



**D. STAFFORD**  
& ASSOCIATES

# **Sexual Misconduct (Title IX) Investigation Class**

**Presented by:**

**Adrienne Meador Murray**

**Executive Director, Equity Compliance and Civil Rights Services**

D. Stafford & Associates, LLC, 179 Rehoboth Avenue, #1121, Rehoboth Beach, DE 19971

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Have you joined NACCOP yet? If not, go to [www.naccop.org](http://www.naccop.org) to become a member of this professional association supporting Clery Compliance Officers.

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

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*(Limited permission is granted to each attendee of this class to make training materials available per the requirements outlined in the Title IX Regulations published on May 19, 2020)*



**Sexual Misconduct Investigations Agenda**  
**ACC/WCU**

***Online Course Agenda***  
***July 13-17, 2020***  
***Four Hours per Day***

9am-1pm PDT each day (15 min BREAK 10:30am and 11:30am)  
11am-3pm CDT each day (15 min BREAK 12:30pm and 1:30pm)  
12noon-4pm EDT each day (15 min BREAK 1:30pm and 2:30pm)

**\*Breakout rooms, polling and group exercises not identified on schedule TBD by instructor**

**Day 1-July 13, 2020**

- Introduction and Definition of Terms
- New Regs--Title IX Overview-Then and Now
- The Clery Act for Title IX Practitioners

**Day 2-July 14, 2020**

- Review & Reflection
- Title IX Structure and Roles of Institutional Stakeholders
- Group Exercise-Understanding Sexual Harassment, Sexual Assault, Domestic Violence, Dating Violence and Stalking

**Day 3-July 15, 2020**

- Review & Reflection
- Special Considerations
- Intake and Supportive Measures
- Informal Resolution Considerations
- Role of the Advisor of Choice

**Day 4-July 16, 2020**

- Investigative Strategy and Evidence Collection
- Interviewing
- Considerations in Creating the Preliminary Report

**Day 5-July 17, 2020**

- Credibility and Relevancy
- Final Reports, Outcomes and Resolutions
- Final Activity

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## **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 Clergy Compliance Officers & Professionals (NACCOP) and D. Stafford & Associates where she currently serves as Executive Director of Training and Compliance Activities after having been affiliated with D. Stafford & Associates as a part-time Associate since 2012.

As the Executive Director, 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.

## INVESTIGATION CLASS ACRONYMS

- ASR:** Annual Security Report (often used as a reference to the Annual Security Report and/or the Annual Security and Fire Safety Report) that must be published by each institution of higher education.
- CSA:** Campus Security Authority—Individuals on each campus who have been identified by the Department of Education as persons who are required to report crimes that they become aware of to the Reporting Structure at each institution.
- DCL:** Dear Colleague Letter—this is a formal name of the method of communication from the Department of Education to college campuses. It is like naming their official “memo” to campuses.
- FERPA:** Family Educational Rights and Privacy Act—governs the confidentiality of student records.
- FNE:** Forensic Nurse Examiners
- GO:** General Order—some departments describe their operating procedures as general orders
- HEOA:** Higher Education Opportunity Act—the broader law that contains the Clery Act language and the fire safety and missing person language that is in the law but not contained within the “Clery Act” portion of the law.
- HIPAA:** Health Insurance Portability and Accountability Act of 1996 —governs privacy of medical records.
- MOU:** Memorandum of Understanding—an official agreement developed between agencies.
- NIBRS:** National Incident-Based Reporting System. 1 of 2 crime reporting systems developed by the FBI, but not the system that you are required to use for Clery Reporting—the only portion of this system that is used for Clery Act purposes are the 4 forcible and 2 non-forcible sex offense definitions.
- OCR:** Office for Civil Rights—the unit of the Department of Education that oversees Title IX Compliance.
- RE:** Responsible Employee as defined by Title IX (OCR)
- PD:** Police Department
- PS:** Public Safety
- PNG:** Persona-non-Grata—process used by some campuses not keep students from entering certain areas of the campus or the entire campus (administrative process) versus legal bar notice or trespass warning.

**SANE:** Sexual Assault Nurse Examiner

**SART:** Sexual Assault Response Team

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

**TWN:** Timely Warning Notice

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



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## How We Got Here

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- Title IX Prohibits Discrimination On The Basis Of Sex
- ED And The Courts Have Interpreted Title IX To Prohibit Sexual Harassment (Including Sexual Assault)
  - Among Other Things, Colleges And University Must Investigate Allegations Of Sexual Harassment And Take Appropriate Disciplinary Action

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## How We Got Here (Cont.)

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- Obama-Era ED Guidance Focused On Protecting Victims
  - Including The 2011 “Dear Colleague” Letter, And
  - The Mandatory “Preponderance Of The Evidence” Standard
- Trump/DeVos-Era ED Has Focused On The Due Process Rights Of The Accused:
  - Rescinded Obama-Era Guidance
  - Issued Informal Guidance (Including 2017 Q&A)
  - Engaged In Formal Rulemaking Process

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### Major Changes Under New Regs



- Jurisdiction
- Definitions
- Responsible Employees
- Duty to Respond
- Report vs Signed Formal Complaints
- Role of Advisor of Choice
- Supportive Measures
- Separation of Duties
- Live Hearings
- Notice Requirements

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### 1. Definition Of Sexual Harassment

Must Be Severe, Pervasive, and Objectively Offensive

- Conduct Must Occur Within The Context Of An “Education Program Or Activity” and the institution must have control over the Respondent
- Conduct Must Occur In The U.S.

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### 1. Definition Of Sexual Harassment (Cont.)



- Sexual Harassment Will Also Expressly Include The Following (As Of August 14, 2020) (AND—these definitions use the Clery Act & VAWA definitions):
  - Sexual Assault
  - Dating Violence
  - Domestic Violence
  - Stalking

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## 2. Mandatory Dismissal

- Recipient Must Dismiss Complaint If Allegations Do Not Meet Title IX Definition Of Sexual Harassment
- Dismissal Does Not Preclude Action Under The College's Or University's Code Of Conduct

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## 3. Emergency Removal

- Colleges And Universities May Remove A Student From An Education Program Or Activity If The Institution:
  - Conducts An Individualized Safety And Risk Analysis;
  - Determines There Is An Immediate Physical Threat; And
  - Provides Respondent With Notice And An Opportunity To Challenge Decision Immediately Following Removal.

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## 4. Notice Requirement

- Respondent Must Receive Written Notice (With Sufficient Time To Prepare Before Initial Interview), Including:
  - Identities Of The Parties Involved
  - Conduct Allegedly Constituting Sexual Harassment
  - Date Of Alleged Incident
- Continuing Obligation To Update Written Notice
- Written Notice Must Also State That Respondent:
  - Is Presumed Not Responsible
  - May Have An Advisor (Attorney?)
  - May Inspect And Review Evidence

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## 5. Evidence Gathering



- Institution May Not Restrict Either Party From Either Discussing The Allegations Under Investigation Or Gathering And Presenting Relevant Evidence
- ED: Restricting Respondent From Discussing Allegations May Limit Ability To Effectively Present Evidence

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## 6. Informal Resolution



- Informal Resolution Process Allowed (Except For Allegations That An Employee Harassed A Student)
- Both Parties Must Agree To Informal Resolution
- Either Party May Withdraw From Informal Process And Resume Grievance Process

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## 7. Evidentiary Standard



- Consistent With Interim Guidance, Colleges And Universities May Use Either The "Preponderance" Standard Or The "Clear And Convincing" Standard
- Must Apply The Same Standard Of Evidence To:
  - All Title IX Complaints Against Employees And Against Students

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# Preponderance Of The Evidence

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### Evidentiary Standard Comparison

Evidentiary Standard	Percentage
Preponderance of the Evidence	50
Clear and Convincing	80

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# Clear And Convincing Evidence

- This standard requires a finding in favor of the complainant if the evidence shows that a particular violation was substantially more likely than not to have occurred.
- Some courts have described this standard as requiring a high probability that a particular fact is true. This standard sets a higher threshold than the preponderance of the evidence standard but does not rise to the widely recognized standard in criminal cases of "beyond a reasonable doubt."

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# Considerations When Choosing Standard

- How Will Community React To Changes:
  - Students?
  - Faculty?
  - Employees?
  - Alumni?
- Possible Impact Of Union-Represented Employees?
- Who Should Be Involved In Choice?

