



D. STAFFORD
& ASSOCIATES

Sexual Misconduct (Title IX) Investigation Class

Presented by:

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Have you joined NACCOP yet? If not, go to 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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Title IX/Sexual Misconduct Investigator Agenda

University of Miami

September 1-2, 2020

9am-5pm Eastern (breaks: 10:15-10:30am, 12noon-1pm, 2:15pm-2:30pm)

Day 1

Introductions

Module 1: Overview of Title IX

Module 2: Overview of VAWA

Small Group Discussions: Institutional Policies, Procedures and Practices

Module 3: Special Considerations

Module 4: Consent

Day 2

Review and Reflection

Module 5: Evidence Collection and the Investigative Process

Module 6: Interviewing

Module 7: Credibility and Relevancy

Module 8: Report Writing

Case Study/ Q & A



TITLE IX

Copyright

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ISSUANCE OF CERTIFICATES FOR COMPLETION OF DSA/NACCOP CLASSES

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

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

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

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

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



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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



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

Murray is a graduate of the University of Richmond, where she received her Bachelor's Degree in Applied Studies in Human Resource Management 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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D. Stafford & Associates Online Sexual Assault Investigations Recertification (SAIR) Training Program

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

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

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

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

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

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

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



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

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

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

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

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

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

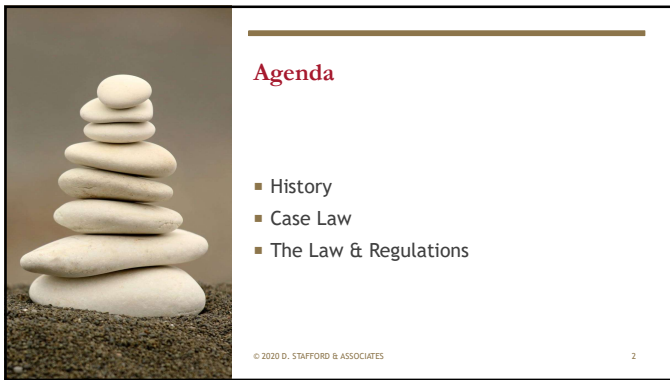
NOTE: If you already attended or plan to attend either the DSA Investigation of Sex Crimes for Campus Police and Public Safety Agencies Class or the Title IX Coordinator/Investigator Class and you sign up for the Online Sexual Assault Investigations Recertification Training Program and Online Domestic/Dating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

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

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



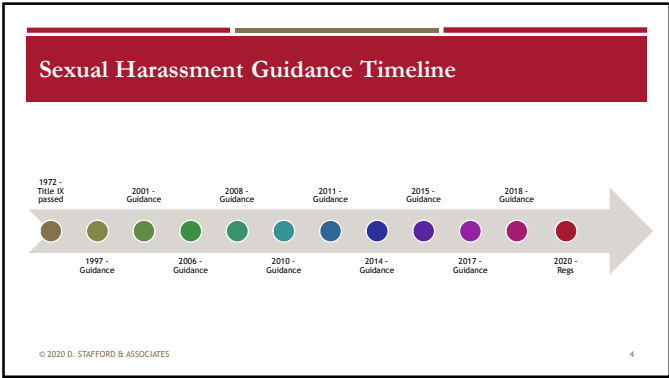
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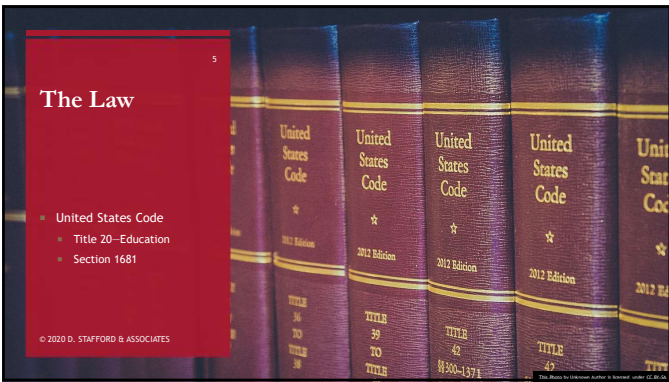
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Law - Federal

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

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

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CASE LAW

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Geographic Boundaries
of United States Courts of Appeals and United States District Courts

The map displays the following circuit numbers and corresponding states:

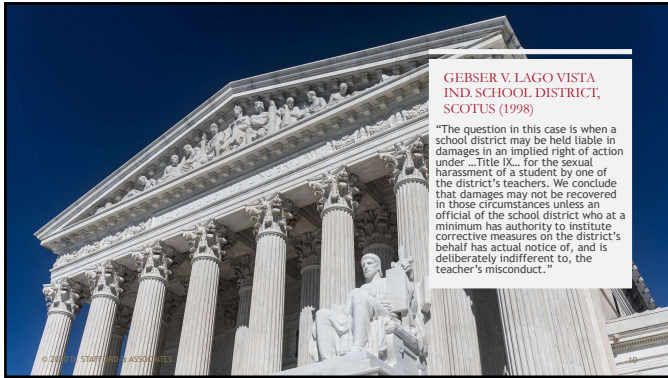
- 1:** Maine (ME), New Hampshire (NH), Massachusetts (MA), Rhode Island (RI), Connecticut (CT)
- 2:** Vermont (VT), New York (NY)
- 3:** New York (NY), New Jersey (NJ), Delaware (DE), Maryland (MD), District of Columbia (DC), Federal District (FED)
- 4:** Virginia (VA), North Carolina (NC), South Carolina (SC), Georgia (GA), Florida (FL)
- 5:** Texas (TX), Oklahoma (OK), Arkansas (AR), Louisiana (LA)
- 6:** Kentucky (KY), Tennessee (TN), Mississippi (MS), Alabama (AL)
- 7:** Illinois (IL), Indiana (IN), Michigan (MI), Ohio (OH), Pennsylvania (PA)
- 8:** Minnesota (MN), Iowa (IA), Missouri (MO), Wisconsin (WI)
- 9:** California (CA), Nevada (NV), Arizona (AZ), New Mexico (NM), Colorado (CO), Utah (UT), Idaho (ID), Montana (MT), Washington (WA), Oregon (OR)
- 10:** New Mexico (NM), Colorado (CO), Utah (UT), Arizona (AZ)
- 11:** Florida (FL)

Alaska (AK) and Hawaii (HI) are shown as insets. Puerto Rico (PR) is also shown as an inset.

