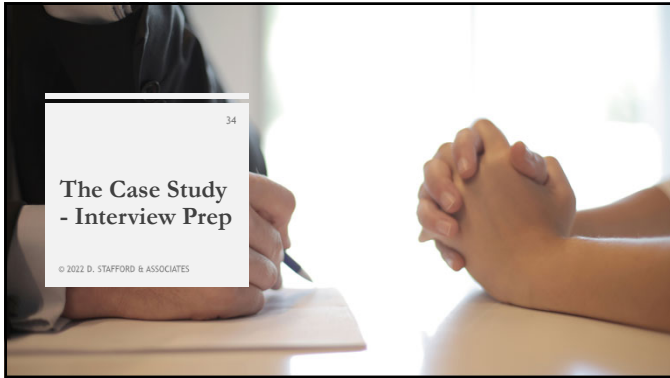
Interviewer - You have ten minutes to conduct an interview about the event.

After the ten minutes, I will have you switch roles.

We will report out with your observations.

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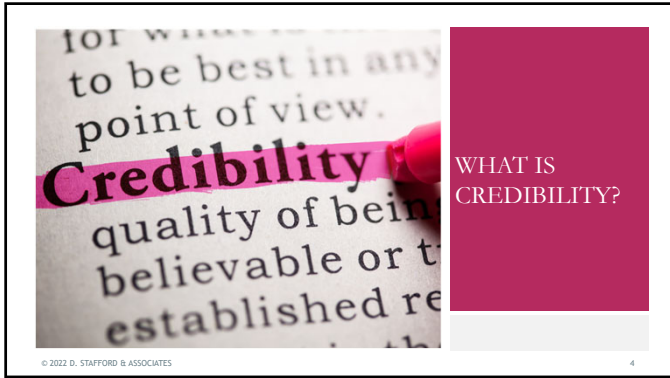
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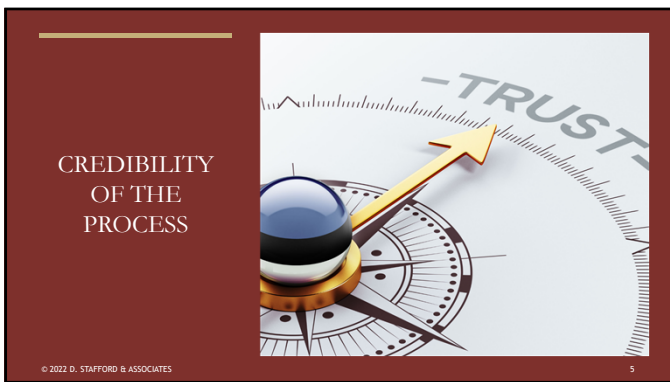
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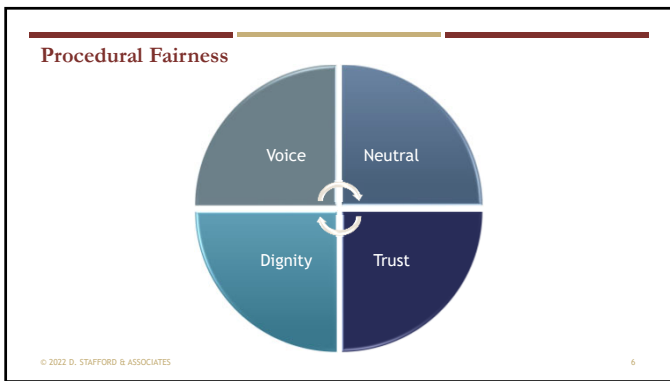
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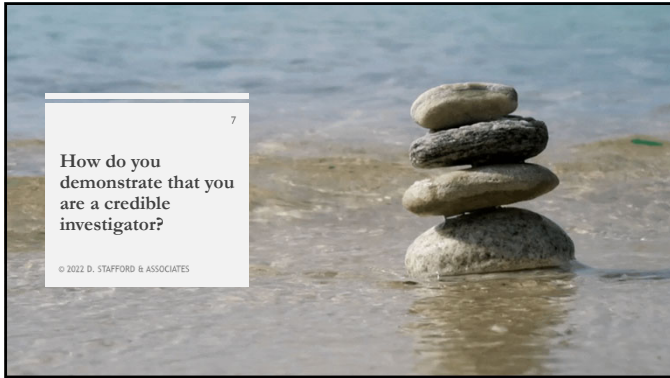
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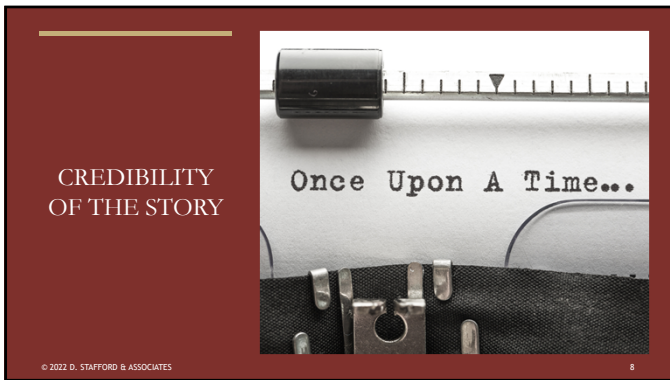
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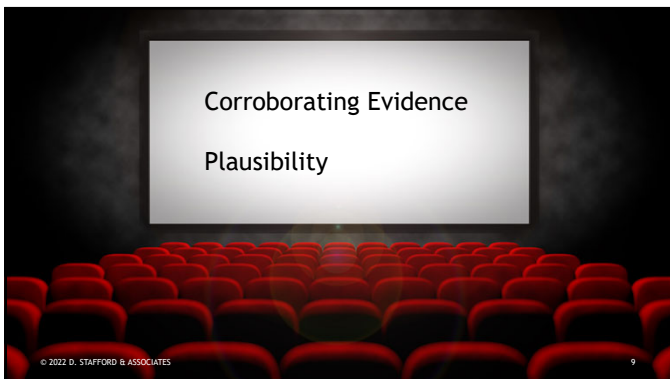
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Corroborating Evidence 