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## 8. Inspection Of Evidence

- Both Parties Must Be Given An Equal Opportunity To Inspect Evidence Directly Related To The Allegations
  - At Least 10 Days Before Completion Of Investigative Report
  - At Any Hearing

Must Include Any Inculpatory And Exculpatory Evidence Whether Obtained From A Party Or Another Source



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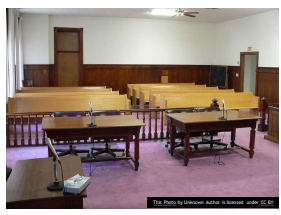
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## 9. Live Hearing



- Required Element For All Post-Secondary Grievance Procedures
- "Single Investigator" Now Prohibited
- Hearing May Be Held In One Location
- May Be Held Virtually, In Real Time
  - At The Request Of A Party; Or
  - At The Institution's Discretion
- Must Be Recorded Or Transcribed, With Recording Or Transcript Available To Parties For Inspection And Review

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## Cross-Examination

- Must Be Conducted By Advisor (Or Attorney)
  - Never By Party
  - If Any Party Has No Advisor, Institution Must Provide One Free Of Charge
- Questions Challenging Credibility Are Allowed
- Decision-Maker May Preclude Irrelevant Questions
- Questions About Complainant's Prior Sexual Behavior Or Sexual Predisposition Generally Not Allowed
- If An Individual Refuses To Submit To Cross-Examination, Decision-Maker May Not Rely On Any Statement Of That Individual To Determine Responsibility



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## 10. Decision-Maker's Written Determination

- Decision-Maker(s) Must Issue Written Determination That
  - Identifies Allegations
  - Describes Procedural Steps
  - Includes Findings Of Fact
  - Includes Conclusions Applying Facts To Code of Conduct
  - Includes Rationale For Conclusion Regarding Each Allegation
  - Describes Appeal Procedures



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## Top 10 Continued ... Surprise!

### 11. Appeal

- Equal Access To Appeal For Complainant And Respondent
- Must Be Allowed For Any Material...
  - Procedural Irregularity
  - New Evidence
  - Conflict of Interest
- Institution Has Discretion To Offer Additional Grounds For Appeal



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## One Last Surprise!?

### 12. Publication Of Training Materials

- Institutions Must\* Publish - On Their Website - All Materials Used To Train
  - Title IX Coordinators
  - Title IX Investigators
  - Title IX Decision-Makers
  - Any Person Who Facilitates Informal Resolutions



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Photo credit: cleryclerycenter.org

And then don't forget to add the Clery Act Requirements!

- As you redevelop your institutional policies and procedures related to Title IX, remember, half the Clery Act contains requirements related to institutional disclosures, training, and procedures you must have in place when responding to a report of sexual assault, dating violence, domestic violence and stalking.

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Questions?



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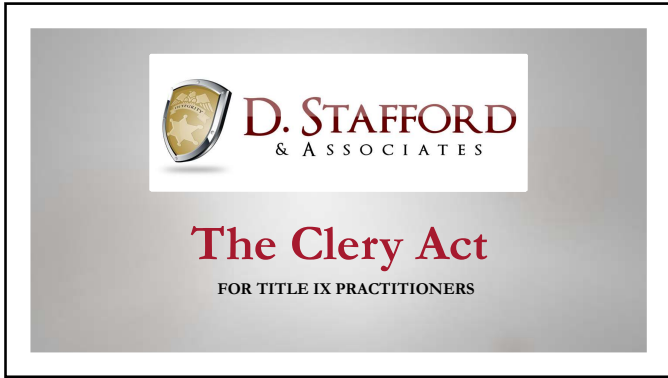
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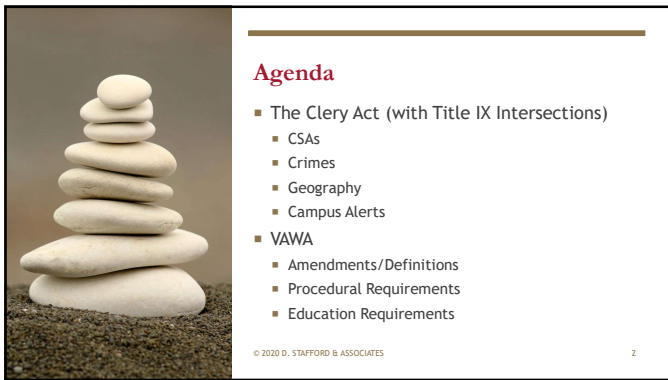
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**Key Requirements (part 2)**

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

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Gettysburg College

**2019 - 2020 Academic Year  
Annual Security and  
Fire Safety Report**

Prepared by the Department of Public Safety  
Includes Crime Statistics for Calendar Years (CYs) 2016, 2017 & 2018

**COUNTING  
CRIME  
STATISTICS**

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**Three Part Test**

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

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## Campus Security Authorities (CSA)

Campus  
police/security

Security  
responsibility

Individual or  
organization  
where crimes  
should be reported

An official with  
responsibility for  
student and  
campus activities

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## Who is never a CSA?



**Professional Counselors**

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



**Pastoral Counselors**

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

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# REPORT



**CSA  
FUNCTION**

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

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## Reporting Considerations

Title IX—"Officials with authority to institute corrective action on behalf of the institution"

Clery Act--CSAs

- Title IX Coordinator
- Official(s) who can institute corrective measures on behalf of the school
- Any other person who is designated by the institution as a person who shall report
- Campus police department responsible for security
- individuals to whom crimes should be reported
- "officials with significant responsibility for student and campus activities"
- Local law enforcement



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## COUNTING CRIME STATISTICS: CLERY CRIMES

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(Excerpt Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act)

**Calendar Years (CY) 2016 – 2018**

Criminal Offenses or Primary Crimes (Crimes Reported By Hierarchy)	Calendar Year	On Campus (Including Residential)	Non-Campus	Public Property	Totals	On Campus (Residential Only)
Murder & Non-Negligent Manslaughter	2016	0	0	0	0	0
	2017	0	0	0	0	0
	2018	0	0	0	0	0
Manslaughter by Negligence	2016	0	0	0	0	0
	2017	0	0	0	0	0
	2018	0	0	0	0	0
Rape	2016	11	2	0	13	11
	2017	25	2	0	27	25
	2018	14	2	0	16	14
Fondling	2016	11	1	0	12	9
	2017	4	1	0	5	4
	2018	0	0	0	0	0
Sexual Assault	2016	0	0	0	0	0
	2017	0	0	0	0	0
	2018	0	0	0	0	0
Statutory Rape	2016	0	0	0	0	0
	2017	0	0	0	0	0
	2018	0	0	0	0	0
Robbery	2016	0	0	0	0	0
	2017	0	0	0	0	0
	2018	0	0	0	0	0
Aggravated Assault	2016	9	0	0	9	9
	2017	9	0	0	9	9
	2018	32	9	0	41	33
Burglary	2016	7	1	0	8	7
	2017	3	1	0	4	3
	2018	0	0	0	0	0
Motor Vehicle Theft	2016	0	0	0	0	0
	2017	0	0	0	0	0
	2018	0	0	0	0	0

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## Three Part Test

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

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## Clery Crime Categories

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Primary Crimes

Hate Crimes

Arrests and Referrals for Drug, Liquor and Weapon Violations

Dating Violence, Domestic Violence and Stalking Incidents (VAWA Crimes)

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## Clery Reportable Crime Categories

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- Murder/Non-negligent Manslaughter\*
- Negligent Manslaughter\*
- Sex Offenses\* (Rape/Fondling)
- Sex Offenses\* (Incest/SR)
- Robbery\*
- Aggravated Assault\*
- Burglary\*
- Motor Vehicle Theft\*
- Arson\*

- Arrests and Disciplinary Referrals for:
  - Liquor
  - Drugs
  - Weapons
- Domestic Violence
- Dating Violence
- Stalking
- Hate Crimes for \*, plus
  - Larceny-Theft
  - Simple Assault
  - Intimidation
  - Vandalism