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https://www.uscourts.gov/sites/default/files/u.s._federal_courts_circuit_map_1.pdf

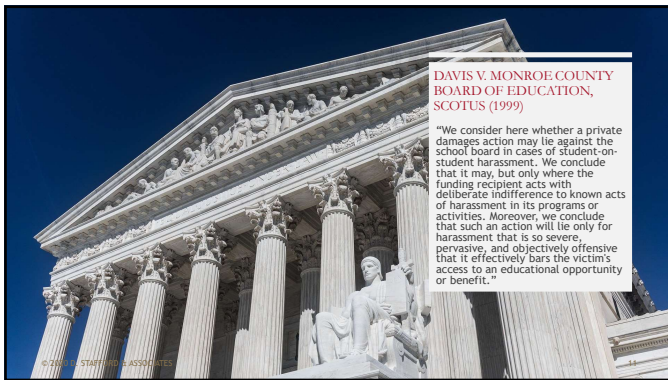
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**GEBSER V. LAGO VISTA
IND. SCHOOL DISTRICT,
SCOTUS (1998)**

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

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

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

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**JACKSON V. BIRMINGHAM
BOARD OF EDUCATION,
SCOTUS (2005)**

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

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

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

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**DOE V. CINCINNATI, 6TH
CIRCUIT (2017)**

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

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**DOE V. BAUM,
6TH CIRCUIT (2018)**

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

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

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

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

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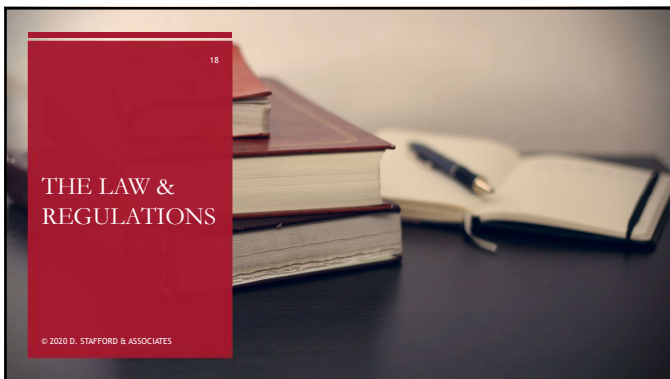


**DOE V. UNIVERSITY OF
THE SCIENCES,
3RD CIRCUIT (2020)**

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

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Interpreting Laws



Law



Regulations



Substantive guidance

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Title IX Overview



Applies to Higher Ed
and K-12



Limited regulations
pre-2020




Covers wide range of
sex discrimination


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2020 Regulations



PREAMBLE



PROCESS FOR SEXUAL
HARASSMENT ONLY




TECHNICAL
ASSISTANCE


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§106.3 – Remedial Action



Fix it



No monetary damages

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§106.6 – Effect of Other Requirements and Preservation of Rights

Constitutional Rights

FERPA

Title VII


Parents and guardians

State and local laws


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§106.8(a) Designation of Coordinator



Title IX Coordinator



Notification of parties



Contact information



Reporting information

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§106.8(b) Dissemination of Policy



Notification that you do not discriminate



Title IX Coordinator contact information



Grievance procedure



United States

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§106.8(C) Adoption of Grievance Procedure

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

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Only applies to US

Use other policy

No Clery conflicts

§106.8(d) Application Outside of the United States

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§106.30 Definitions – Actual Knowledge

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


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§106.30 Definitions – Actual Knowledge




Title IX Coordinator




Official with authority



Different K-12 standard



Designation



Not same as CSAs

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§106.30 Definitions – Complainant & Respondent

Complainant

“an individual who is alleged to be the victim of conduct that could constitute sexual harassment”

Respondent

“an individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment”

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§106.30 Definitions – Formal Complaint

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

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§106.30 Definitions – Formal Complaint



Signed formal
complaint



Title IX
Coordinator



Complainant MUST
be participating



Third party
reports

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§106.30 Definitions - Sexual Harassment

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


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


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PRONG 1: Quid Pro Quo

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

 “This for that” harassment


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


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

 No definition of consent required

 Not the same Title VII “hostile environment” or 2001 Guidance


 First Amendment protections

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PRONG 3: The VAWA Crimes


 Sexual Assault

Rape

Fondling


Incest

Statutory Rape

 Intimate Partner Violence

Dating Violence

Domestic Violence

 Stalking

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§106.30 Definitions – Supportive Measures

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

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

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§106.30 Definitions – Supportive Measures



Non-disciplinary, non-punitive



Both parties



Academic, housing, and athletic impact



“Mutual restrictions on contact”

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§106.44 Recipient’s Response to Sexual Harassment; (a) General Response to Sexual Harassment

Deliberately
Indifferent

Educational
Program or
Activity

Equitable

Contact
Complainant

On-line


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





Emergency removal

Administrative leave

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§106.45 Grievance Process for Formal Complaints of Sexual Harassment (a) Discrimination

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

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

Equitable

Objective Evaluations

Impartiality and Training

Presumption of Not Responsible

Prompt Time Frames

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

Range of sanctions and remedies

Standard of evidence

Appeal


Supportive measures


Respect privilege

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





Notice requirementsAdditional allegations

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

Must dismiss:

May dismiss:

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

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

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

Multiple respondents

More than one complainant against one or more respondent

One party against other party

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Burden of proof

Witnesses and facts

No restriction on discussing allegations

Advisor

Notice

Inspect evidence


Investigative report


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

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§106.45(b)(6) Hearings


Live hearing


Cross-examination

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§106.45(b)(6) Hearings

- Advisor
- Relevancy
- Participation consequences
- “Physically present”

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§106.45(b)(7) Determination Regarding Responsibility

- Allegations
- Procedural steps
- Findings of fact
- Conclusion/application
- Rationale
- Appeal procedures

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Sanctions and Remedies



Sanctions



Remedies

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§106.45(b)(8) Appeals

MUST have

- Procedure
- New evidence
- Conflict or bias that impacted outcome

Additional grounds permitted

Decision-maker can have no other role

Reasonably prompt time frame

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§106.45(b)(8) Appeals

Notification of appeal

Equal opportunity to respond


Written outcome - rationale

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§106.45(b)(9) Informal Resolution



Notice



Voluntary



Not allowed for Employee/student

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


Case Materials


Training materials

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Intimidation, threats, coercions, discrimination

