



D. STAFFORD
& ASSOCIATES

Title IX Coordinator and Investigator Training Class

Presented by DSA Associates:

Cathy Cocks

Beth Devonshire

Adrienne Murray

Ann Todd

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Title IX Coordinator & Investigator Training

Online Course Agenda

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

Day 1 - Understanding Title IX

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

Day 2 - Title IX Coordinator and Policy Development

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

Day 3 - Process Considerations

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

Day 4 - Process Stages

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

Day 5 - Case Evaluation

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



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Dolores Stafford, President & CEO



Ms. Stafford was the Chief of Police at The George Washington University in Washington, DC from 1992-2010. During her distinguished 26 year career in the law enforcement and security industry, she worked in Campus Law Enforcement for 23 years at Bucknell University, Butler University, and most recently, at the George Washington University, where she served as Chief of Police of a 176 member police department for 18 years. Chief Stafford retired from active law enforcement on May 5, 2010. She has a Bachelor's Degree in Criminal Justice from Mansfield University and has a Master's of Science Degree in Education from Bucknell University. Chief Stafford is a Certified Litigation Specialist.

As one of the nation's premier campus police chiefs, she is a much sought after speaker, consultant, educator, expert witness, and instructor on campus security, campus safety and law enforcement related issues and on compliance with the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act (The Clery Act) and the security and safety requirements of the HEOA.

Chief Stafford has won numerous accolades for her 26 years of service in the law enforcement field. She won the "Breaking the Glass Ceiling" award in 2002 in honor of her ongoing contributions to improving the law enforcement profession. In 2004, Stafford was honored by the European Association for Campus Security for her expertise and achievements in campus security. Campus Safety Magazine awarded her their 1st Annual Campus Safety Director of the Year Award for 2006. In June 2008, Chief Stafford was presented with the Distinguished Young Alumni Award by her alma mater, Mansfield University in Pennsylvania.

She has been a member of the International Association of Campus Law Enforcement Administrators (IACLEA) since 1990 and she served on the Board of Directors from 2000-2005. She served as the Chair of the IACLEA Accreditation Commission from 2005-2008 and she served as the 45th President of the International Association of Campus Law Enforcement Administrators in 2003-2004, she was the first female to hold that office.

Chief Stafford has been a keynote speaker and has conducted presentations on the Clery Act for various organizations, including IACLEA, NACUBO, American Council on Education (ACE); the Stetson Law Conference, Security on Campus Inc, and other video/teleconference training companies.

She was a member of the IACLEA Government Relations Committee from 1995 to 2010 and was the Committee Chair from 1998 to 2000. Chief Stafford has testified at several congressional hearings, one at the request of the U.S. House of Representatives in July of 1997 and two at the request of the U.S. Senate in March of 1998 and July of 2015. Chief Stafford was selected to represent IACLEA as the primary negotiator during the 1999 and 2009 Negotiated Rule Making processes sponsored by the Department of



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Education regarding the development of final rules for the implementation of the Clery Act. She is a nationally recognized expert on compliance with the Clery Act.

Chief Stafford has been a featured speaker in many other areas of security and safety for the American Council on Education (ACE); American Association of State Colleges and Universities (AASCU); National Association of Student Personnel Administrators (NASPA), the National Association of College and University Business Officers (NACUBO); University Risk Management and Insurance Association (URMIA); Stetson University College of Law; and the International Association of Campus Law Enforcement Administrators (IACLEA).

Chief Stafford led the GW Police Department as the agency became an internationally accredited law enforcement agency with the Commission of Law Enforcement Accreditation (CALEA) in March of 2006 and the agency was successfully reaccredited in March of 2009. The agency subsequently achieved accreditation with the International Association of Campus Law Enforcement Administrators in May of 2007. She was chosen to become an assessor for CALEA in March 2006 and she is currently an IACLEA assessor, and as such, she has completed numerous on site assessments for those organizations.

She has published more than a dozen articles in various professional journals and magazines. She was one of the lead authors of the International Association of Campus Law Enforcement Administrator's [Blueprint for Safer Campuses: An Overview of the Virginia Tech Tragedy and Implications for Campus Safety](#). This document, unveiled at a press conference sponsored by the Woodrow Wilson School at Princeton University on April 18, 2008, is a roadmap for campus safety and security. The Blueprint for Safer Campuses outlines the guiding principles for campus safety and security worldwide.



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



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

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

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

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

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

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

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



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



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

Court, and in various positions for the Massachusetts House of Representatives. Beth has also presented extensively on Title IX including presentations to Colleges, State Wide Organizations, Regional Conferences, and at the OCR Title IX Conference in March of 2011.

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

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

Devonshire currently serves as an Associate for D. Stafford & Associates, a highly reputable consulting firm specializing in delivering on organizational, physical security, vulnerability and arming assessments; Clery



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



Adrienne Meador Murray, Executive Director of Training and Compliance Activities



Adrienne Meador Murray began her career in municipal law enforcement as a civilian employee with the City of Richmond Police Department (Virginia). She graduated from the Virginia Commonwealth University Police Training Academy and began her career as a sworn police officer for the University of Richmond (UR) Police Department (Virginia). At UR, Murray progressed through the ranks from a night shift patrol officer to Operations Lieutenant (overseeing criminal investigations, crime prevention and patrol) over the span of a decade before becoming the Chief of Police at Davidson College in North Carolina. Most recently, Murray served as Chief of Police at Trinity Washington University (in Washington, D.C.). In January 2014, Murray joined the National Association of Clery Compliance Officers & Professionals (NACCOP) and D. Stafford & Associates where she currently serves as Executive Director of Training and Compliance Activities after having been affiliated with D. Stafford & Associates as a part-time Associate since 2012.

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

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



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

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



Ann Todd, Consultant

Equity Compliance and Civil Rights Investigations



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

Ms. Todd joined the DSA in 2015 and currently serves as the Consultant, Equity Compliance and Civil Rights Investigations. She is the Senior Investigator for the DSA Title IX Investigation Team. She conducts external investigations on behalf of colleges and universities, specializing in investigating student allegations of sex discrimination, sexual assault, intimate partner violence, and stalking. Additionally, she brings a strong Human Resources

background to investigating a range of employee misconduct—from performance issues to discrimination.

In addition to conducting investigations, Ms. Todd is a frequent speaker and consultant on Title IX investigations, conducting 20-30 courses every year on best practices for investigating sex discrimination and sex crimes on campus. She works with schools to draft policies and processes that provide equity and fairness to all parties involved and is adept at facilitating discussions with institutions to ensure the end product represents the values of the campus community.

Ms. Todd is a member of the NC Bar and a Certified Clery Compliance Officer through the National Association of Clery Compliance Officers and Professionals (NACCOP). She is also a certified 360 facilitator through the Center for Creative Leadership. She lives in Davidson, NC where she volunteers on a number of local and town boards.

INVESTIGATION CLASS ACRONYMS

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

SART: Sexual Assault Response Team

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

SWA: Senior Women's Administrator (Athletics)

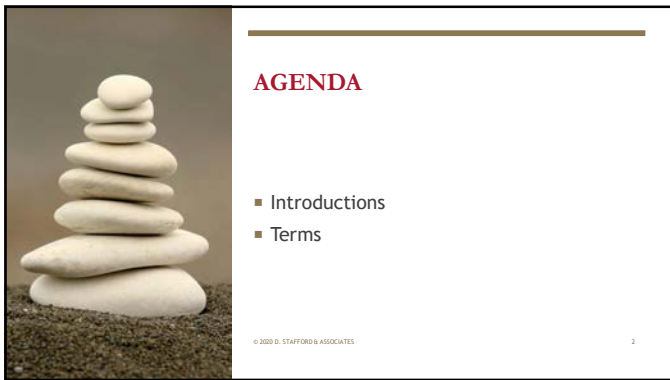
TWN: Timely Warning Notice

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

VAWA: Violence Against Women Act



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Attorneys



- Not your attorney
- Consult with YOUR legal counsel

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The Laws

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

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Language

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

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Parties

- **Complainant**
 - An individual who is alleged to be the victim of conduct that could constitute sexual harassment
- **Respondent**
 - An individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment
- **Witness**
 - Any individual who has direct knowledge of an incident

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Outcomes

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

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

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Standard of Proof

- **Preponderance of the Evidence**

Based on the evidence presented, it is more likely than not that...
- **Clear & Convincing Evidence**

Based on the evidence presented, it is highly probable that ...
- **Evidence Beyond a Reasonable Doubt**

Highest level of proof which is used in criminal cases and therefore, not applicable.