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## Counting Clery Crimes

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

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

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

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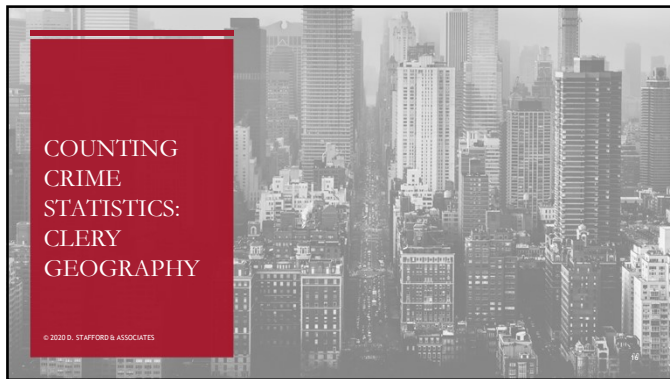
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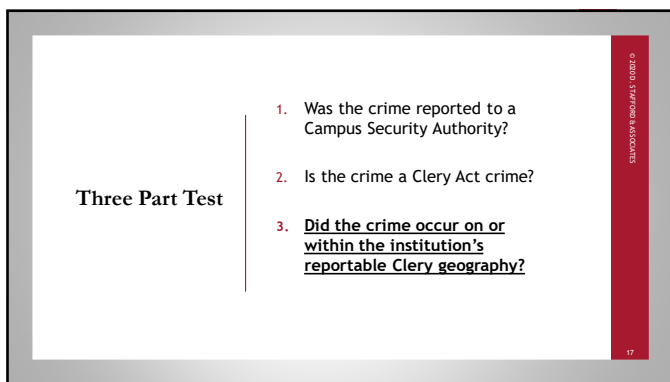
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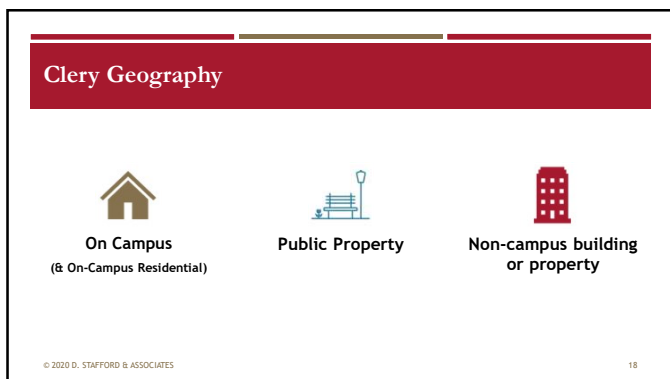
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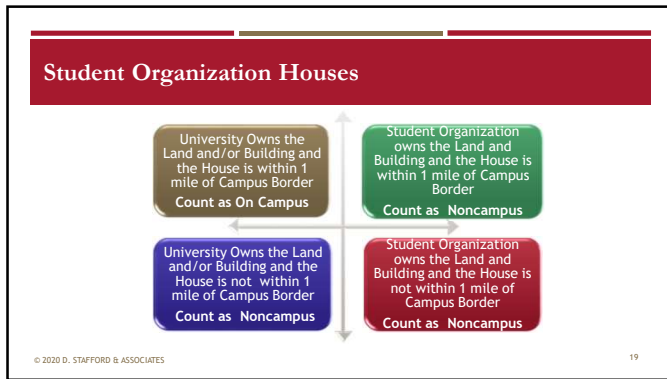
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### Impact of Location & Party

- **2020 Title IX Regulations**
  - Conduct that occurs within its 'education program or activity'
  - Against a person within the United States
  - School must have exercised substantial control over both the respondent and the context in which the sexual harassment occurs
  - Also includes any building owned or controlled by a student organization that is officially recognized by a postsecondary institution
- **Clery Act**
  - On campus; on public property within or immediately adjacent to and accessible from the campus; in or on non-campus buildings or property that your institution (or a recognized student organization) owns/controls
  - May include some study abroad programs
  - For VAWA crimes, must use processes even if occurs off-campus

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### Geography versus Jurisdiction

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

**Jurisdiction** generally describes authority to apply law to a certain area and/or to certain persons. For example, under Title IX, an act may not physically occur on campus, but if it occurs within certain programs between certain people, Title IX attaches.

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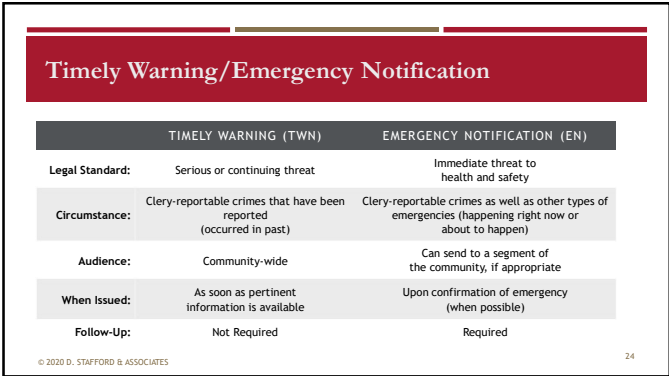
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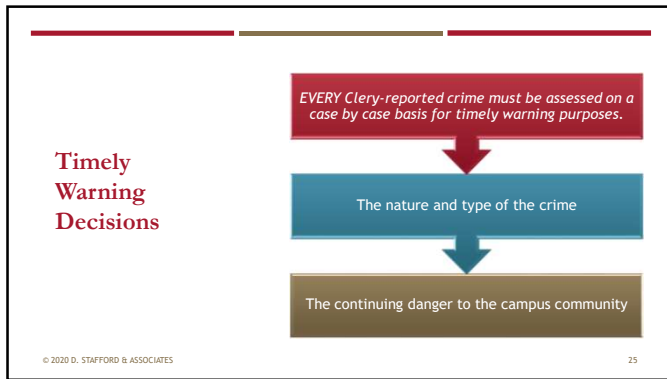
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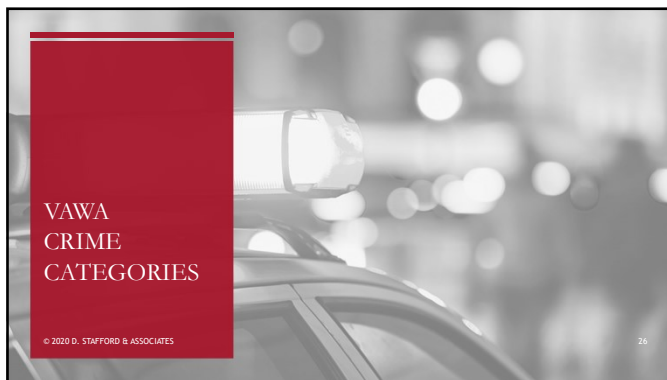
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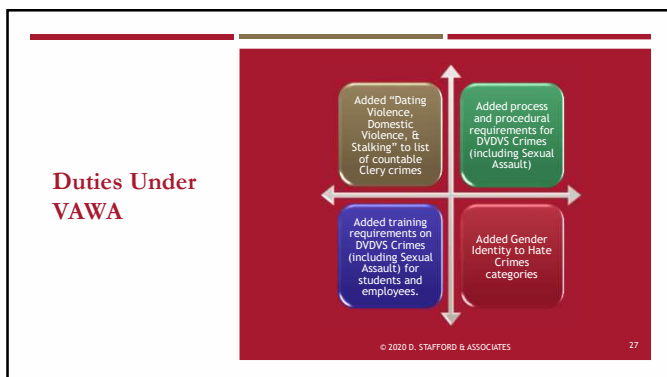
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**Clery Crime Categories**

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

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**Rape**

Penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, without the consent of the victim. This definition includes any gender of victim or respondent.

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**Fondling**

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

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## Consent

The Clery Act does not require any particular definition of consent

ASR must include definition of consent as defined by jurisdiction (state law)

Institution should have a definition in their institutional sexual misconduct policy

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## “Non-Forcible” Sex Offenses

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

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

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## Domestic Violence

A felony or misdemeanor crime of violence committed by:

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

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## What is a “Crime of Violence?”

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

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## Dating Violence

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

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

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## Stalking

Engaging in a course of conduct directed at a specific person that would cause a reasonable person to—

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

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## Stalking (related definitions)

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

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## Discussion: What's Missing?