May use same grievance procedure

1st Amendment

False reports

§106.71
Retaliation
Prohibited

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Title IX Personnel – Title IX Coordinator

Coordinates all Title IX efforts

Disseminates policy

Receives reports and/or outreach to complainant

Accepts or signs formal complaints

Accepts complainant's withdrawal of complaint

Coordinates effective implementation of supportive measures and remedies

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Title IX Personnel – Decision-Maker

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

May ask questions in hearing

Determine relevancy of questions in hearing

Issues written determination of responsibility

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Title IX Personnel – Investigator

Gathers relevant evidence

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

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

Drafts final investigative report

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Title IX Personnel – Informal Resolution Facilitator

Facilitate the informal resolution process

Receive same training as other Title IX Personnel

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School-provided Advisors

Institutions must provide an advisor if a party does not have one at hearing

Conducts cross examination of witnesses and opposing party

Receives evidence and investigation report

No training requirement

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Who does everything else?

Emergency removal decisions (and appeals)

Determine bias and conflict of interest

Make dismissal decisions

Appoint Title IX Personnel

Interpret policy

Draft and send notice documents

Implement sanctions

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All Title IX Personnel:

Definition of sexual harassment

Scope of the recipient's education program or activity

How to conduct an investigation and grievance process including hearings, appeals, and informal resolution processes, as applicable

How to serve impartially, including by avoiding prejudgment of the facts at issue, conflicts of interest, and bias

Decision-makers:

Technology to be used at a live hearing

Issues of relevance of questions and evidence, including when questions and evidence about the complainant's sexual predisposition or prior sexual behavior are not relevant

Investigators:

Issues of relevance to create an investigative report that fairly summarizes relevant evidence

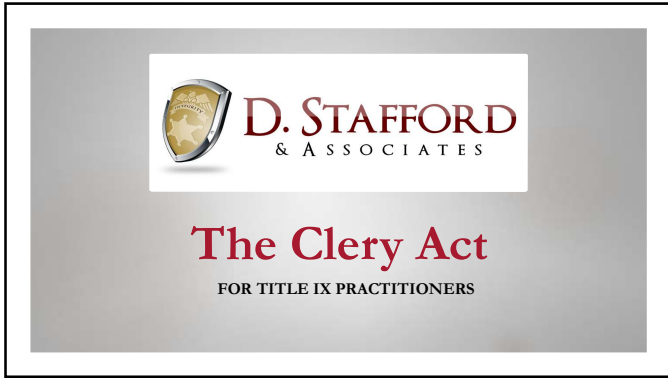
Training

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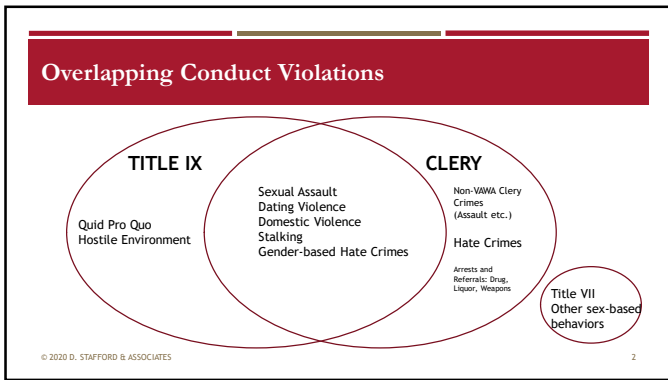
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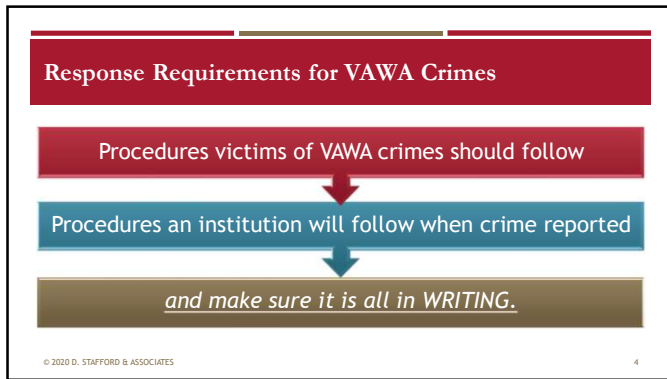
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Written Explanation of Student or Employee's Rights

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

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Written Explanation of Rights and Options

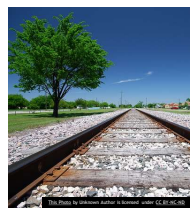


- The importance of preserving evidence** that may assist in proving that the alleged criminal offense occurred or may be helpful in obtaining a protection order
 - Not required but recommended: Where to obtain forensic exams, contact info, does not require police report and can have exam now, decide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

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Written Explanation of Rights and Options



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



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

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Written Explanation of Rights and Options



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

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Response to “Actual Knowledge”

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

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Clery Requirements for Disciplinary Proceedings




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

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Advisors under Clery

NO



TALKING


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	Clery Act
<ul style="list-style-type: none"> 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 <u>range</u> of sanctions; Describe range of supportive measures 	<ul style="list-style-type: none"> Prompt, fair, and impartial investigation and resolution Anticipated timeframes List all possible sanctions for each offense (employees and students) Consistent with policy and transparent Not required to list all protective measures

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Formal (Live Hearing)

2020 Title IX Regulations	Clery Act
 <p>2020 Title IX Regulations</p> <p>Requires live hearing with cross examination by advisor</p>	 <p>Clery Act</p> <p>Clery is silent regarding live hearing</p>

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Written Determination

Title IX	Clery Act
<ul style="list-style-type: none"> Identification of the allegations Procedural steps taken from receipt through determination <ul style="list-style-type: none"> 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) 	<ul style="list-style-type: none"> Result (include any sanctions and rationale for results and sanction) Appeals procedures Any change to the result When such results become final

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Clery Requirements for Officials

training



This image is intended to be a training screen for VUS and MHE.