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Umbrella Terms

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

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Terminology

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

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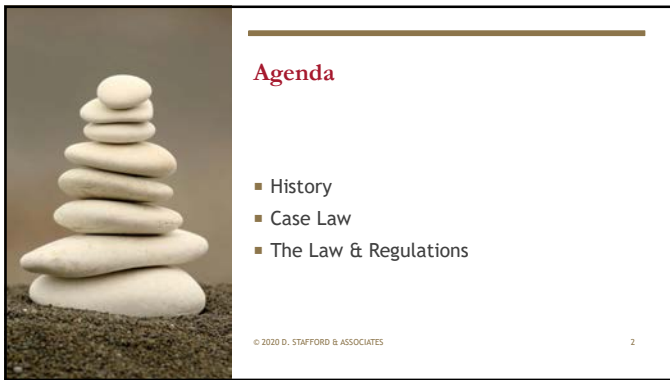
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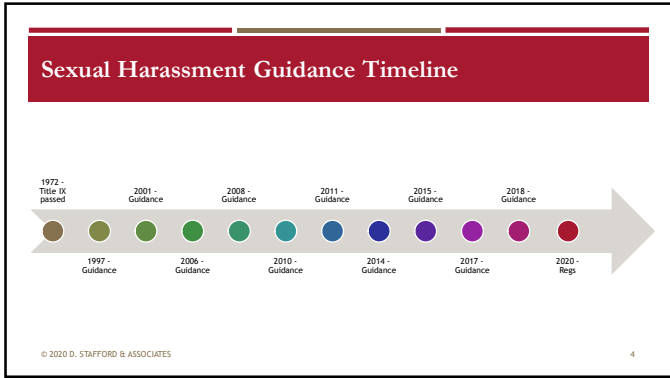
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The Law

- United States Code
 - Title 20—Education
 - Section 1681

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

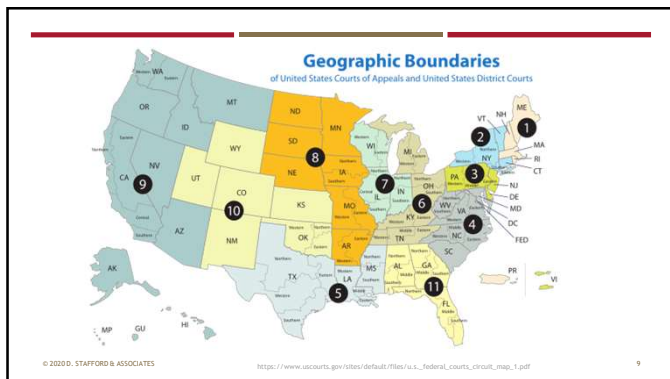
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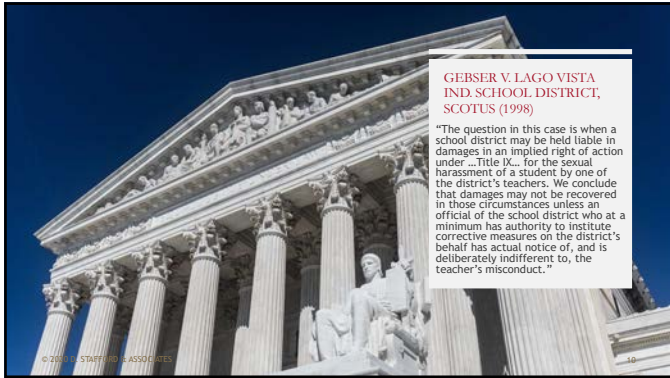
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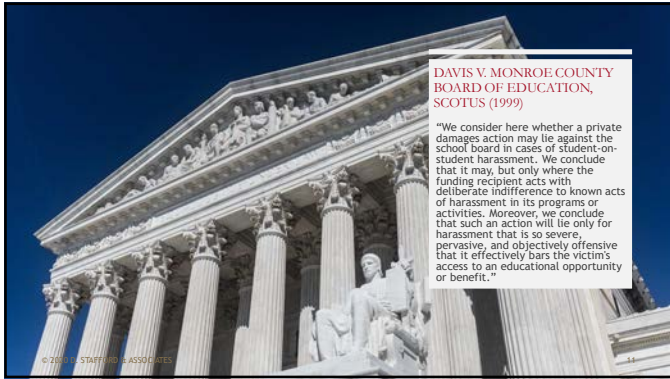
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**GEBSER V. LAGO VISTA
IND. SCHOOL DISTRICT,
SCOTUS (1998)**

"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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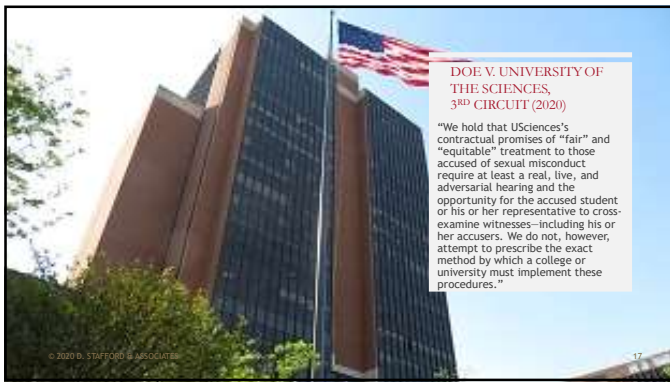


**HADAIAK V. UMASS-AMHERST,
1ST CIRCUIT (2019)**

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

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

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

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

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**THE LAW &
REGULATIONS**


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Interpreting Laws



Law



Regulations




Substantive guidance


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General Comments and Thoughts – 2020 Regulations




Applies to Higher Ed and K-12




Preamble



Technical assistance



Implement date of August 14, 2020



Possible Delay

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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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Submit in writing

Specific tenant

Not required

Raise any time

§106.12 –
Religious
Institutions

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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



Third parties



Anonymous
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 requirements Additional allegations Clarifications

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

<p>Must dismiss:</p> <ul style="list-style-type: none"> • Behavior does not constitute sexual harassment • Did not occur in educational program or activity, not in the United States 	<p>May dismiss:</p> <ul style="list-style-type: none"> • Complainant withdraws formal complaint • Respondent no longer enrolled/employed • Insufficient evidence
--	--

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

- Multiple respondents
- More than one complainant against one or more respondent
- One party against other party

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

- Burden of proof
- Witnesses and facts
- No restriction on discussing allegations
- Advisor
- Notice
- Inspect evidence
- Investigative report

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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

<p>MUST have</p> <ul style="list-style-type: none"> • Procedure • New evidence • Conflict or bias that impacted outcome 	<p>Additional grounds permitted</p>
<p>Decision-maker can have no other role</p>	<p>Reasonably prompt time frame</p>

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§106.45(b)(8) Appeals

<p>Notification of appeal</p>	<p>Equal opportunity to respond</p>	<p>Written outcome - rationale</p>
--------------------------------------	--	---

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§106.45(b)(9) Informal Resolution

 <p>Notice</p>	 <p>Voluntary</p>	 <p>Not allowed for Employee/student</p>
--	---	--

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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

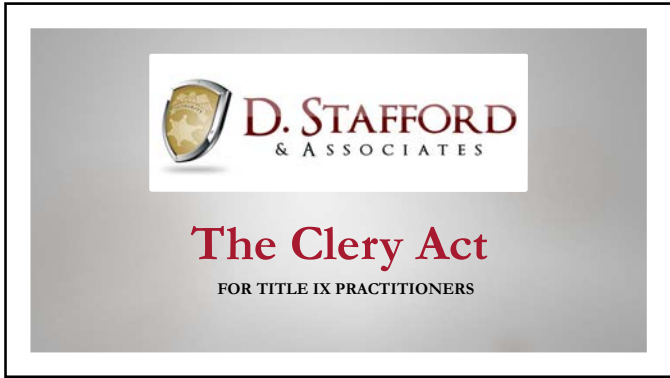
§106.71 Retaliation Prohibited

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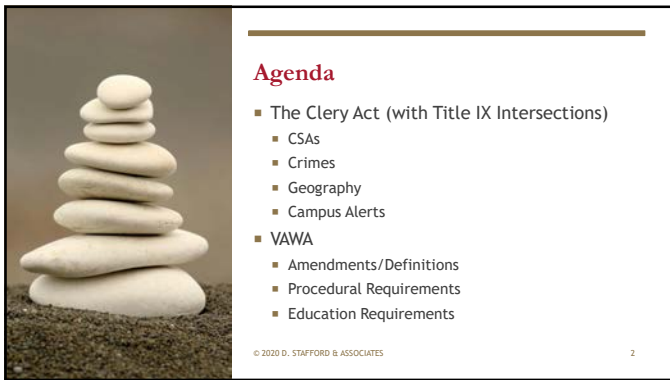
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1



2



3

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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Gleason Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act						
Calendar Years (CY) 2016 – 2018						
Criminal Offense or Primary Crimes (Crimes Reported By Hierarchy)	Calendar Year	On Campus (Including Residential)	Non-Campus	Public Property	Totals	On Campus (Residential Only)
Murder & Non-Fatal Manslaughter	2016	0	0	0	0	0
2017	0	0	0	0	0	0
2018	0	0	0	0	0	0
Manslaughter by Negligence	2016	0	0	0	0	0
2017	0	0	0	0	0	0
2018	0	0	0	0	0	0
Rape	2016	11	2	0	13	11
2017	25	2	0	0	27	18
2018	14	2	0	0	16	10
Fondling	2016	11	1	0	12	8
2017	4	1	0	0	5	4
2018	0	0	0	0	0	0
Incest	2016	0	0	0	0	0
2017	0	0	0	0	0	0
2018	0	0	0	0	0	0
Statutory Rape	2016	0	0	0	0	0
2017	0	0	0	0	0	0
2018	0	0	0	0	0	0
Robbery	2016	0	0	0	0	0
2017	0	0	0	0	0	0
2018	0	0	0	0	0	0
Aggravated Assault	2016	4	0	0	4	4
2017	3	0	0	0	3	3
2018	3	0	0	0	3	3
Burglary	2016	32	0	0	32	31
2017	2	0	0	0	2	2
2018	3	1	0	0	4	1
Motor Vehicle Theft	2016	0	0	0	0	0
2017	0	0	0	0	0	0
2018	0	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

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

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Clery Reportable Crime Categories

- Murder/Non-negligent Manslaughter*
- Negligent Manslaughter*
- Sex 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