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

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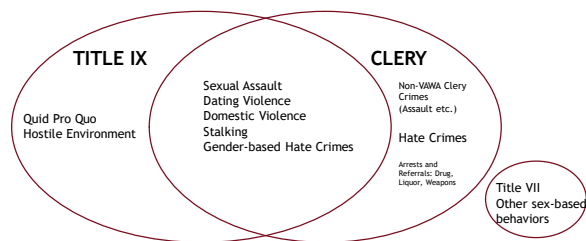
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## Overlapping Conduct Violations



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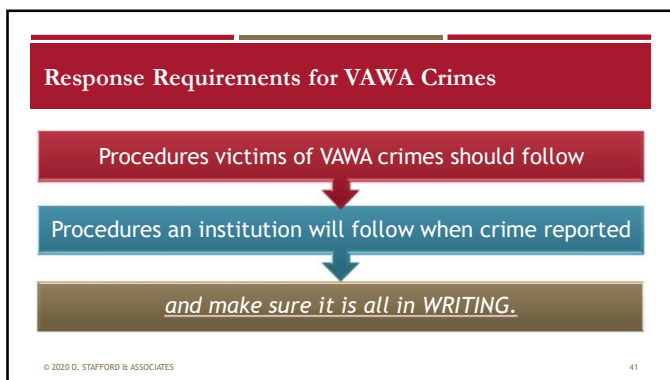
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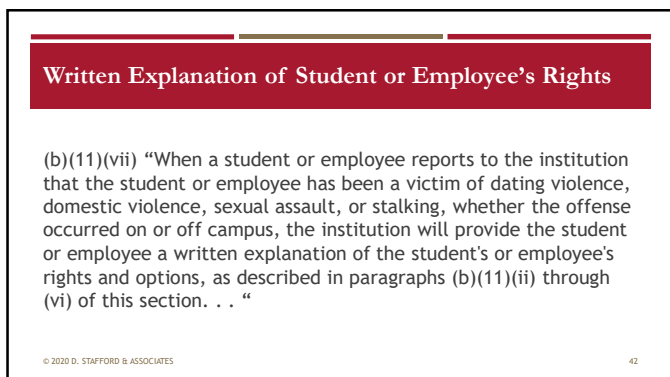
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## Written Explanation of Rights and Options



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

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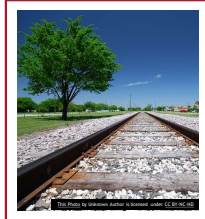
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## Written Explanation of Rights and Options



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

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## Written Explanation of Rights and Options



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

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## Written Explanation of Rights and Options



**7. Confidentiality**

- Publicly available recordkeeping has no personally identifying information about the victim. (not required for respondent but best practice in most cases)
- Accommodations and protective measures are confidential (to the extent they can be without impairing the ability to provide them)

**8. Disciplinary Procedures**

- An explanation of the procedures for institutional disciplinary action in cases of alleged dating violence, domestic violence, sexual assault, or stalking, as required by paragraph (k)

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## Response to “Actual Knowledge”

**Response to “Actual Knowledge”**

- 2020 Title IX Regulations**
  - Contact the Complainant
  - Offer and/or implement supportive measures
  - Explain the process for filing a formal complaint
- Clery Act**
  - Written explanation of victim's rights and options including:
    - procedures to follow (preserve evidence, where report)
    - information about confidentiality
    - existing counseling, mental health, assistance etc.
    - access to law enforcement and no contacts etc.
    - changes to academic, living, transportation and working situations, institutional procedures
    - process for Institutional disciplinary process
  - Assess for Timely Warning Notice OR Emergency Notification

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## Clery Requirements for Disciplinary Proceedings



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

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## Advisors under Clery



### Advisor Requirement

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

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## Advisor Requirement



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## Standard of Evidence



### 2020 Title IX Regulations

- Either the preponderance of the evidence standard or the clear and convincing standard but must be the same for all sexual misconduct

### Clery Act

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

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### 2020 Title IX Regulations

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

### Clery Act

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

## Informal Resolutions

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## Formal Complaint Rights

### 2020 Title IX Regulations

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

### Clery Act

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

## Formal Complaint Rights

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## Formal (Live Hearing)



**2020 Title IX Regulations**

Requires live hearing with cross examination by advisor



**Clery Act**

Clery is silent regarding live hearing

## Formal (Live Hearing)

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## Written Determination

### Title IX

- Identification of the allegations
- Procedural steps taken from receipt through determination
  - notifications to the parties
  - interviews with parties and witnesses
  - site visits
  - methods used to gather other evidence
  - hearings held
- Findings of fact supporting the determination
- Conclusions regarding the application of code of conduct to the facts
- Result (responsibility, rationale, sanctions, remedies for each allegation)
- Appeals procedures
- When results become final (post appeal)

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## Clery Requirements for Officials



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

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## Bias Free and Training for "Officials"

### Title IX ("Title IX Personnel")

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

### Clery ("Officials")

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

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## Appeals

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

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## Recordkeeping

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

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## VAWA Education Requirements

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## Education and Prevention under Clery

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

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## Primary Prevention Best Practices

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

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

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## Primary Prevention & Awareness

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



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

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## Ongoing Prevention & Awareness

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



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

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## CSA Training (Recommendations, Not Requirements)



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

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## Title IX Structure 2020





- ❖ Title IX Coordinator
  - ❖ Accepts Reports-Offers Supportive Measures to Complainant and Explains Process for filing Formal Complaint
  - ❖ Accepts Formal Complaints and determines jurisdiction (if Title IX)
  - ❖ Coordinates each investigation and the extension of Supportive Measures to the Respondent
  - ❖ Drafts all Title IX related notice documents
  - ❖ Assigns Investigators for each investigation, if applicable
  - ❖ Assigns the Advisor of Choice for the Live Hearing if a Party does not have one
  - ❖ Oversees the Live Hearing procedures, but does not make any decisions regarding the outcome of the allegations
- ❖ Decision Maker
  - ❖ Review evidence and deposition of both parties by the Advisors of Choice
  - ❖ Rule on whether the questions asked are relevant
  - ❖ Makes the finding regarding each allegation contained in the complaint

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## Title IX Structure 2020





- ❖ Investigators
  - ❖ Interviews both parties and witnesses
  - ❖ Gathers evidence
  - ❖ Write the preliminary and final investigative reports
- ❖ Advisors of Choice
  - ❖ Chosen by the Party; not required until Live Hearing
  - ❖ Assigned by ACC for purposes of cross examination only if the Party does not have one for Live Hearing
  - ❖ Participates in the examination of the opposing party and witnesses
  - ❖ Reviews evidence and investigate report
  - ❖ Prepares the questions for the examination of the other party during the Live Hearing
- ❖ Appellate Officer
  - ❖ Different than the original Decision Maker
  - ❖ Only one Appeal

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**D. STAFFORD**  
& ASSOCIATES

**Group Exercise:**  
**Understanding Sexual Harassment, Sexual Assault,**  
**Domestic Violence,**  
**Dating Violence and Stalking**

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### Agenda

- Group Discussion - Understanding the Offenses
- Report Out
- Questions & Answers

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## PRONG 1: Quid Quo Pro 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;

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PRONG 2: Hostile Environment + (Davis Standard)

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

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.

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PRONG 3: Clery Act & VAWA Crimes

Sexual Assault

Rape  
Fondling  
Statutory Rape  
Incest

Intimate Partner Violence

Dating Violence  
Domestic Violence

Stalking

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Sexual Assault-Rape

Rape is the penetration, no matter how slight, of the vagina or anus, with any body part or object, or oral penetration by a sex organ of another person, without the consent of the victim. This offense includes the rape of both males and females

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## Sexual Assault-Fondling

**Fondling** is 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.

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## Dating Violence

**Dating Violence** is defined as 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 determined 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

**Domestic Violence** is defined as a felony or misdemeanor crime of violence committed—

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

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## Stalking

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

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

For the purposes of this definition—

- **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.
- **Reasonable person** means a reasonable person under similar circumstances and with similar identities to the victim.
- **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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## Group Discussion




**Breakout groups**

Each group will be assigned a breakout room

Identify a reporter who will present back to the larger group



**30 minutes of group discussion**



**Reporting out**

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Topics	Assignment	Questions
1.QPQ-Sexual Harassment 2.Dating Violence 3.Domestic Violence 4.Hostile Environment + Sexual Harassment 5.Stalking 6.Sexual Assault-Rape 7.Sexual Assault-Fondling	1.Identify the elements of the offense? 2.Where might we find evidence associated with this offense? 3.What are the challenges with investigation into your assigned offense?	You can send questions to the chat while you work, and we will discuss them in the reporting out phase.