- 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”

<p>Title IX (“Title IX Personnel”)</p> <ul style="list-style-type: none"> ■ Training for all on... <ul style="list-style-type: none"> ■ 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 <ul style="list-style-type: none"> ■ training on any technology and on issues of relevance ■ Investigators <ul style="list-style-type: none"> ■ relevance to create an investigative report that fairly summarizes ■ Training materials must not rely on sex stereotypes 	<p>Clery (“Officials”)</p> <ul style="list-style-type: none"> ■ Annual training on <ul style="list-style-type: none"> ■ the issues related to dating violence, domestic violence, sexual assault and stalking and on ■ how to conduct an investigation and hearing process that protects the safety of the victims and promotes accountability
--	---

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Appeals

<p style="background-color: #800000; color: white; padding: 5px; text-align: center;">2020 Title IX Regulations</p> <ul style="list-style-type: none"> • Must offer both parties an appeal • Based on specific grounds 	<p style="background-color: #800000; color: white; padding: 5px; text-align: center;">Clery Act</p> <ul style="list-style-type: none"> • Not required (but must provide notice if allowed along with appeal procedures) • Simultaneous written decision describing result, sanction, any changes to the result, when it becomes final
---	--

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Recordkeeping

2020 Title IX Regulations

- 7 years

Clery Act

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

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VAWA Education Requirements





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Education and Prevention under Clery


Annual training for conducting “officials” (Investigators, Adjudicators, Appeals)


Primary Prevention and Awareness Programs for all incoming students and new employees


Ongoing Prevention and Awareness Campaigns for ALL students and employees


CSA Training and “Super” CSA Training

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Primary Prevention Best Practices

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

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

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Primary Prevention & Awareness

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



- 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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Conflicts of Interest




Roles on campus



Past employment



Volunteering



Social media presence

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Recognizing Bias



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Discussion: Bias

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

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Slide 6

AT1 delete. Question can be asked with previous slide.

Ann Todd, 8/20/2020

jd1 I put the prompt in the note, so Cathy, if you agree, delete this slide when you review

jackd devonshire, 8/20/2020

Bias

Parties

Race

Gender

Gender Identity

Sexual orientation

Nationality

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Bias

Personal experience

Personal identity

Social identity

Theoretical perspective

Professional identity

Religious perspective

Political perspective

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Disability Considerations

Bias

Limited data is available

Accessibility

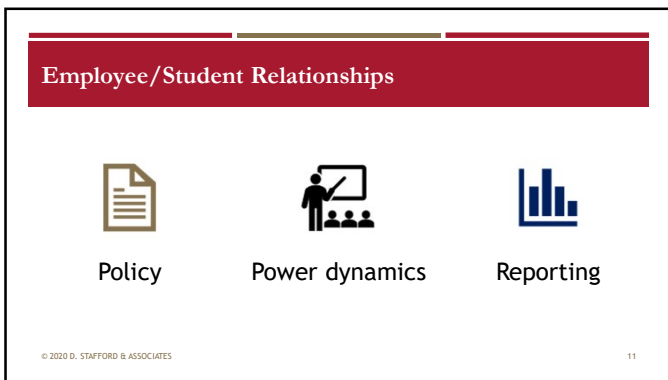
Accommodations

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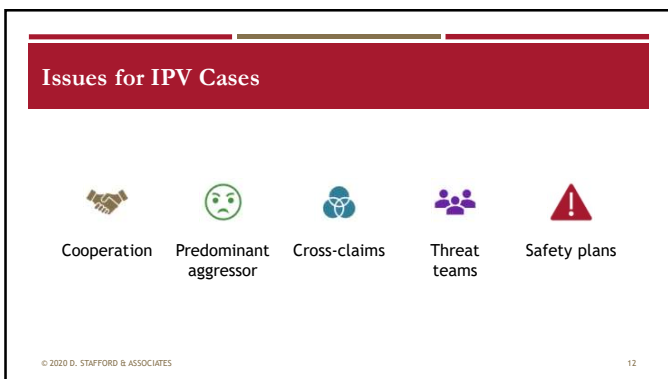
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Issues for Stalking Cases



Recognize behaviors



Duration



Frequency



Safety plan

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Retaliation

Identify behaviors

Which policy?

Remedies

What qualifies?

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UNDERSTANDING STRESS AND TRAUMA

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Keep in Mind

Application

Neutral Fact-finder

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Comparison



Stress



Trauma

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NEUROBIOLOGY


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Impact on Memory



Details




Time and Context


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Response



Reflex



Habit

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Interviewing



Consistent application



Ask clarifying questions



Avoid bias

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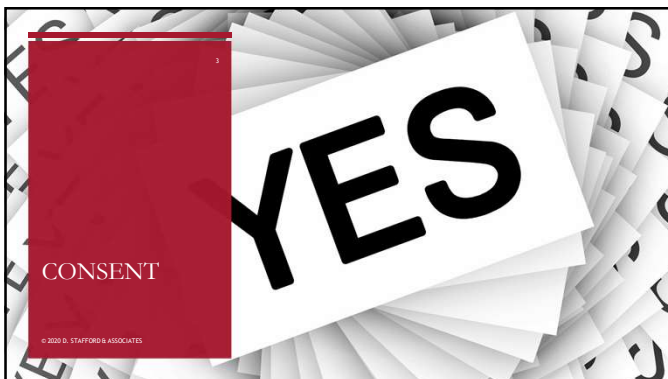
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Discussion:

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

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Consent

Sexual permission

Verbal

Non-verbal

Policy

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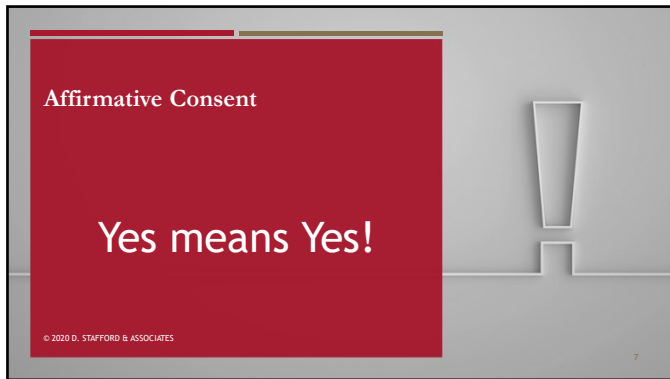
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Yes!