 Physical	 Contemporaneous Documentation	 Personal Documents
 Admissions	 Eyewitness	 Outcry

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Plausibility 

 Possible	 Believable
---	---

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CREDIBILITY OF THE STORYTELLER

Storytelling

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Motivation

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Afraid Pressured Revenge History

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Bias

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Past Relationship Identity Internal Biases

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15

Ability to Perceive




Distance Knowledge Credentials Competence

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Ability to Remember



Passage of Time Alcohol Trauma Peripheral Details History of Memory

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WHAT DOESN'T IMPACT CREDIBILITY?



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Do These Impact Credibility?




- Past Behaviors
- Post-Incident Behavior
- Character
- Interview Demeanor
- Identity

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Past Behaviors



- Discipline
- Related Behaviors
- History with Party
- Mental Health
- Substance Use
- Sexual History

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Post Incident Behaviors




- Mental Health Issues
- Substance Abuse
- Retaliatory Behaviors
- Business as Usual
- Counterintuitive Behaviors

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Character 

- History of truthfulness
- History of behavior
- History in community

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Demeanor 

- Baseline
- Discomfort
- Emotions
- Shame
- Anger
- Defensive
- Fear

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Truthfulness 

Omission Embellishment

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Truthfulness 

Repeat v. Reconstruct Get them to talk Consistency Details

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 DID THEY ANSWER THE QUESTION?

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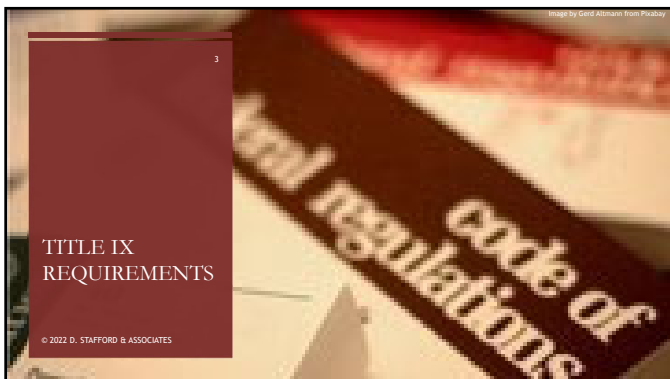
31



1



2



3

Evidence Review

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



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IMAGE BY GETTY IMAGES FROM PHOTAC

4

4

REPORTS



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Major Case Documents

Pre-Investigation		Investigation		Decision
				
Formal Complaint	Notice of Investigation	Preliminary Report	Final Investigative Report	Written Determination

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6

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Versions of the Report 

Investigators



Preliminary Report



Final Investigative Report

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Preliminary Report 



Scope




Methodology



Evidence Obtained

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Preliminary Report Components 

Scope

- Alleged behavior
- Alleged policy violation(s)

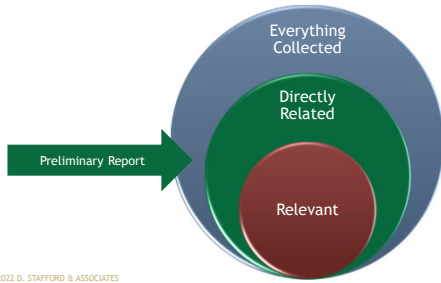
Methodology

- Procedural steps (Notifications, interviews, methods used to gather evidence)

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Preliminary Report Components - Evidence



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10

10

Inspect and Review Stage



Send to party and advisor



Provide at least 10 days to review



Allow submission of written response



Must consider

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11

Final Investigative Report



Scope (Preliminary Report)



Methodology (Edited)



Evidence Obtained (Preliminary Report and any additional)



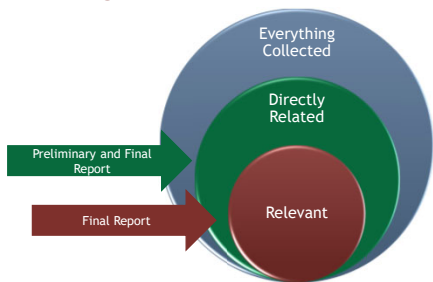
Summary of Evidence (New)

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Final Investigative Report Components - Evidence



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13

13

Inspect and Review Stage



Send to party and advisor



At least 10 days before hearing



Allow review and written response

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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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Considerations in Drafting 

Institutional Policy
Preliminary vs. Final
Process for comment
Mandated sections

Who views?
Parties
Decision-makers
Advisors

How shared
Electronic format
Hard copy

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Report Writing Goals 

Compilation of Evidence

Summary of Facts

Documentation of Process

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DETERMINING RELEVANCY



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When is Evidence Relevant?

Makes a fact more or less probable than it would be without the evidence

+

The fact is of consequence in determining the action

=

Relevance

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Key Relevancy Points

The evidence does not need to be conclusive

Is sufficient if it constitutes a link in the chain

Enough if in connection with other evidence, helps "a little"

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NOT RELEVANT
(from the Title IX Regulations)

Past Sexual Behavior


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




Privileged Information

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

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Context 

 Background  Charts  Floorplans

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The Incident 

 Admissions  Eyewitness  Communications

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Supporting Information 

 Research  Expert Testimony

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What About... 



Character and Character Traits

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