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Report out



HOSTILE ENVIRONMENT



QUID PRO QUO  
SEXUAL HARASSMENT



SEXUAL ASSAULT,  
RAPE AND FONDLING



STALKING



DOMESTIC VIOLENCE



DATING VIOLENCE

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QUESTIONS



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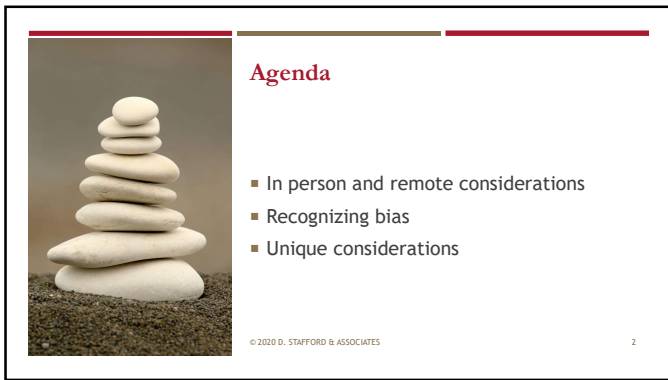
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In-person

Room layout

Available materials

Advisors

Interpreters

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Equity Issues – Remote Locations

Socioeconomic

Computer

Internet

Home

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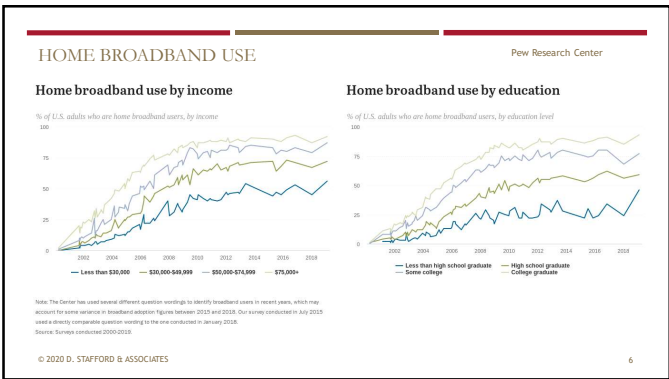
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### Intake – Intimate Partner Violence




Increased risk

Check-ins

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### Intake – New Reports

Jurisdiction

Nature of the report

Clergy implications

Reporting options

Outreach

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### Intake - Accommodations





Academic

Living

Working

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### Intake – No Contact Orders and Court Orders



Enforcement



Court

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### Intake - Resources



Health



Mental health



Victim advocacy



Legal assistance



Visa and immigration



Financial aid

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### Meetings/Interviews



Policy



In person



Virtual



Advisors



ADA



Equity

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Documentation

FERPA

Current practice

File sharing

Security considerations

Accessibility

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Hearing

Delay

Virtual

Platform

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Virtual Hearings

Practice

Settings

Practical considerations

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# Data

The Title IX Regulations  
Unofficial Version Published on the U.S.  
Department of Education Website on May  
6, 2020



**MEN**

- 15% of college-aged men
- 26% of gay men and 37% of bisexual men experience rape, physical violence or stalking by partner
- More likely to be assaulted than falsely accused of assault

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# Data

The Title IX Regulations  
Unofficial Version Published on the U.S.  
Department of Education Website on May  
6, 2020



**LGBTQ+**

- LGB rates of sexual violence double rate of heterosexual youth
- 73% of LGBTQ+ college students sexually harassed (61% non-LGBTQ+)
- 44% of lesbians and 61% of bisexual women experience rape, physical violence, or stalking by an intimate partner

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# Data

The Title IX Regulations  
Unofficial Version Published on the U.S.  
Department of Education Website on May  
6, 2020



**PERSONS OF COLOR**

- 23% of Asian Pacific Islander women experience sexual violence
- 21% of black women are survivors of sexual assault
- 13.5 of Hispanic women are survivors of sexual assault
- Seven out of every 1,000 American Indian (including Alaska Native) women experience rape or sexual assault, compared to two out of every 1,000 women of all races

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# Data

The Title IX Regulations  
Unofficial Version Published on the U.S.  
Department of Education Website on May  
6, 2020



■ Twice as likely as non-immigrant peers to experience sexual assault

## IMMIGRANTS

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UNIQUE  
CONSIDERATIONS

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# Employee/Student Relationships



Vary



“Dual relationship”



Reluctance to report

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## Employee/Student Relationships



Issues



Results

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## Employee/Student Relationships

Employee/  
Student  
Relationships


Policy


Mentoring


Training


Accountability

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## Issues for IPV Cases




Cooperation




Predominant  
aggressor



Cross-claims



Threat  
teams



Safety plans

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### Issues for Stalking Cases

Recognize behaviors

Duration

Frequency

Safety plan

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### Retaliation

Identify behaviors

Which policy?

Remedies

What qualifies?

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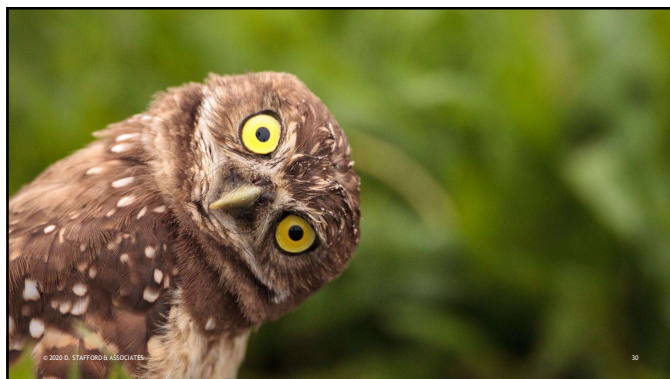
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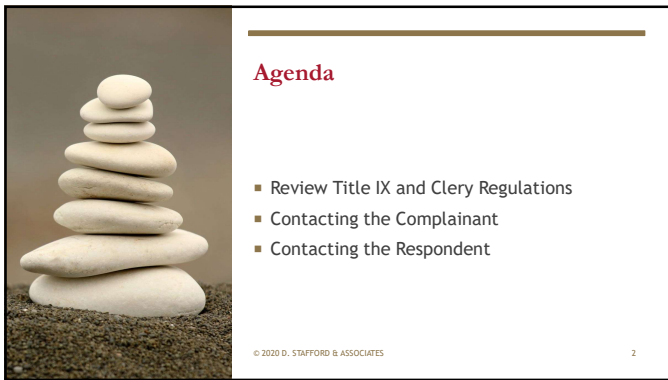
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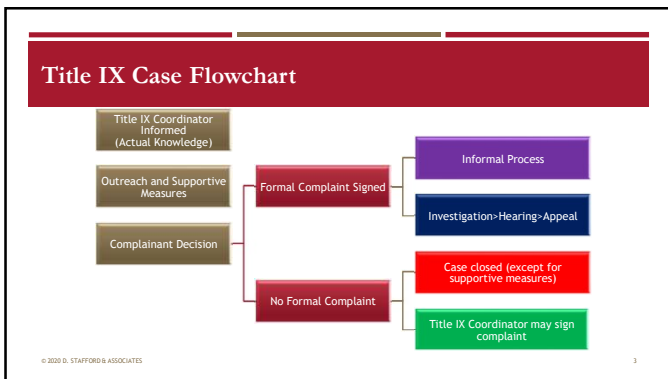
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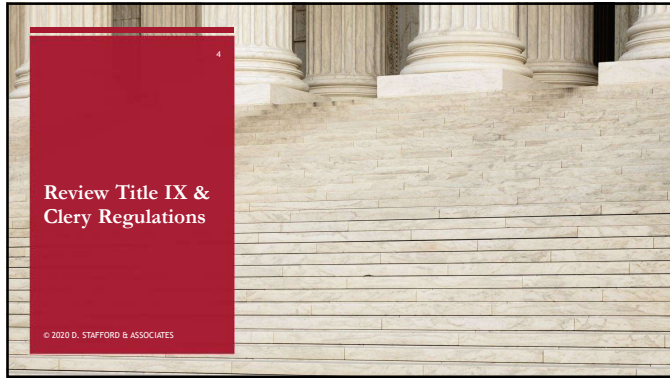
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### Actual Knowledge