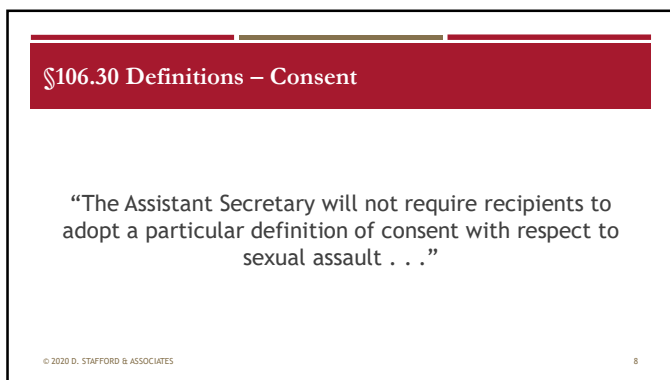
GOT CONSENT?

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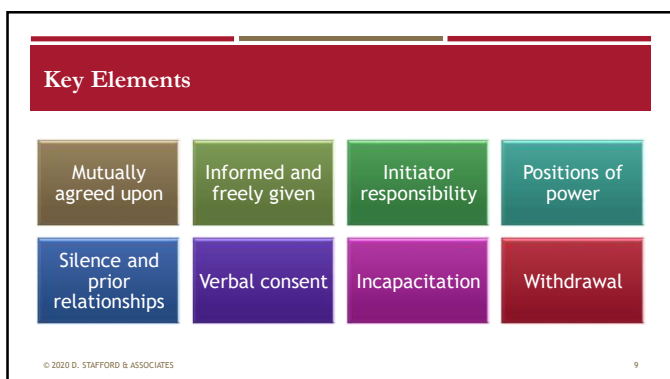
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Consent Is Absent when...

Force

- Physical
- Coercion
- Intimidation
- Threat

Incapacitation

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Physical Force

Holding
down

Forced
to touch

How
much?

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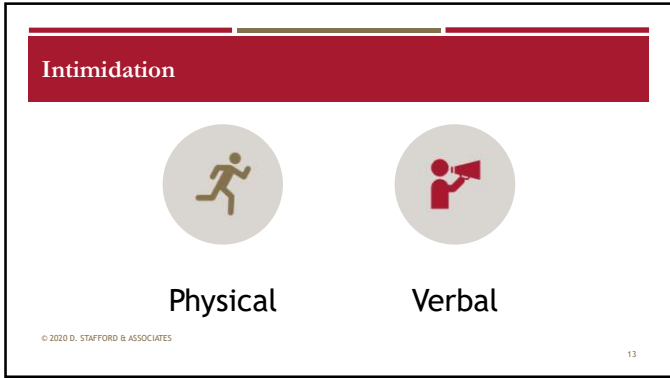
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Coercion

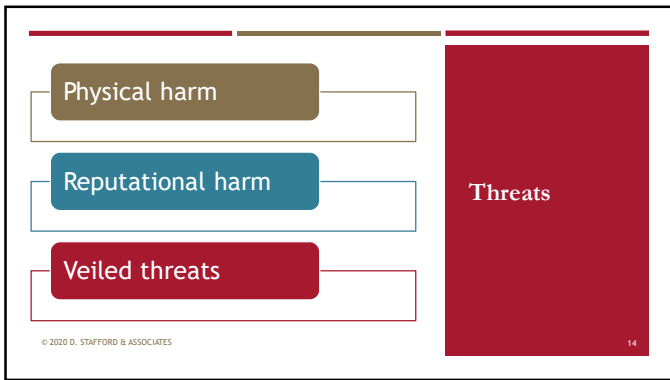
Frequency +	Intensity +	Duration +	Isolation
?	Now	5 minutes?	Library
Twice	?	?	Bar
Fifty times	?	2 days?	?

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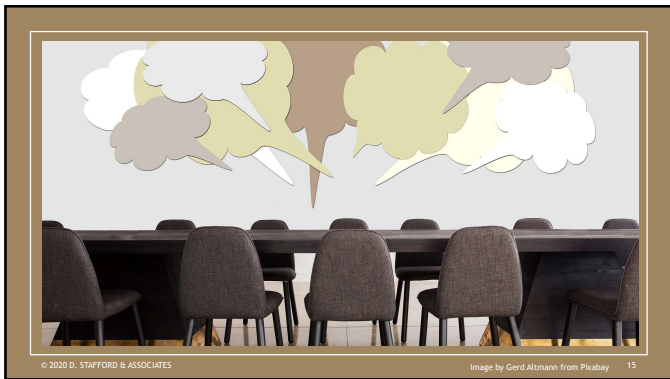
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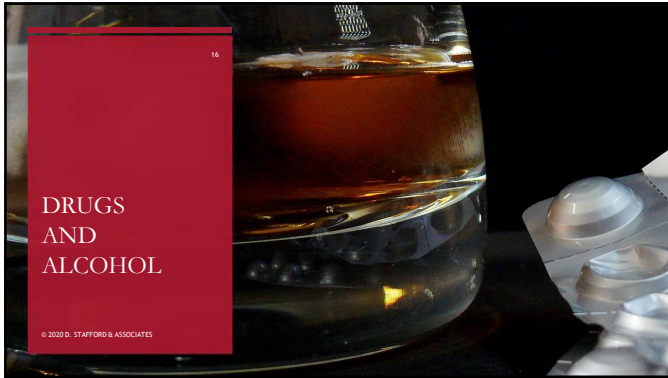
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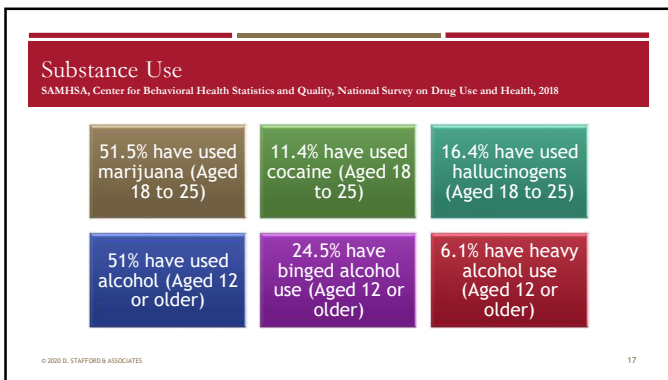
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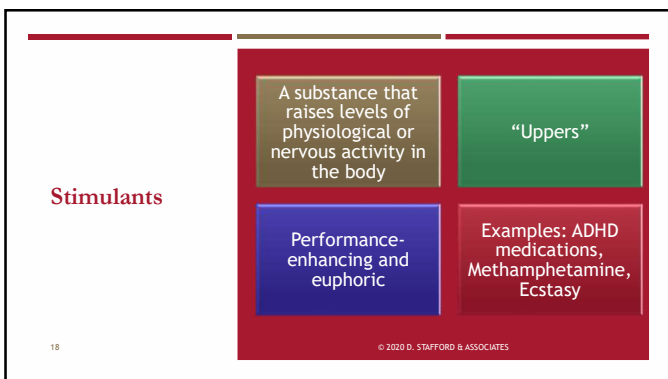
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Depressants



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

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Other Drugs

	
Hallucinogens	Opioids

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What is a Drink?