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

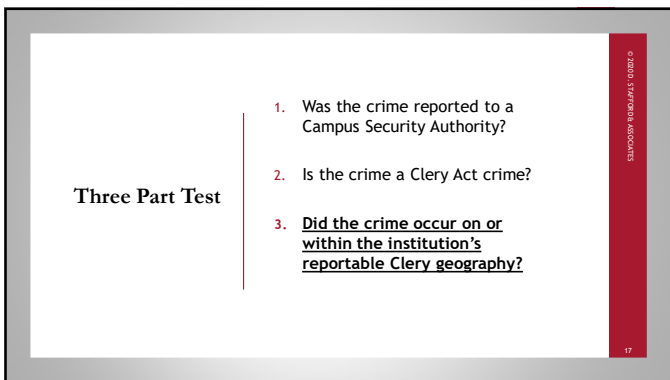
It is not the word used but the facts of the case that determine how it gets counted

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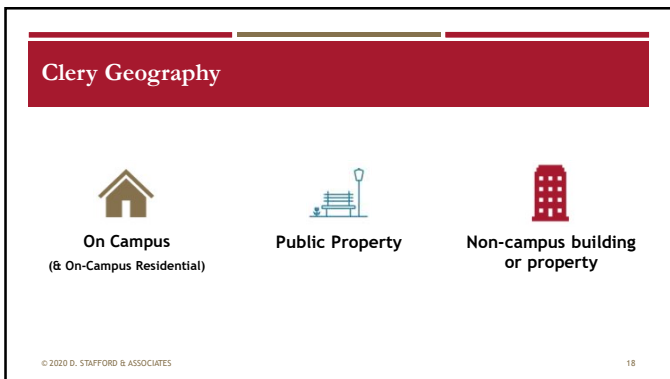
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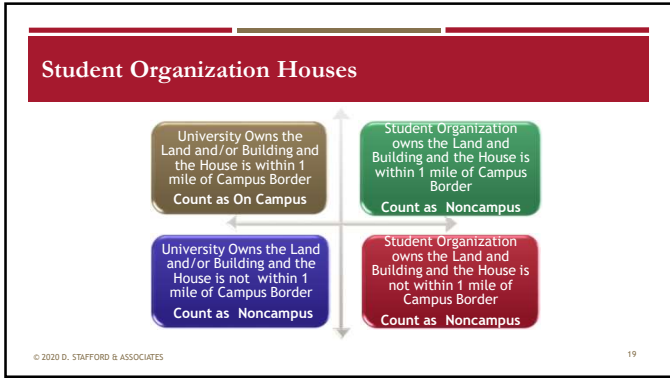
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Impact of Location & Party

- 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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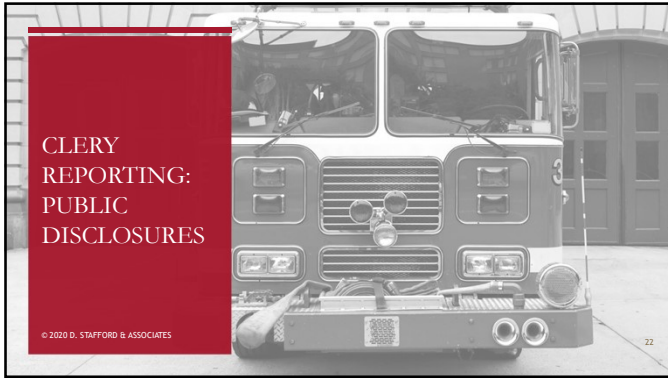
Geography versus Jurisdiction

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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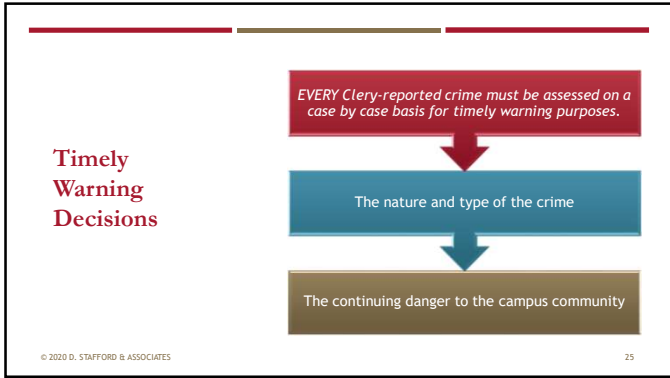


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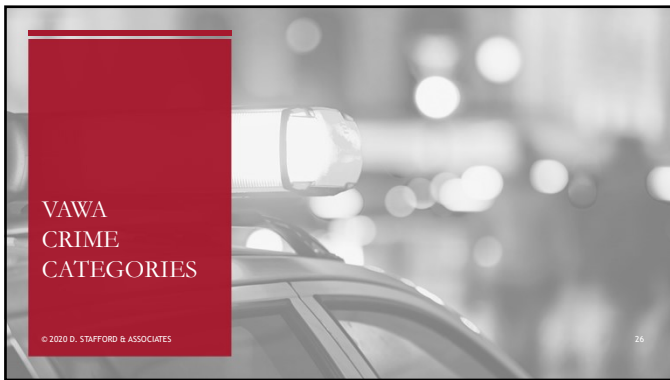
	TIMELY WARNING (TWN)	EMERGENCY NOTIFICATION (EN)
Legal Standard:	Serious or continuing threat	Immediate threat to health and safety
Circumstance:	Clery-reportable crimes that have been reported (occurred in past)	Clery-reportable crimes as well as other types of emergencies (happening right now or about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

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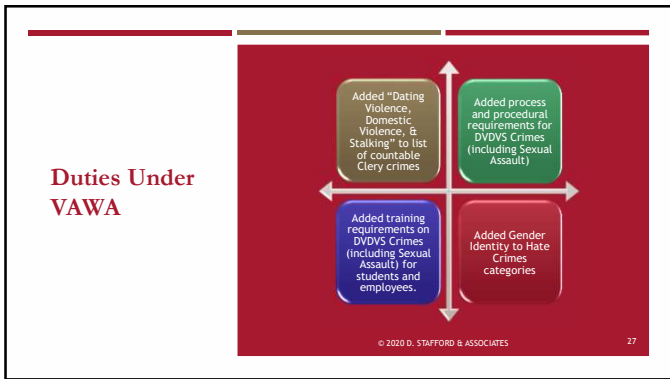
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Clery Crime Categories

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

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What is a “Crime of Violence?”

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

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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.

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

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Stalking

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

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

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Stalking (related definitions)

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

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Discussion: What's Missing?

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

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Overlapping Conduct Violations

TITLE IX
Quid Pro Quo
Hostile Environment

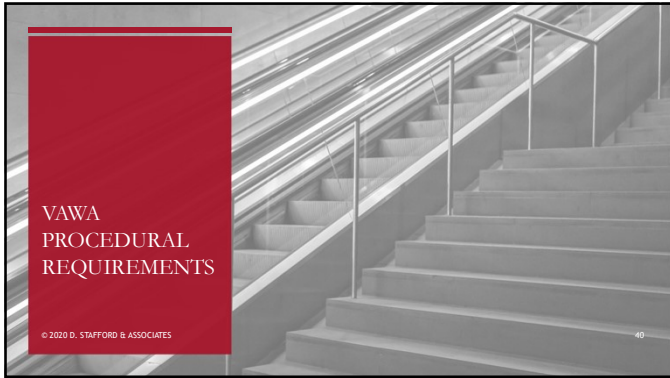
CLERY
Non-WAWA Clery Crimes (Assault etc.)
Hate Crimes
Arrests and Referrals: Drug, Liquor, Weapons

Sexual Assault
Dating Violence
Domestic Violence
Stalking
Gender-based Hate Crimes

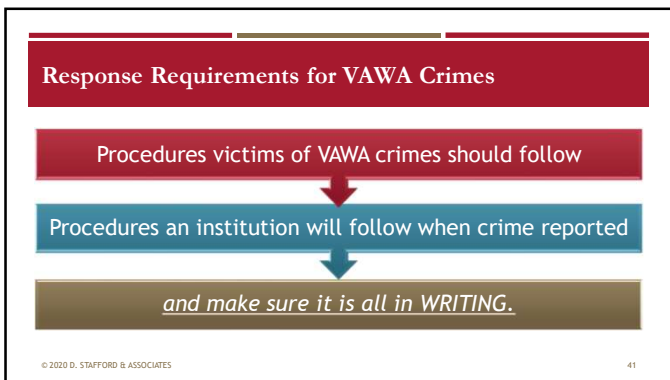
Title VII
Other sex-based behaviors

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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



- 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
- 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




- 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
- 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

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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

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Formal (Live Hearing)



2020 Title IX Regulations

Requires live hearing with cross examination by advisor



Clery Act

Clery is silent regarding live hearing

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Written Determination

<p>Title IX</p> <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) 	<p>Clery Act</p> <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



- 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: #6b8e23; color: white; padding: 2px; margin: 0;">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: 2px; margin: 0;">Clery Act</p> <ul style="list-style-type: none"> Not required (but must provide notice if allowed along with appeal procedures) Simultaneous written decision describing result, sanction, any changes to the result, when it becomes final
--	---

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Recordkeeping

<p style="background-color: #6b8e23; color: white; padding: 2px; margin: 0;">2020 Title IX Regulations</p> <ul style="list-style-type: none"> 7 years 	<p style="background-color: #003366; color: white; padding: 2px; margin: 0;">Clery Act</p> <ul style="list-style-type: none"> Retain all records used in compiling ASR for three years from the latest publication of the report to which they apply (in effect 7 years)
---	--

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VAWA Education Requirements

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Education and Prevention under Clery

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

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Primary Prevention Best Practices

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


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

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Primary Prevention & Awareness

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



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

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Ongoing Prevention & Awareness

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



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

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CSA Training (Recommendations, Not Requirements)



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

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2




3

Policy vs Procedure




Policy

What are the rules, why they exist, when they apply



Internal Procedures

Step by step actions for the staff



External Process Information

Information through a notice letter or information sheet explaining the process and steps for the involved parties

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Example

Policy statement

- Prior to completion of the investigative report, the Respondent and Complainant, and their respective advisors, if any, will be provided a copy of the evidence in an electronic format or a hard copy. The parties will have 10 calendar days to submit a written response

Internal procedure

- All documents considered evidence should be converted and merged into one pdf.
- The pdf should be watermarked for each party, and security settings should be set to prohibit editing.
- A transfer link is sent to the parties simultaneously via email.