- Title IX
  - "Actual knowledge means notice of sexual harassment or allegations of sexual harassment to a recipient's Title IX Coordinator or any official of the recipient who has authority to institute corrective measures on behalf of the recipient, or to any employee of an elementary and secondary school."
- Clery
  - Campus police, security, or official with significant responsibility for student and campus activities
  - "Official" is any person who has the authority and the duty to take action or respond to particular issues on behalf of the institution

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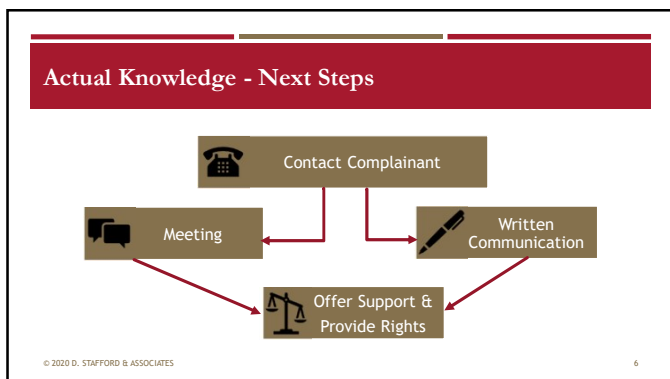
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Terminology

Clery

- Accommodations
  - Victim
- Protective Measures
  - Victim
- Support Services
  - Victim
  - Accused (can but not required)
  - Employees

Title IX

- Supportive Measures (2020 Title IX Regulations)
  - Complainant
  - Respondent

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2020 Title IX Regulations - Supportive Measures

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

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2020 Title IX Regulations - Supportive Measures

Counseling

Extensions of deadlines or other course-related adjustments

Modifications of work or class schedules

Campus escort services

Mutual restrictions on contact between the parties

Changes in work or housing locations

Leaves of absence

Increased security and monitoring of certain areas of the campus

and other similar measures

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Clery Support Services and Resources

Counseling

Health

Mental health

Victim advocacy

Legal assistance

Visa and immigration assistance

Student financial aid

Other on-campus services

Other off-campus services

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Clery Accommodations

Clery Protective Measures

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Title IX Formal Complaint

Filed/Signed

Alleging sexual harassment

Requesting an investigation (or informal option)

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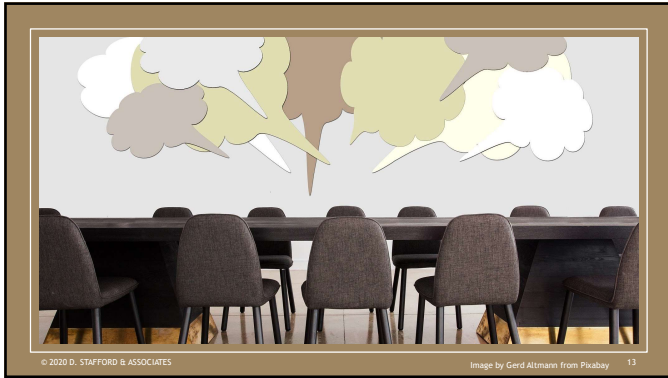
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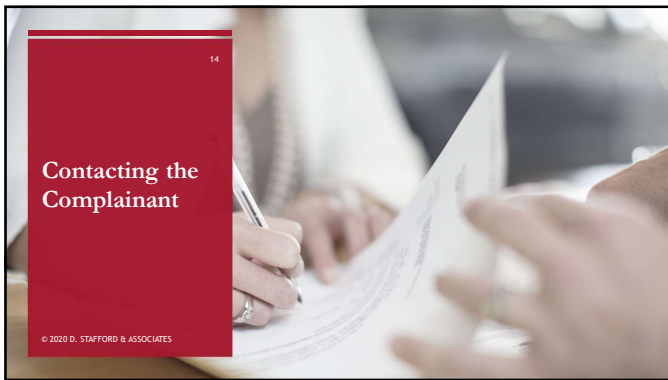
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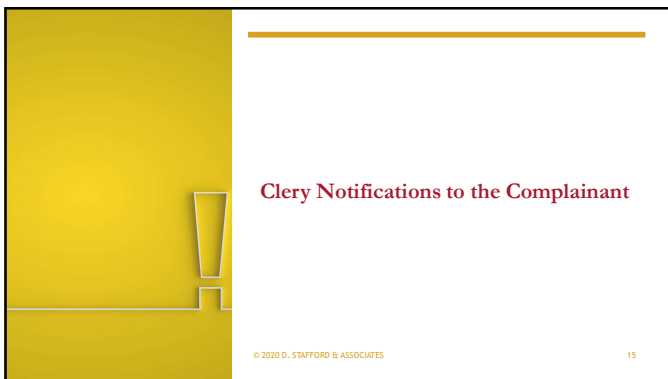
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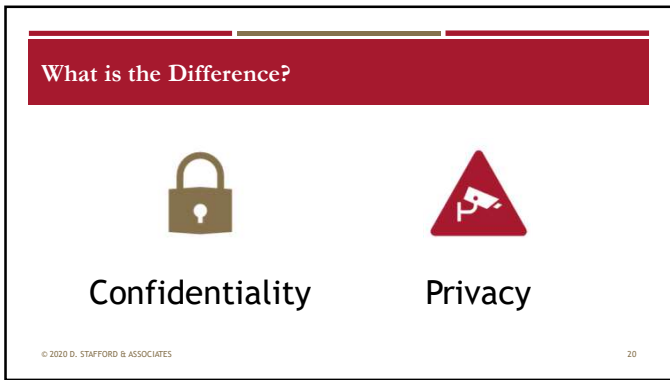
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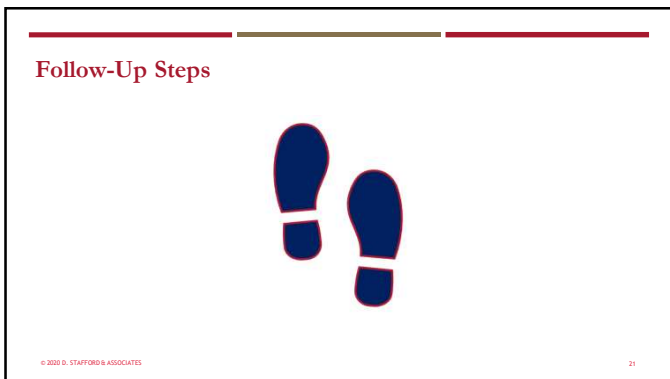
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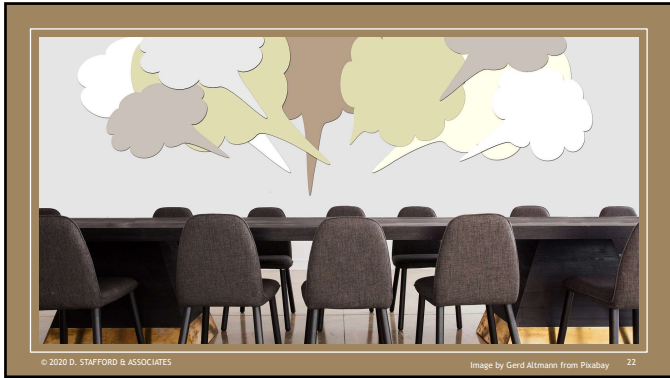
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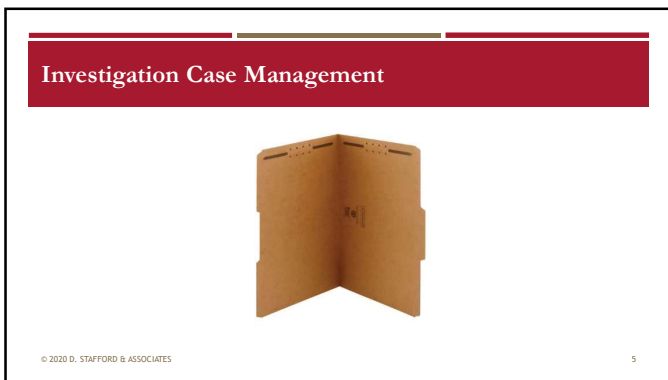
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Investigative Strategy

 Scope

 Methodology

 Challenges

 Pre-Work

 Roadmap

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Scope



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

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Methodology (and who does what?)