		
12 OZ BEER	4-5 OZ OF WINE	1.5 OZ 80 PROOF

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What is a Drink in College?



- Water bottle
- Boxed wine
- Solo cups

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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.
- Alcohol is a nervous system depressant.
- Impairment begins as soon as alcohol enters the bloodstream.
- Impairment increases with consumption of alcohol.

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

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Intoxication




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

Question: Can two INTOXICATED people legally have sexual intercourse?

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INCAPACITATION

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Incapacitation

Physical and mental impairment

Temporary or permanent

Decisions and judgement

Unconscious, sleep, blackout

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Incapacitation – Not Alcohol Related





Physical


Mental


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Incapacitation







Unconscious

Sleep

Blackout

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Incapacitation Questions

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

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Incapacitation



Impact BAC

- Time
- Amount consumed

Impact Presentation

- Food and water
- Sleep
- Drugs

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Blood Alcohol Content



Number of drinks



Body weight



Time

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Incapacitation

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

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

Incapacitation

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Two-Step Determination

Was the Complainant Incapacitated?

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

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Blackout v. Pass Out

Fragmentary blackout

En Bloc blackout

Pass out

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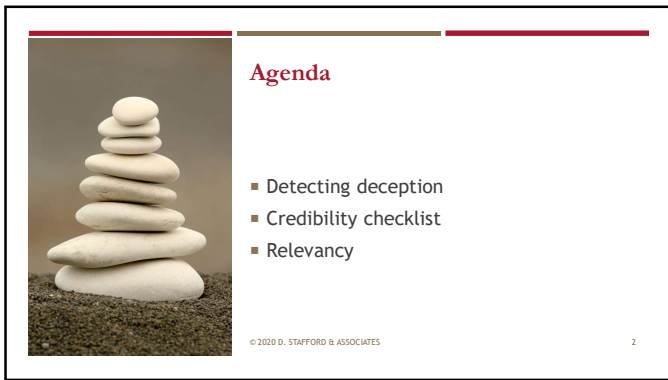
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Deception



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

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CREDIBILITY CHECKLIST

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CREDIBILITY



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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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7

Truthfulness




Repeat v. Reconstruct



Get them to talk



Consistency




Details

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Past and Post Behaviors



Past behaviors




Post assaultive

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Corroborating Evidence



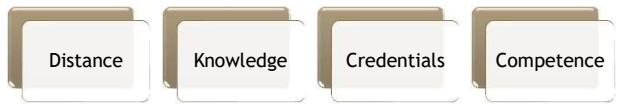
Physical Contemporaneous documentation Personal documents

Admissions Eyewitness Outcry

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Ability to Perceive




Distance Knowledge Credentials Competence

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Ability to Remember



Passage of time Alcohol Blackout Peripheral details History of memory

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Plausibility

Believability

Perspective

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Demeanor

←

Baseline

😬

Discomfort

😞

Emotions

🙄

Shame

😡

Anger

🛡️

Defensive

😱

Fear

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Motivation

To lie


Pressure

Past relationships


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Bias



Personal preference



Impartiality



Internal Biases

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

Bias


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Other Factors that Impact Credibility



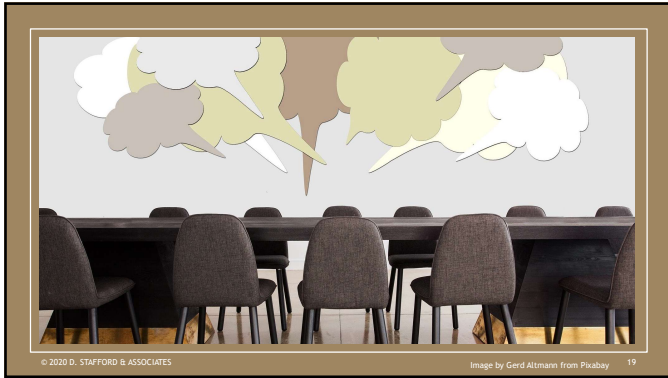
Memory and trauma



Cross-cultural issues

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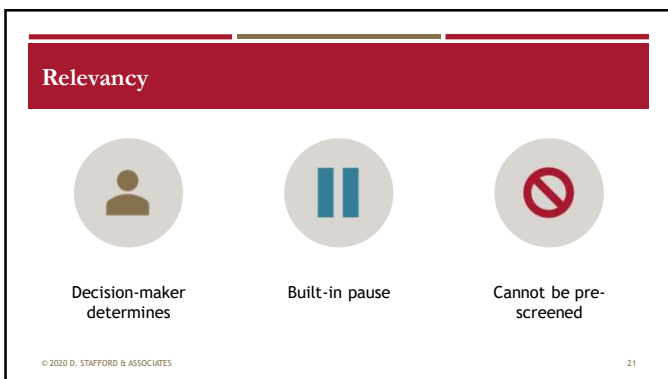
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What Does Relevancy Mean?

- 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 and information are irrelevant when they are not related to the issue at hand

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Other Ways to Put It...

The evidence does not need to be conclusive

The evidence constitutes a link in the chain of proof

The evidence, in connection with other evidence, helps "a little"

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Relevancy Exceptions

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

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§106.45(b)(5)(i) Relevancy Exception

The recipient cannot access, consider, disclose, or otherwise use a party's records that are made or maintained by a physician, psychiatrists, psychologist, or other recognized professional or paraprofessional acting in that capacity . . . unless the recipient obtains that party's voluntary, written consent . . .