External process information

- "Prior to the completion of the report, you and your advisor, if applicable, will receive a Dropbox link to access a copy of the evidence. You will have until [DATE] to review the evidence and provide a written response to the investigator. To provide the written response, use the following link: [submission link]."

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Example

Policy statement

- Either party may request, no later than seven calendar days prior to the hearing, for the hearing to occur with the parties located in separate rooms with technology enabling the hearing body and parties to simultaneously see and hear the party or the witness answering questions.

Internal procedure

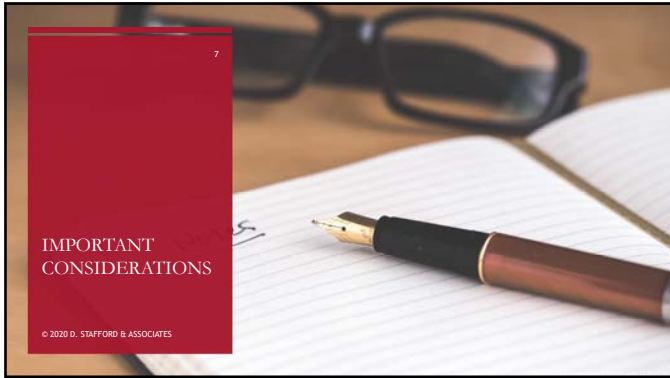
- Notify both parties of the request for a virtual hearing.
- Book the space and technology.
- Send login information to the hearing officer and parties.
- Include an instruction sheet on using the technology.

External process information

- "Either the Complainant or Respondent may request to have the parties located in separate rooms and the hearing will be held using Zoom technology. If you wish to utilize this option, you must notify [NAME] at [EMAIL] no later than [DATE]."

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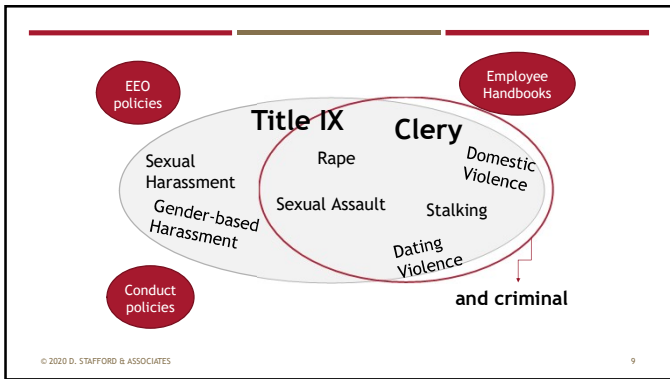
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Important Considerations

- ✓ Scope
- MOUs
- Multiple campuses
- Jurisdiction

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When Multiple Policies May Apply

Conflict

Application

Status of Respondent

Jurisdiction

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

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Discussion: Different Voices

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

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Competencies



Laws and legal issues



Cultural competencies



Campus climate



Campus politics



Approval process

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Policy Sections

- Statement of Policy
- Related Policies
- Applicability/Jurisdiction
- Title IX Coordinator
- Employee Responsibilities
- Definitions
- Prohibited Conduct
- Reporting Options
- Supportive Measures
- Accommodations and Interpretive Services
- Interim Action
- Grievance Procedures
- Education and Prevention
- Record Management
- Interpretation and Revision


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Statement of Policy




Mission of the institution




Intent of the policy



Behaviors



Equitable Treatment



Scope

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Related Policies

Code of Conduct

Retaliation

Employee handbook

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Applicability/Jurisdiction



Who



Location



Educational program or activity

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Applicability – Individuals

Students Employees Students in dual credit/enrollment programs Students in institution-operated K-12 schools

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Title IX Coordinator

Role Contact information Additional coordinators/deputies?

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Employee Responsibilities

Reporter Witness Advisor

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Definitions from Title IX Regulations

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

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Definitions from Title IX Regulations

- **Actual knowledge:** Actual knowledge means notice of sexual harassment or allegations of sexual harassment to a recipient's Title IX Coordinator or any official of the recipient who has authority to institute corrective measures on behalf of the recipient, or to any employee of an elementary and secondary school.

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Definitions from Title IX Regulations

- **Formal Complaint:** A document filed by a complainant or signed by the Title IX Coordinator alleging sexual harassment against a respondent and requesting that the recipient investigate the allegation of sexual harassment. At the time of filing a formal complaint, a complainant must be participating in or attempting to participate in the education program or activity of the recipient with which the formal complaint is filed.

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Definitions from Title IX Regulations

- **Complainant:** An individual who is alleged to be the victim of conduct that could constitute sexual harassment.
- **Respondent:** An individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment.

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Definitions from Title IX Regulations

- **Supportive Measures:** Nondisciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the complainant or the respondent before or after the filing of a formal complaint or where no formal complaint has been filed. Such measures are designed to restore or preserve equal access to the recipient's education program or activity without unreasonably burdening the other party, including measures designed to protect the safety of all parties or the recipient's educational environment, or deter sexual harassment.

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Other Recommended Definitions

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

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Other Recommended Definitions

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

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Decisions About Definitions

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

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Title IX Specific Prohibited Conduct


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

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Reporting Options



Institution



And/or



Law Enforcement

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Reminder: Clery Obligations about Reporting

1. Evidence preservation
2. How and to whom to report
3. Notification of options
4. Rights of victims and responsibilities of institution
5. Existing resources
6. Options for available assistance and how to request changes
7. Confidentiality
8. Disciplinary procedures


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Supportive Measures




Counseling



Course-related



Modifications of work/class schedules



Campus escort services

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Accommodations and Interpretive Services

Disability resources Interpretive services Student responsibility to request

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Interim Action

Emergency Removal Administrative Leave

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Grievance Procedures

- Notice
- Dismissal
- Consolidation of complaints
- Investigation
- Hearing
- Determination of responsibility
- Appeals
- Informal resolution
- Retaliation

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Education and Prevention



Primary and on-going



Bystander




Risk reduction

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Record Management

Records




All case materials




Training materials


Considerations




Data custodian



Record retention policy



Duration




Access


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Interpretation and Revision




Policy interpreter



Review process



Published date



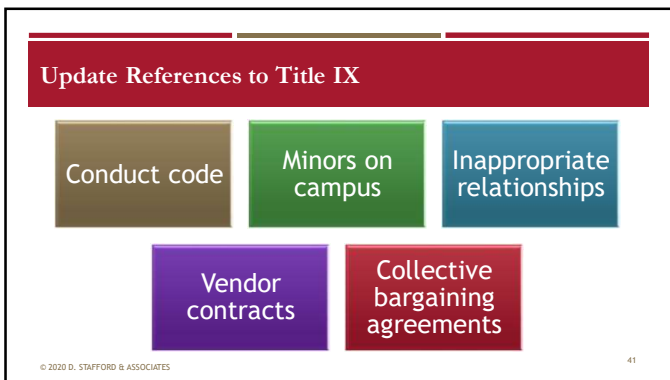
Reports in progress

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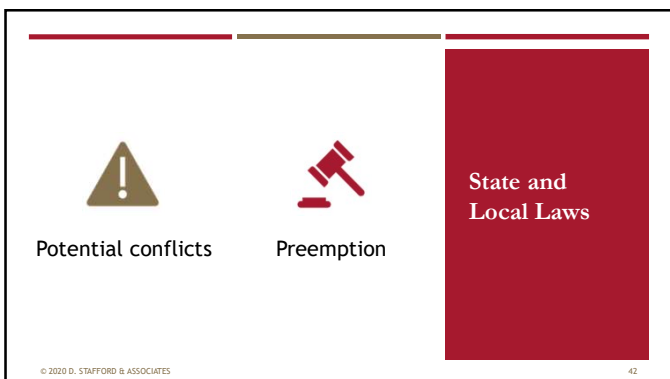
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**Discussion:
First
Amendment**

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

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**Discussion:
Time
Implications of
Reports**

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

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Title IX and Athletics

1



Agenda

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

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

NCAA Gender Equity Task Force, 1992


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4

Title IX Compliance

 **Effective Accommodation of Interest and Abilities**


 **Scholarships**


 **Laundry List**


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Three-part Test

 **Substantially proportionate**

 **Program expansion**

 **Interest and abilities**

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Participation



Sport **Participation**

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PART 1 – Substantially Proportionate

Athletic opportunities substantially proportionate to enrollment

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Part 2 – History and Continuing Practice of Program Expansion


- History or continuing practice of adding programs
 - Adding or upgrading teams
 - Expansion plan



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Part 3 – Interests and Abilities



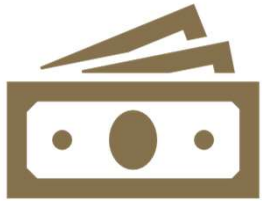
“Safe harbor” Unmet interest Sustainability Competition

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Scholarships

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



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Equal Athletic Opportunities – Laundry List

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

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Compliance Efforts

- Committee?
- Audit
- Other
- Equity in Athletics Disclosure Information
- Sexual Violence Policy

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INCLUSION OF LGBTQ+ STUDENT-ATHLETES

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Inclusion of LGBTQ+ Student Athletes