- Liaisons
- Logistics
- Internal Communications

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## Challenges: Evidence Considerations



- Testimonial Evidence
- Non-Testimonial Evidence

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## Challenges: Other



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

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## Pre-Work



- Draft Questions
- Initial Evidence Collection

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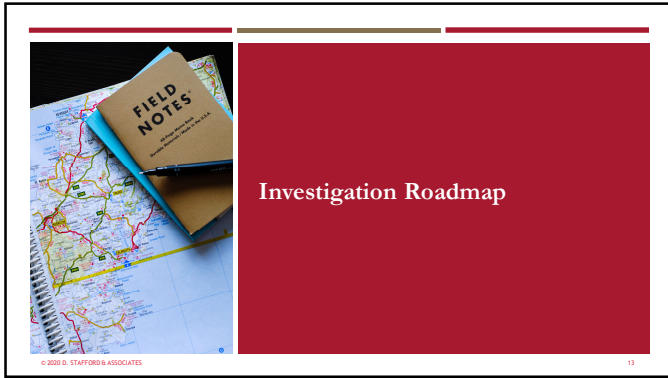
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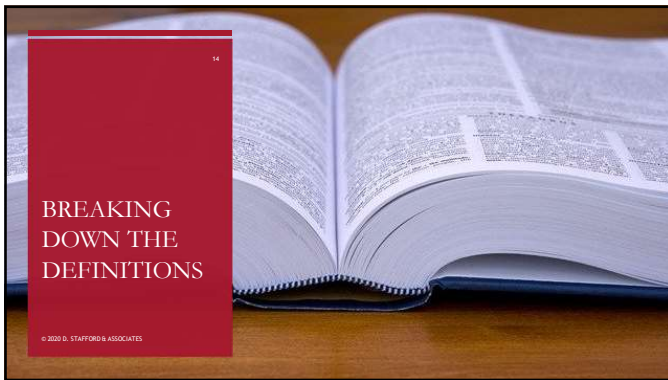
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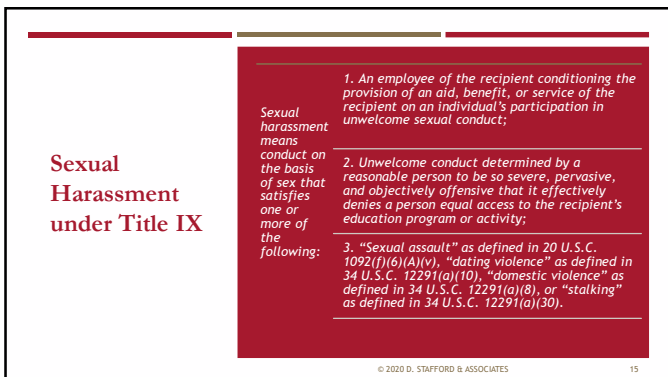
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### PRONG 1: Quid Pro Quo

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

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### PRONG 2: Hostile Environment +

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

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### PRONG 3: Sexual Assault

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

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

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### PRONG 3: Intimate Partner Violence

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

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

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### PRONG 3: Stalking

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

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

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

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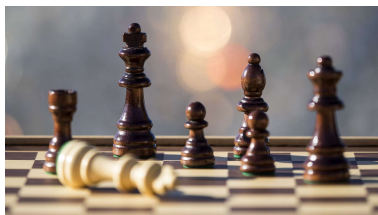
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Retaliation

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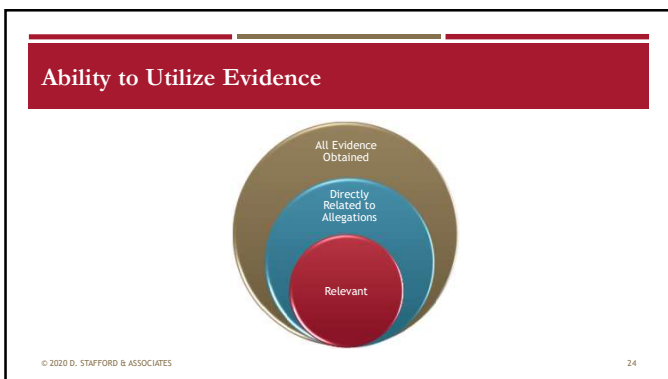
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Research



Websites



Organizations



Calendars



Schedules



Party "directory information"

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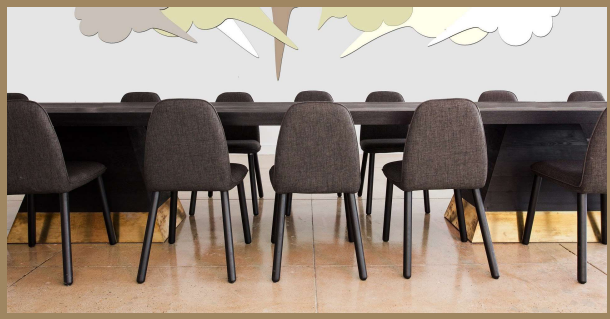
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Initial Evidence Collection

Other "statements"

Evidence from campus sources

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Other Sources of Evidence

Photographs

Text messages

Social media/dating apps

Documents  
(diagrams, memos, letters, notes)

Voicemail

Phone logs

Guest lists

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Floorplans



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Diagrams



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# Investigation Timeline



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**Agenda**

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

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**What are Interviews**



PART OF EVIDENCE  
(TESTIMONIAL)



CONVERSATION



STRUCTURED

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### Interview Golden Rules

Preparation

Environment

Flexibility

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### Interview Preparation



**Research**  
The incident  
The policy  
Topics of inquiry



**Pre-draft questions**  
Background questions  
Narrative question  
Case Specific Questions



**Preliminary Info**  
Procedural  
Recordkeeping  
Notice

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### INTERVIEW – WHAT TO BRING

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**Flexibility**



*I pledge to...*

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

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THE  
INTERVIEW

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**The DSA Interview Outline**

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

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**PRELIMINARIES:**  
You do the talking



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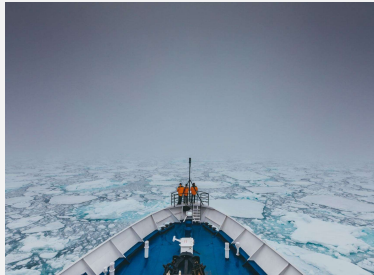
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**BACKGROUND:**  
Build the Rapport



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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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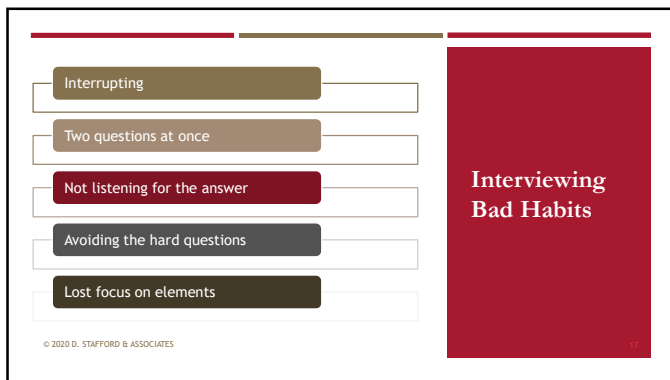
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## Re-traumatization

 Safety and Wellbeing

 Maintain privacy and confidentiality

 Kept up to date

 Empathy and respect

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## Question Format

 Tone

 Phrasing

 Open-ended

 Safe

 Judgment-free

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## Witness Interviews

 Follow same interview structure

 Assess credibility

 Confidentiality/Privacy

 How "know"?

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RESPONDENT -  
POTENTIAL  
DEFENSES

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

Victim consented but does not remember due to intoxication.

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

The sexual misconduct occurred but a different assailant.

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SAMPLE  
QUESTIONS

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RECREATE  
THE SCENE

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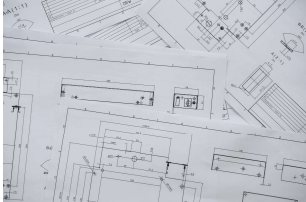
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Physical Space



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SENSORY

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Sensory




SMELLS




TEMPERATURE




TOUCH



SOUNDS



LIGHT



TASTE

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## Harassment Questions



WHO, WHAT,  
WHEN, WHERE,  
AND HOW



RESPONSE



IMPACT



WITNESSES



EVIDENCE

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## Elements of the Policy Violations

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

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## Consent

Consent cues

Force,  
Coercion,  
Intimidation,  
Threats

Incapacitation

Policy definition

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**Deception**



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

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**Answer:**

**60%**

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**CREDIBILITY**

**CREDIBILITY CHECKLIST**

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### Credibility Checklist

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

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### Truthfulness

Omission

Embellishment

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### Truthfulness



Repeat v. Reconstruct



Get them to talk



Consistency



Details

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### Past and Post Behaviors



Past behaviors



Post assaultive

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### Corroborating Evidence


  
Physical


  
Contemporaneous documentation

  
Personal documents

  
Admissions

  
Eyewitness

  
Outcry

  
Other?