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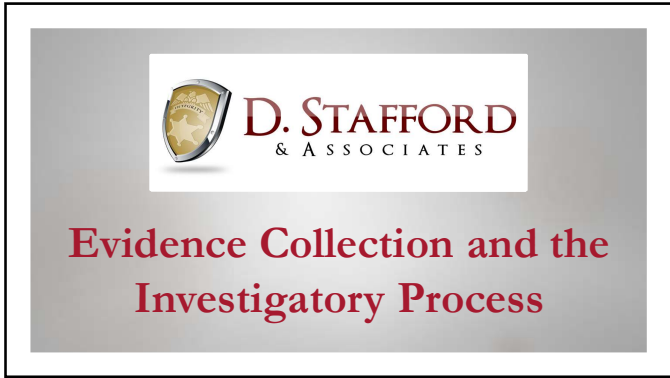
Image by Gerd Altmann from Pixabay 26

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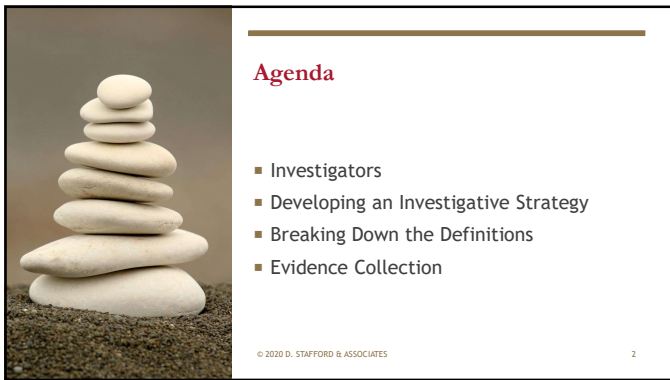
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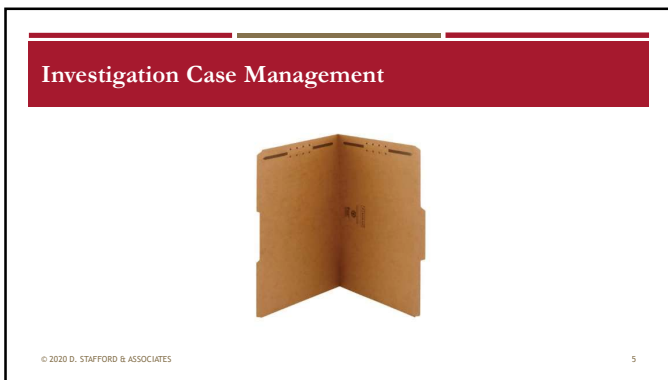
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Investigative Strategy

 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



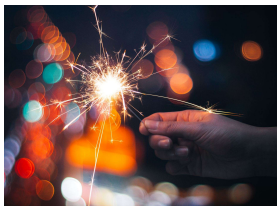
- Testimonial Evidence
- Non-Testimonial Evidence

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Challenges: Other



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

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Pre-Work

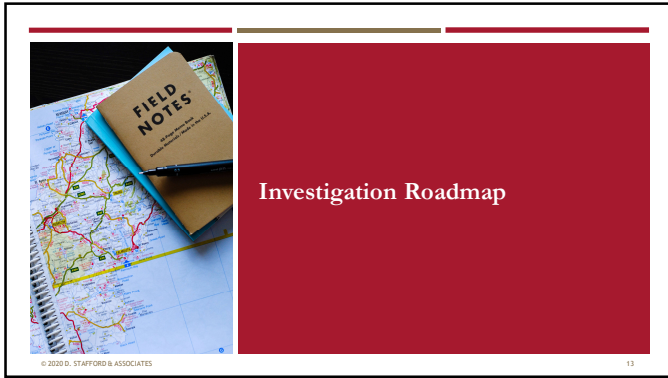


- Draft Questions
- Initial Evidence Collection

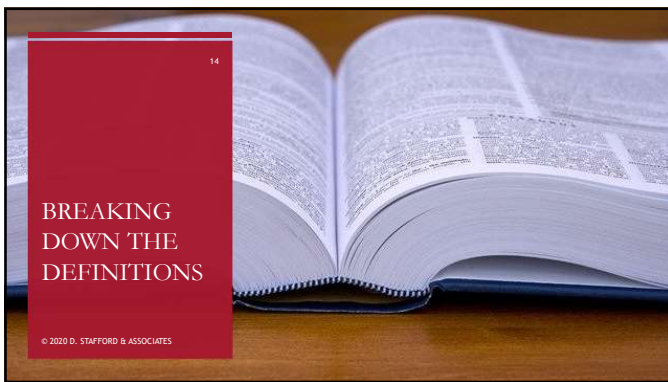
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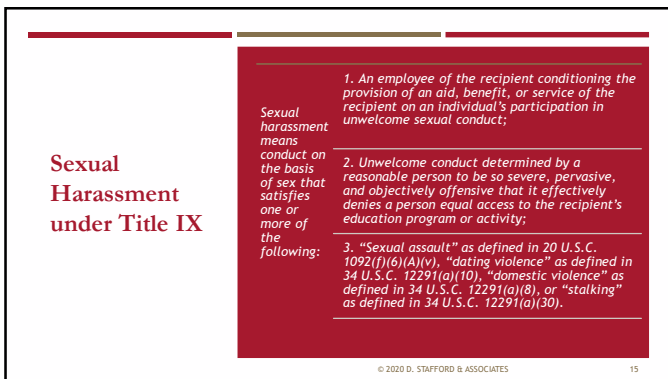
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PRONG 1: Quid Pro Quo

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

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PRONG 2: Hostile Environment +

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

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PRONG 3: Sexual Assault

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

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

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PRONG 3: Intimate Partner Violence

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

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

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PRONG 3: Stalking

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

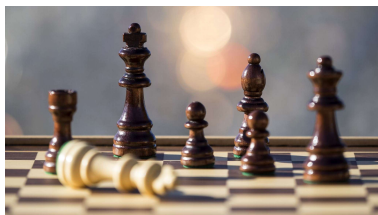
Stalking is defined as engaging in a course of conduct directed at a specific person that would cause a reasonable person to—

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

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Retaliation

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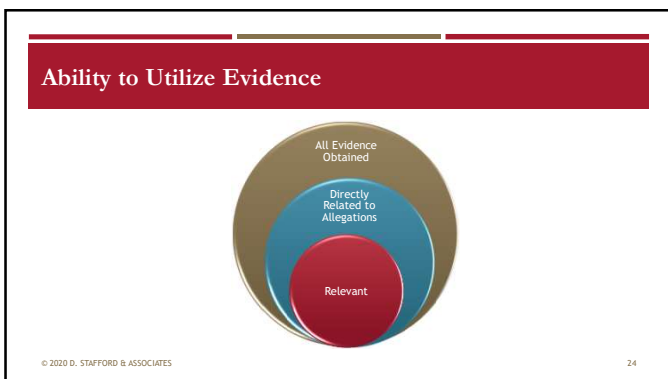
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Research




Websites



Organizations



Calendars



Schedules




Party "directory information"

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Initial Evidence Collection

Other "statements"

Evidence from campus sources

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Other Sources of Evidence

Photographs

Text messages

Social media/dating apps

Documents
(diagrams, memos, letters, notes)

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

6

Flexibility

I pledge to...