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



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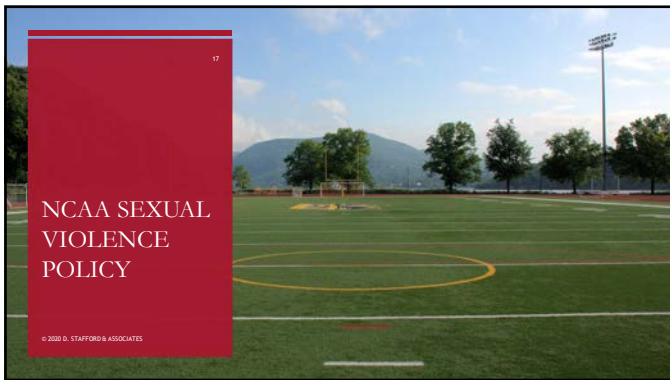
Inclusion of LGBTQ+ Student Athletes



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

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NCAA SEXUAL VIOLENCE POLICY

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NCAA Campus Sexual Violence Policy – 2014

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

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NCAA Sexual Violence Policy – May 2020



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

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NCAA Sexual Violence Policy – The Tool Kit

Leadership	Collaboration	Compliance
Education	Student-Athlete engagement	Additional materials

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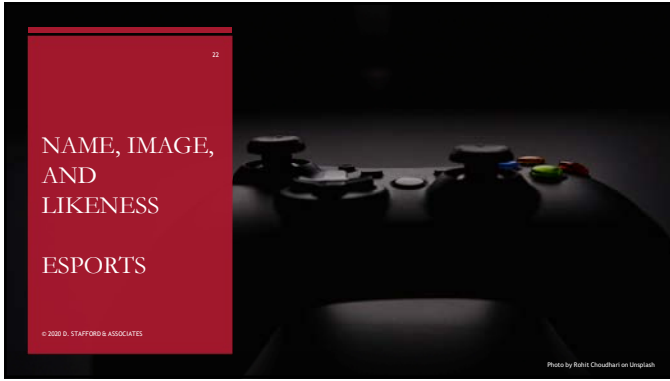
Regulation Implications



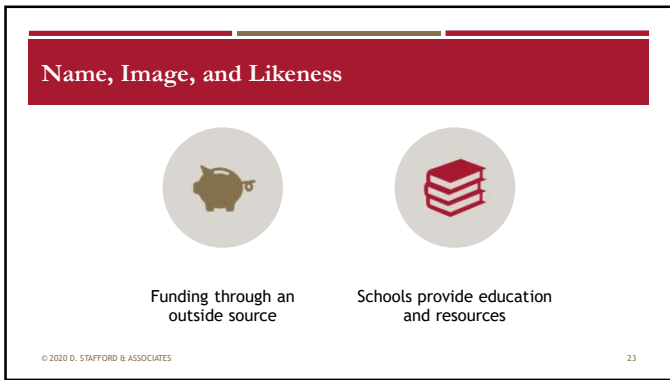
- Supportive measures - non-disciplinary
 - Communication restrictions
 - Fact-specific
 - Changing class schedule “more acceptable” than removal from sports team
 - Disciplinary if it is listed
- Emergency removal
 - Immediate threat to PHYSICAL health or safety

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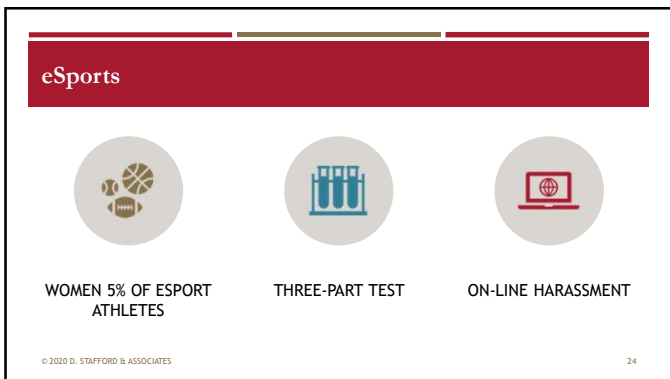
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**Discussion:
Moving
Forward**

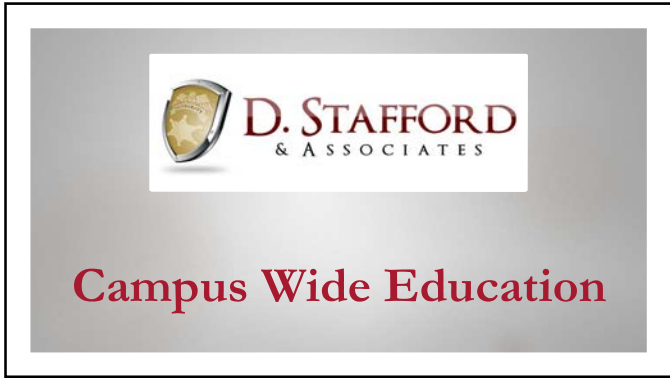
- Who is in charge of athletic compliance efforts on your campus?
- How can you work with athletics in terms of sexual violence?
- What strategies are effective?

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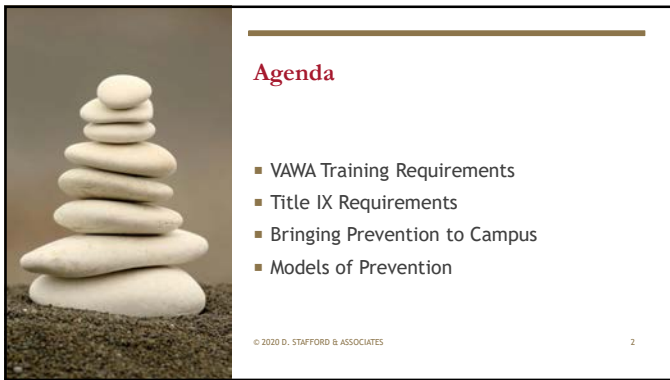
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From the VAWA Regulations...

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

4

Programs to Prevent VAWA Crimes

- Programs and campaigns that are...
 - Culturally relevant
 - Inclusive
 - Sustainable
 - Responsive
 - Informed by research



5

Programs to Prevent VAWA Crimes

- Programs and campaigns that are...
 - Individual
 - Relationship
 - Institutional
 - Community
 - Societal



6

Programs to Prevent VAWA Crimes

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

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Primary Prevention Programs

- Primary prevention programs mean:
 - Research and assessment
 - Stop before they occur . . . Positive behaviors
 - Bystander intervention
 - Change social norms

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Primary Prevention Programs Requirements

- Institutional statement
 - Definitions
 - Bystander intervention
 - Risk reduction

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Ongoing Prevention Programs

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

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More VAWA Definitions

(i) Awareness programs means community-wide or audience-specific programming, initiatives, and strategies that increase audience knowledge and share information and resources to prevent violence, promote safety, and reduce perpetration.

(v) Risk reduction means options designed to decrease perpetration and bystander inaction, and to increase empowerment for victims in order to promote safety and to help individuals and communities address conditions that facilitate violence.

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Bystander Intervention



(ii) Bystander Intervention means safe and positive options that may be carried out by an individual or individuals to prevent harm or intervene when there is a risk of dating violence, domestic violence, sexual assault, or stalking. Bystander intervention includes recognizing situations of potential harm, understanding institutional structures and culture conditions that facilitate violence, overcoming barriers to intervening, identifying safe and effective intervention options, and taking action to intervene.

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Clery Handbook Guidance

Community involvement

- Local rape crisis centers
- Local law enforcement officials
- Social services personnel
- Coalitions against domestic and sexual violence


Not required for all to attend

Can combine topics

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Primary Prevention Programs



Delivery Options

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

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

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Coordinated Strategies:

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

Ongoing Prevention & Awareness


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Campus Community: Who is included?

 Students	 Employees	 “Mandatory Reporters” Title IX School policy State law	 Officials with authority to institute corrective measures Deans Supervisors Other?	 “Title IX Personnel” Title IX Coordinators Investigators Decision-makers Informal Resolution Facilitator
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Students and Employees

- No Training required

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Mandatory Reporters

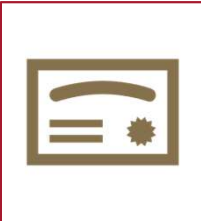


- Institutions decide for student disclosures
 - Who are mandatory reporters?
 - No reporting obligation
 - Report with consent
 - No training requirement
- Different than state law regarding “mandated reporters”

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Removal of “Responsible Employee”



- Rationale:
 - Receive reporting information
 - Maintain control
- But...
 - You still can have...
 - Train on how to report

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Official with Authority to Institute Corrective Measures



Actual notice



Institutional specific



Training does not trigger obligation



Limitless



Publicize list



Not all Campus Security Authorities (CSAs)

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Title IX Personnel

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

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

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§ 106.45 (1)(iii): Title IX Training

- “A recipient must ensure that Title IX Coordinators, investigators, decision-makers, and any person who facilitates an informal resolution process, receive training on
 - the definition of sexual harassment in § 106.30,
 - the scope of the recipient’s education program or activity,
 - how to conduct an investigation and grievance process including hearings, appeals, and informal resolution processes, as applicable, and
 - how to serve impartially, including by avoiding prejudgment of the facts at issue, conflicts of interest, and bias.”

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§ 106.45 (1)(iii): Title IX Training

- A recipient must ensure that decision-makers receive training on:
 - any technology to be used at a live hearing and
 - on issues of relevance of questions and evidence, including when questions and evidence about the complainant's sexual predisposition or prior sexual behavior are not relevant, as set forth in paragraph (b)(6) of this section.
- A recipient also must ensure that investigators receive training on:
 - issues of relevance to create an investigative report that fairly summarizes relevant evidence, as set forth in paragraph (b)(5)(vii) of this section.