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### Ability to Perceive

Distance

Knowledge

Credentials

Competence

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### Ability to Remember



Passage of time



Alcohol



Blackout



Peripheral details



History of memory

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### Plausibility

Believability

Perspective

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### Demeanor



Baseline




Discomfort




Emotions



Shame



Anger



Defensive



Fear

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## Motivation



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## Bias



Personal preference      Impartiality      Internal Biases

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## Bias

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

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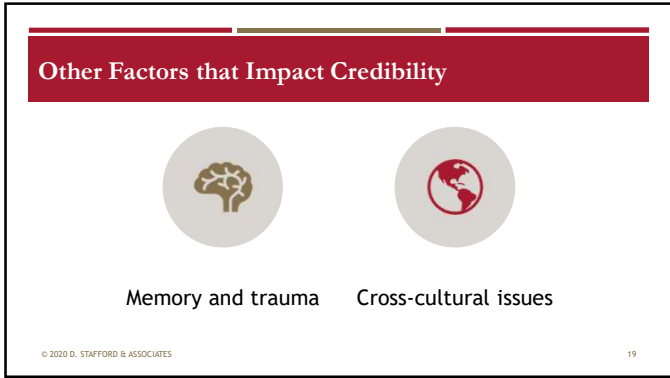
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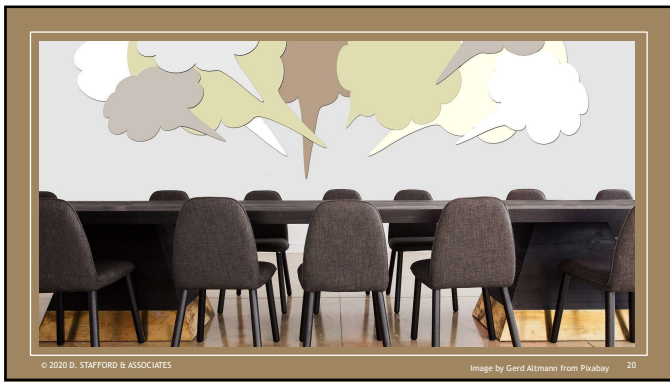
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## Relevancy



Decision-maker determines



Built-in pause



Cannot be pre-screened

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## What Does Relevancy Mean?

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

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## Other Ways to Put It...

Testimony that witness was "pretty certain" defendant had been a patron at a bar was relevant and properly admitted

It is sufficient if the evidence constitutes a link in the chain of proof

It is enough if in connection with other evidence, it helps a little

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## Relevancy Exceptions

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

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### Agenda

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

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### We are Here...



Intake



Investigation



Resolution

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Resolution Options



Informal Resolution



Formal Resolution

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INFORMAL RESOLUTION

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I Agree ☐

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§106.45(b)(9) – Informal Resolution

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

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### Informal Resolution



Notice



Voluntary



Not allowed for  
Employee/student

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### Formal Complaint – Conduct Conferences



Witnesses



Timing



Acceptance of  
Responsibility



Sanctions

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### Informal Resolution Considerations

Subpoena

Change to  
formal  
process

Incomplete  
requirements

Discipline file

Record  
keeping

"Virtual" RJ  
meetings

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# Informal Resolution

Mediation

Restorative Justice

Educational efforts

Other

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# Restorative Justice

Harms and Needs

Obligations

Engagement

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# RESTORATIVE PRACTICE

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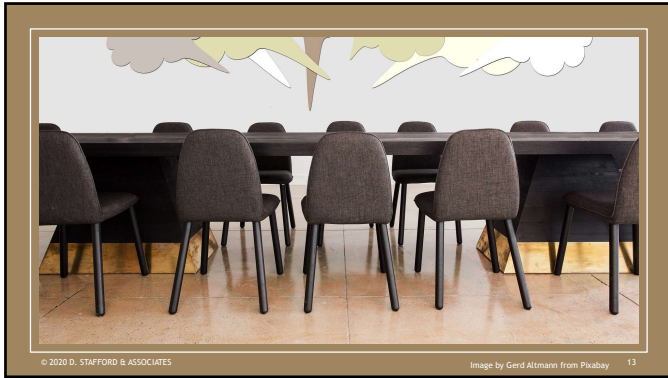
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**Single Adjudicator Model**

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

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## Formal Resolution – Considerations

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

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## Live Hearings



- Must provide for a live hearing
- At the request of either party, the recipient must provide for a live hearing to occur with the parties located in separate rooms with technology enabling the decision-maker(s) and parties to simultaneously see and hear the party or the witness answering questions
- Must create an audio recording or transcript and make available.

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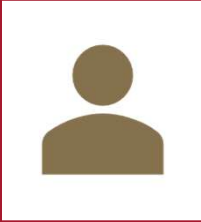
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## Advisors



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

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## Cross Examination



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

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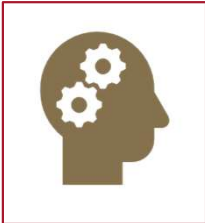
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## Relevancy



“Only relevant cross-examination and other questions may be asked of a party or witness. Before a complainant, respondent, or witness answers a cross-examination or other question, the decision-maker(s) must first determine whether the question is relevant and explain any decision to exclude a question as not relevant.”

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## Relevancy



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Participation



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

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Formal Resolution – Making a Finding



Policy language - Alleged violations



Weighing the evidence



Determined behaviors



Standard of evidence

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SANCTIONS AND REMEDIES

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Disciplinary Sanctions and Remedies



Sanctions



Remedies

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Formal Resolution – Disciplinary Sanctions

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

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

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Status

- Expulsion, separation, probation

Prevention

- Protective measures, restrictions, separation

Educational

- Action plans

Formal Resolution - Disciplinary Sanctions

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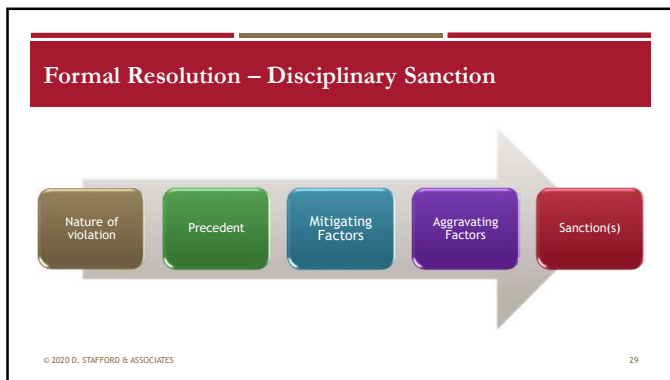
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Written Outcome

Allegations

Procedural steps

Findings of fact

Conclusion/application

Rationale (each allegation, determination regarding responsibility, disciplinary sanctions, remedies)

Appeal procedures

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Live Hearing Recording or Transcript



Recording



Transcript

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APPEALS

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
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Appeals

 Must offer

 Three bases

Procedure  
New evidence  
Conflict or bias

 Additional grounds permitted

 No other role for appeal officer

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
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Appeals

 Notification

 Comply with appeal standards

 Equal opportunity to respond

 Issue written decision simultaneously

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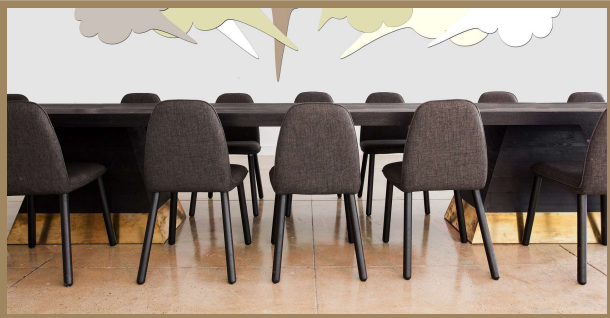
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When is the Decision Final?

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