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

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THE INTERVIEW

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The DSA Interview Outline


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

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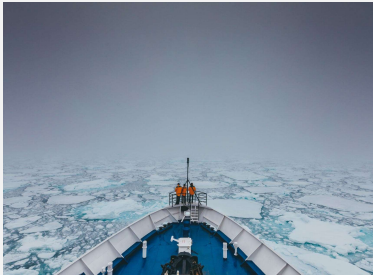
PRELIMINARIES:
You do the talking



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BACKGROUND:
Build the Rapport



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NARRATIVE:
The Big Question



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CLARIFICATION:
Filling in the holes



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CASE QUESTIONS:
The Pre-Drafted
Must Asks




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CLOSING:
Loose Ends



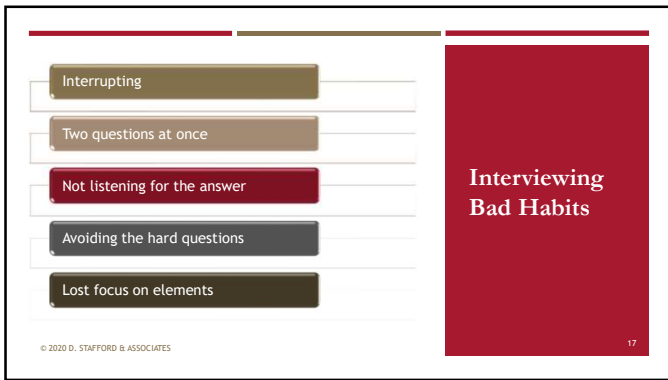
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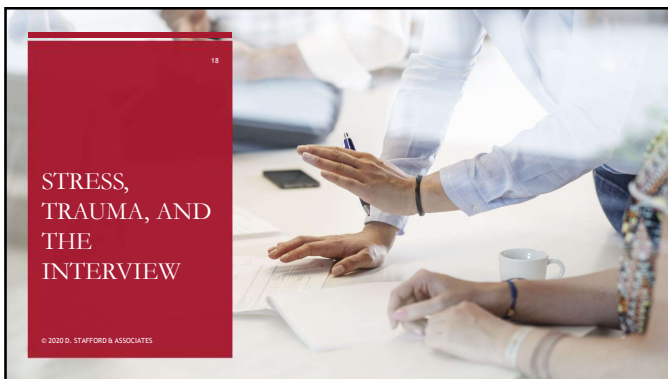
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Re-traumatization

 Safety and Wellbeing

 Maintain privacy and confidentiality


 Kept up to date


 Empathy and respect


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Question Format

 Tone

 Phrasing

 Open-ended


 Safe


 Judgment-free


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Witness Interviews

 Follow same interview structure

 Assess credibility

 Confidentiality/Privacy

 How do they "know"?

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**RESPONDENT -
POTENTIAL
DEFENSES**

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



Victim consented but does not remember due to intoxication.



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



The sexual misconduct occurred but a different assailant.

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**SAMPLE
QUESTIONS**

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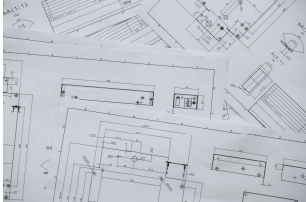
**RECREATE
THE SCENE**

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Physical Space



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SENSORY

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Sensory




SMELLS




TEMPERATURE




TOUCH



SOUNDS



LIGHT



TASTE

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Harassment Questions



WHO, WHAT,
WHEN, WHERE,
AND HOW



RESPONSE



IMPACT



WITNESSES



EVIDENCE

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Elements of the Policy Violations

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

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Consent

Consent cues

Force,
Coercion,
Intimidation,
Threats

Incapacitation

Policy definition

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1

[illegible]

2

[illegible]

3

Gather Evidence/ Present Evidence

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

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

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Party Evidence



Witness List



Evidence Submission



Expert Testimony

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The Regs on Evidence

- Any evidence obtained
 - directly related to the allegations
 - including the evidence upon which the recipient does not intend to rely in reaching a determination regarding responsibility and
 - inculpatory or exculpatory evidence whether obtained from a party or other source
- So that a party can meaningfully respond

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Written Determination

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

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Written Determination

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

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Evidence Collection

Everything Collected
Directly Related
Relevant

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Everything BUT...

- Complainant's sexual predisposition or prior sexual behavior unless...
 - offered to prove that someone other than the respondent committed the conduct alleged or
 - complainant's prior sexual behavior with respect to the respondent and are offered to prove consent
- Physician, psychiatrist, psychologist in connection with the provision of treatment to the party
 - unless voluntary, written consent

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"Directly Related": in the comments

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

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"Relevant" in the Comments

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

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Considerations in Drafting



Institutional Policy
Preliminary vs. Final
Process for comment
Mandated sections



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



How shared
Electronic format
Hard copy

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Report Writing Golden Rule



What does your policy say and FOLLOW YOUR POLICY!

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

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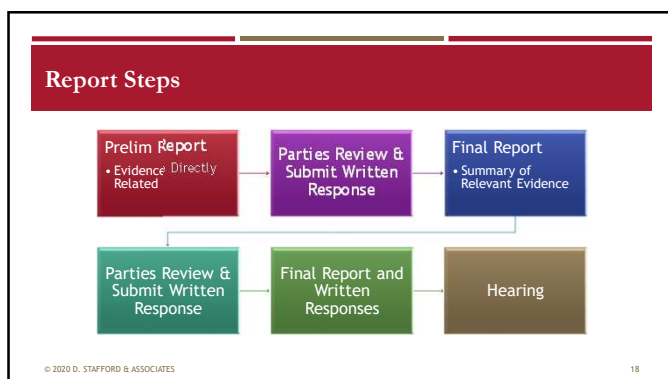
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QUESTIONS?

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