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Recordkeeping

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

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Discussion: School year training

- What training events are you planning for the fall to achieve these requirements?
- What are your fears?

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Training for Employees and Students





- Types?
- Who receives training?

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Who's Around the Table?





How many tables? Who is at the table?


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Essential Campus Components




Coalition Building




Policy Analysis




Data Collection



Inclusive Programming



Male Involvement



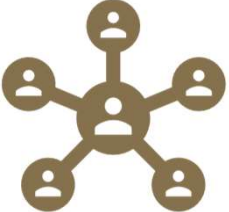
Social Marketing

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Coalition Building

- Collaboration
- Share knowledge
- “Check ins”



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Policy Analysis

Mission

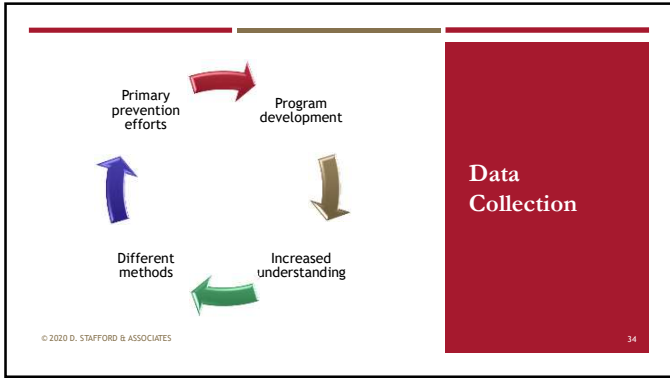
Easy to understand

Information

Easily accessible

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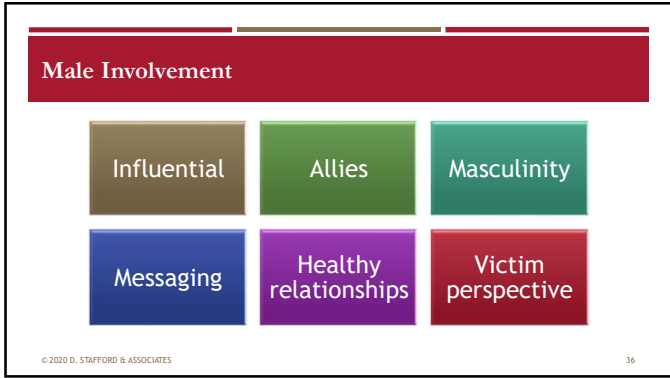
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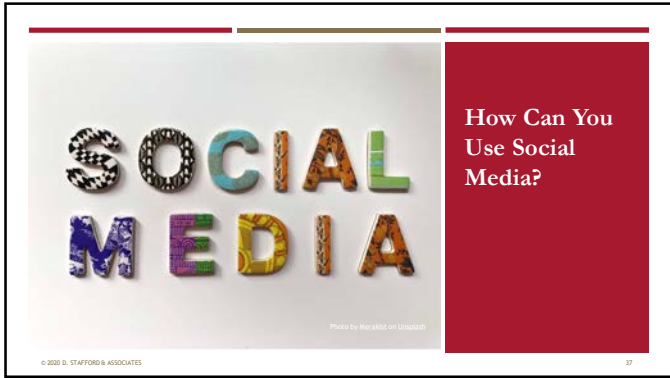
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- ### Inclusive of Marginalized Populations
- ADA compliant
 - Interpreters
 - Universal design
 - Safe spaces
 - Inclusive training material
 - Challenge stereotypes
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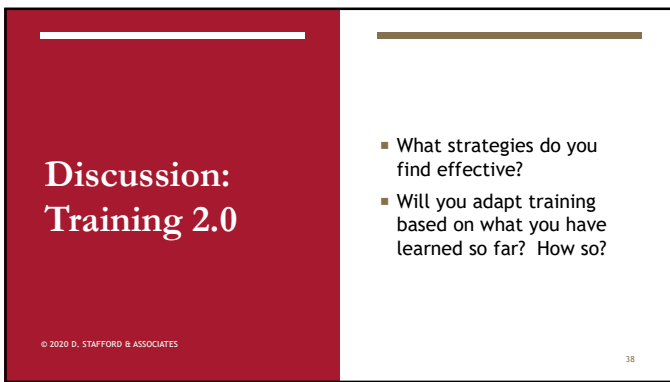
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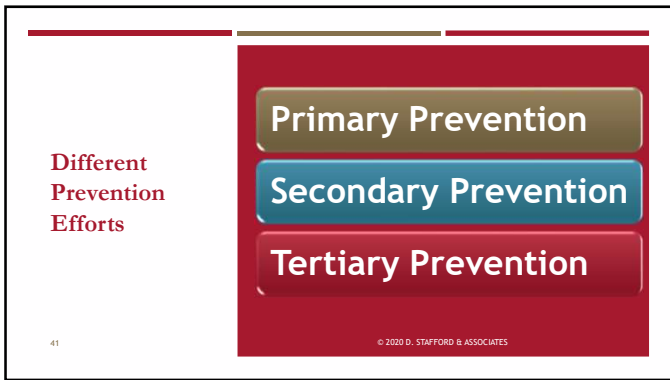
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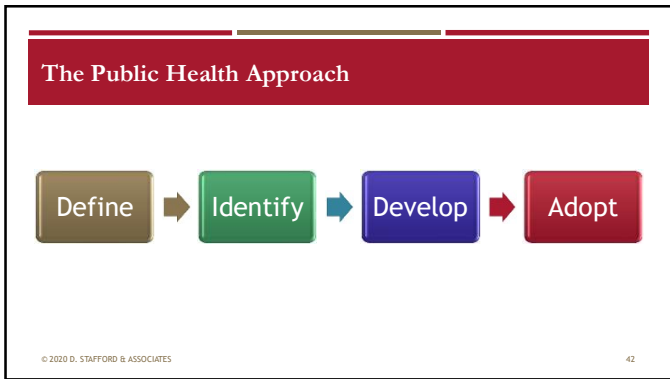
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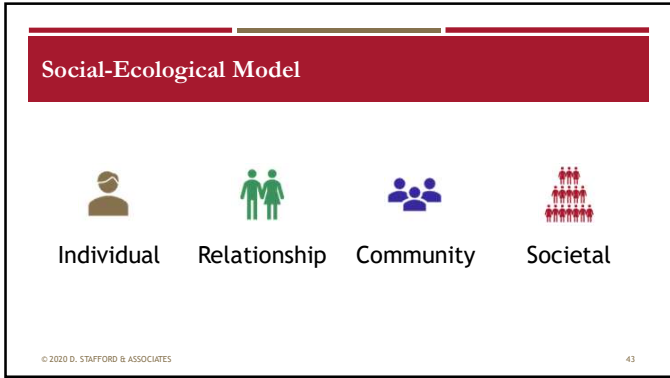
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Level	Influences	Strategy	Prevention activities example
Individual	Personal traits and beliefs	Positive attitudes	Mentoring and education
Relationship	Peers and family	Modeling behavior	Bystander
Community	Institutional relationships	Policies and processes	Social media
Societal	Belief systems and social norms	Laws	Target lawmakers

(2019, January 16). The Social-Ecological Model: A Framework for Prevention. Retrieved from <https://www.cdc.gov/violenceprevention/publichealthissue/social-ecologicalmodel.html> 44

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Other Strategies



Social Justice Paradigm
Root cause of sexual violence



Stop Sexual Violence
Strategies
Approaches

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**Discussion:
Different
Populations**

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

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- Clothesline project
- Take back the night
- Walk a mile in our shoes
- It's on us
- Bystander
- One Love
- 360 Stay Safe

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Examples

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Primary Prevention - Incoming Students			
Name of Program	Date Held	Location Held	Which Prohibited Behavior Covered?
First Year Student Orientation	8/15/2013	Main Auditorium	DoV, DaV, SA & S*
First Year Student Orientation	8/16/2013	Main Auditorium	DoV, DaV, SA & S*
Transfer Student Orientation	8/15/2013	South Hall	DoV, DaV, SA & S*
Law School Student Orientation	8/17/2013	North Hall	DoV, DaV, SA & S*
Graduate School Orientation	8/16/2013	East Hall	DoV, DaV, SA & S*
Bystander Intervention Training	8/17/2013-8/19/2013	Fair Sports Complex	SA*

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Primary Prevention - Incoming Employees			
Name of Program	Date Held	Location Held	Which Prohibited Behavior Covered?
New Employee Orientation	01/15/2013	Human Resources	DoV, DaV, SA & S*
New Employee Orientation	03/18/2013	Human Resources	DoV, DaV, SA & S*
New Employee Orientation	06/21/2013	Human Resources	DoV, DaV, SA & S*
New Employee Orientation	8/25/2013	Human Resources	DoV, DaV, SA & S*
New Employee Orientation	9/10/2013	Human Resources	DoV, DaV, SA & S*

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Ongoing Prevention - Students			
Name of Program	Date Held	Location Held	Which Prohibited Behavior Covered?
Behind Closed Doors Skits	3/15/2013	Main Auditorium	DoV, DaV, SA & S*
Behind Closed Doors Skits	9/03/2013	Main Auditorium	DoV, DaV, SA & S*
Residence Hall Speaker Series-1	2/17/2013	Cole Residence Hall	DoV* DaV
Residence Hall Speaker Series-4	12/02/2013	Cole Residence Hall	S*
Clothesline Project	10/01/2013-10/05/2013	Student Commons Main Floor	DoV, DaV, SA *
Vagina Monologues	12/02/2013	Main Auditorium	SA*
Poetry Speak Out	03/19/2013	Student Commons Lounge	DoV, Dav*
Safe Zone Hate Crime Prevention	11/02/2013-11/04/2013	Office of Diversity & Inclusion	DoV, DaV, SA & Stalking (LGBTQ)

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Ongoing Prevention -Employees

Name of Program	Date Held	Location Held	Complied with Section B a-e?	Which Prohibited Behavior Covered?
Faculty Spring Orientation	01/15/2013	Graduate School Faculty Conference Room	Yes	DoV, DaV, SA & S*
Faculty Spring Orientation	03/18/2013	Arts & Sciences Conference Room	Yes	DoV, DaV, SA & S*
Faculty Fall Orientation	8/25/2013	Moot Court Room	Yes	DoV, DaV, SA & S*
Staff In-Service	9/11/2013	Human Resources	Yes	DoV, DaV, SA & S*
Poster Campaign: "Challenging Myths and Stereotypes About Victims of Rape in HE"	11/01/2013-12/01/2013	Posters placed in Faculty lounges in Main Hall B1-B5, King Hall, offices of advisors	Yes	DoV, DaV, SA*
Web-based Training: "The Role of Faculty in Assisting Students Who Disclose Abuse"	04/10/2013	Provost Smith	Yes	DoV, DaV, SA & S*

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Final Thoughts



Develop a plan



Clery requirements



Primary and ongoing programs



Prevention



Documentation

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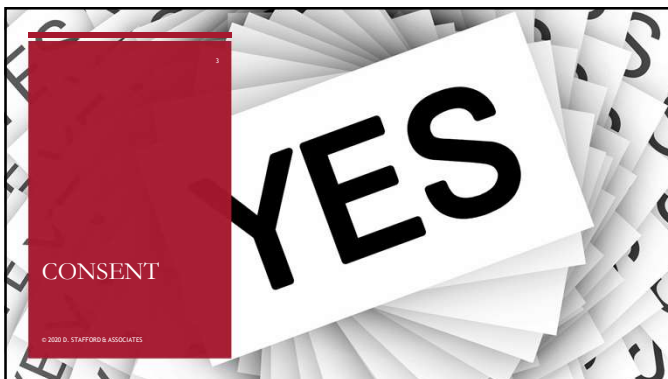
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Discussion:

- 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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Yes!

GOT CONSENT?

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Affirmative Consent

Yes means Yes!



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§106.30 Definitions – Consent

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

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Key Elements

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

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Consent Is Absent when...

Force

- Physical
- Coercion
- Intimidation
- Threat

Incapacitation

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Physical Force

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

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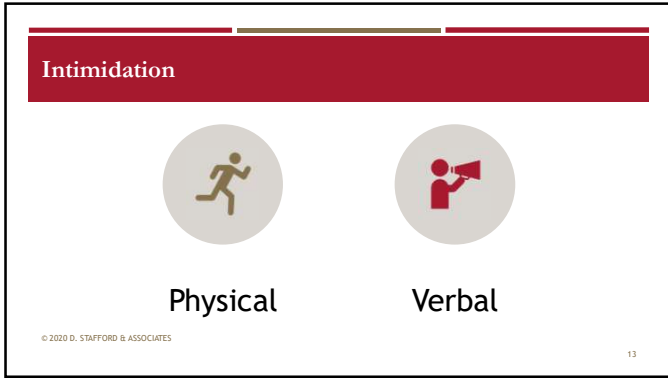
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Coercion

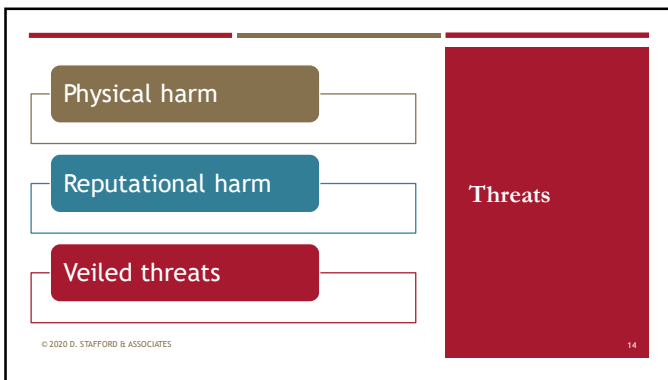
Frequency +	Intensity +	Duration +	Isolation
?	Now	5 minutes?	Library
Twice	?	?	Bar
Fifty times	?	2 days?	?

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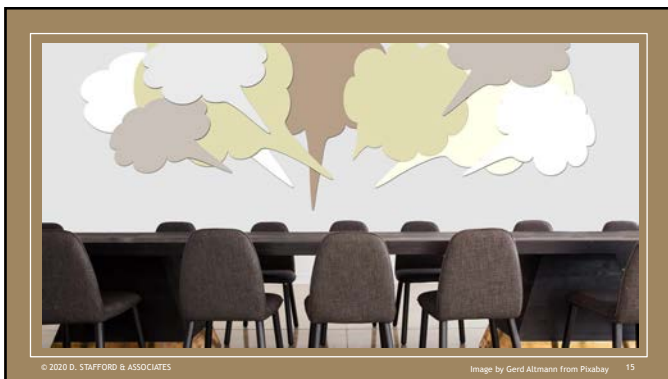
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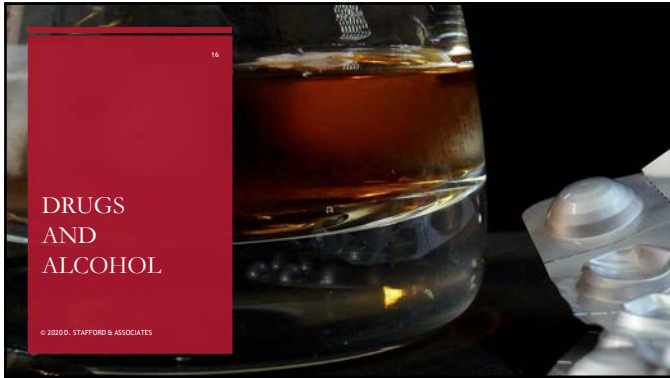
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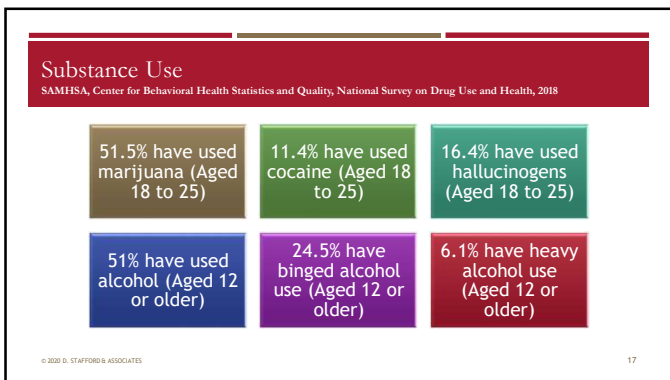
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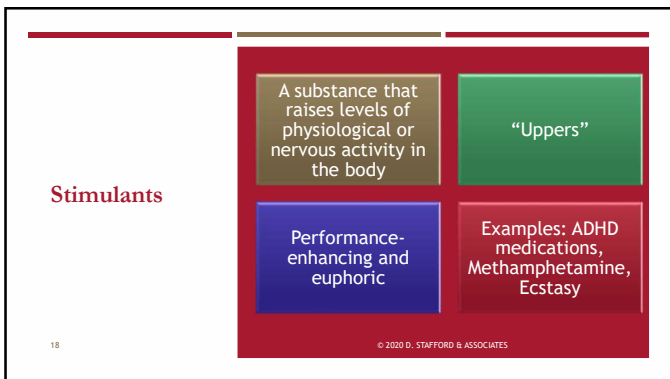
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Depressants

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?

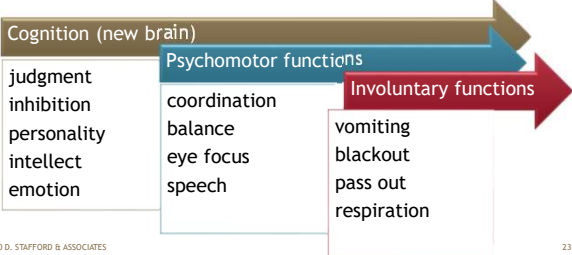


- Water bottle
- Boxed wine
- Solo cups

Photo by Jamie Sessler on Unsplash
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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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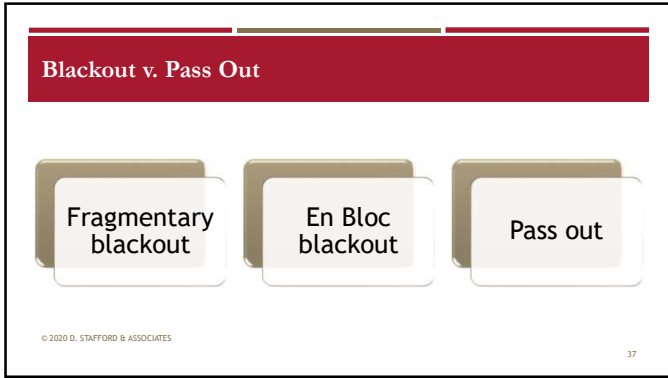
Two-Step Determination

Was the Complainant Incapacitated?

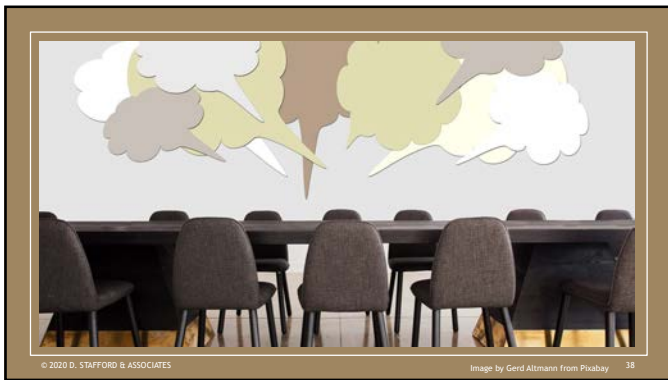
Did the Respondent (or would a reasonable person) know?

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Conflicts of Interest

Roles on campus Past employment Volunteering Social media presence

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Recognizing Bias

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Discussion: Bias

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

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Bias

Parties Race Gender Sexual orientation Disabilities

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Bias

Personal experience Personal identity Social identity Theoretical perspective

Professional identity Religious perspective Political perspective

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Intersectionality

Race and ethnicity Immigrants Gender Sexual orientation Disabilities

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Considerations

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

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Barriers to Reporting

- Race
- Sexual Orientation
- Disabilities

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Impact on Reporting

- Race
- Sexual Orientation
- Disability

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Discussion:
What are potential biases with each of the parties?

- Complainant
- Respondent
- Witnesses

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What are biases with each of the parties?

Complainant


Respondent

Witnesses


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Race



Historical context



Stereotypes

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Gender

Perception Impact on credibility

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Gender Identity and Sexual Orientation

Higher risk

Fewer reports

Lack of understanding

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Disability

Limited data is available Neuro processing implications Stereotypes Accessibility Accommodations


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Employee/Student Relationships



Policy



Power dynamics




Reporting


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Issues for IPV Cases




Cooperation




Predominant aggressor



Cross-claims



Threat teams



Safety plans

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Issues for Stalking Cases

- Recognize behaviors
- Duration
- Frequency
- Safety plan

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Retaliation

- Identify behaviors
- Which policy?
- Remedies
- What qualifies?

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UNDERSTANDING STRESS AND TRAUMA

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Keep in Mind

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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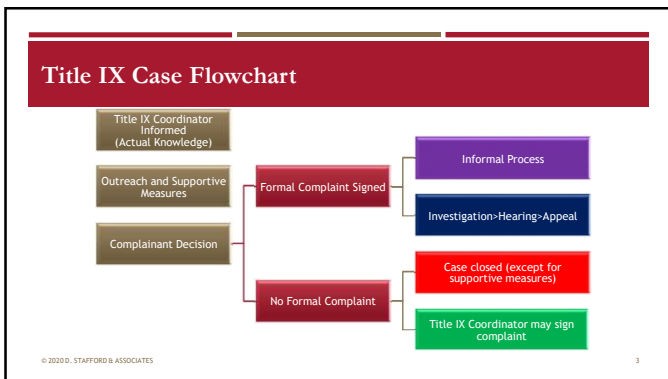
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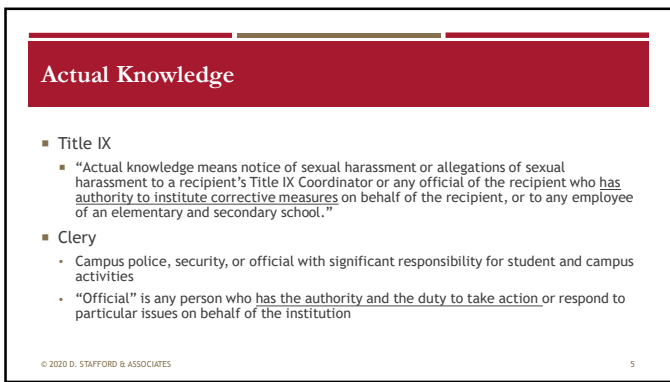
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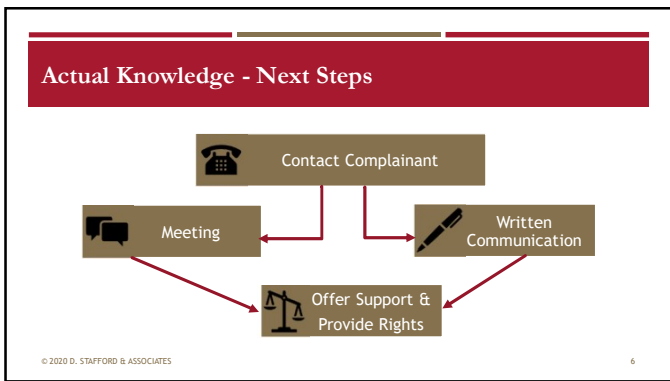
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Terminology

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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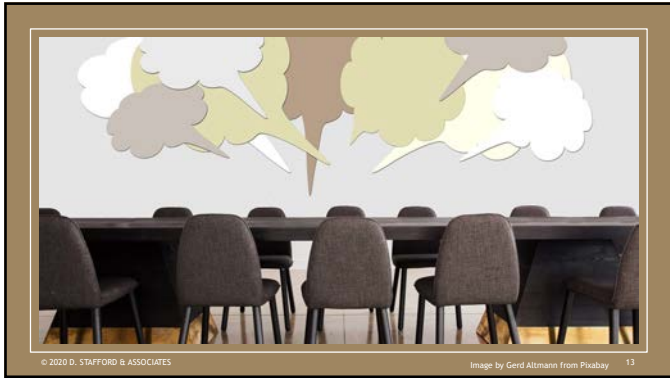
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Title IX Formal Complaint

- Filed/Signed
- Alleging sexual harassment
- Requesting an investigation (or informal option)

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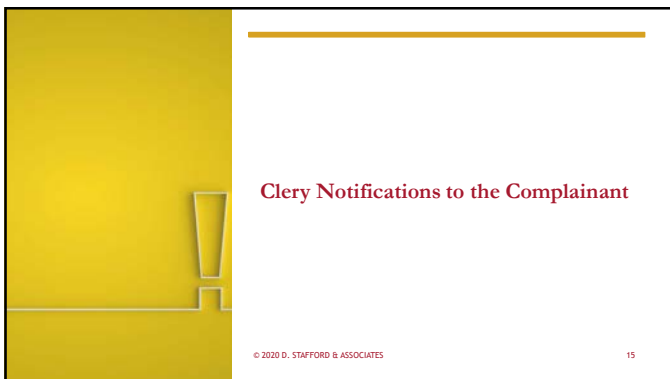
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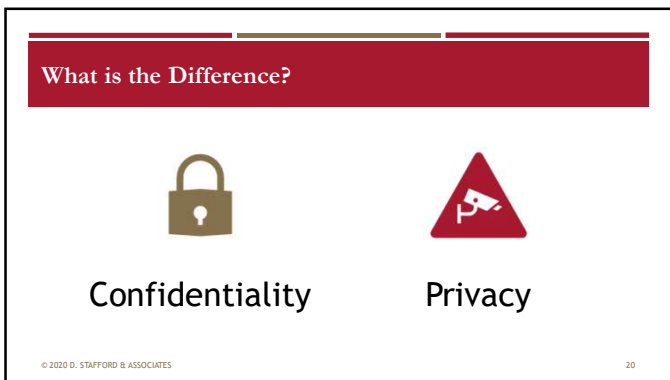
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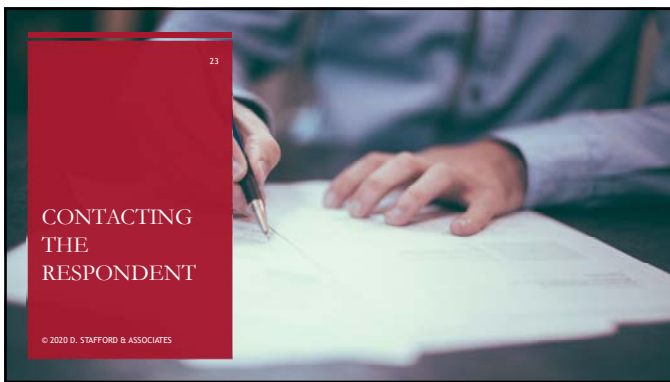
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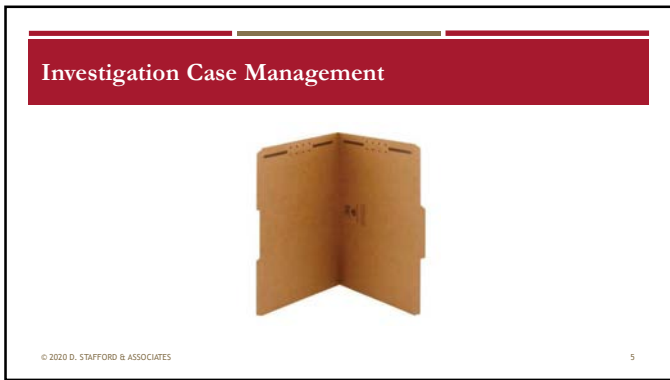
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Investigative Strategy

- 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

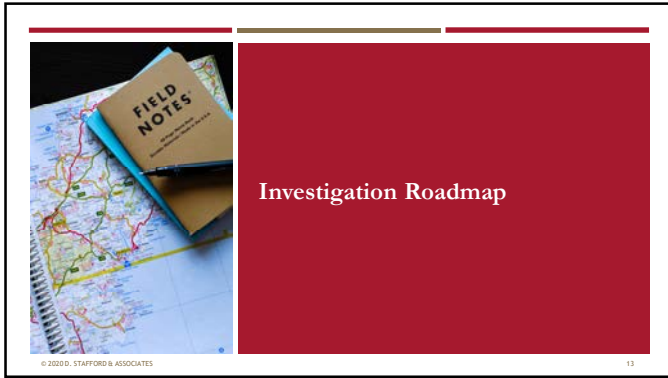


- Draft Questions
- Initial Evidence Collection

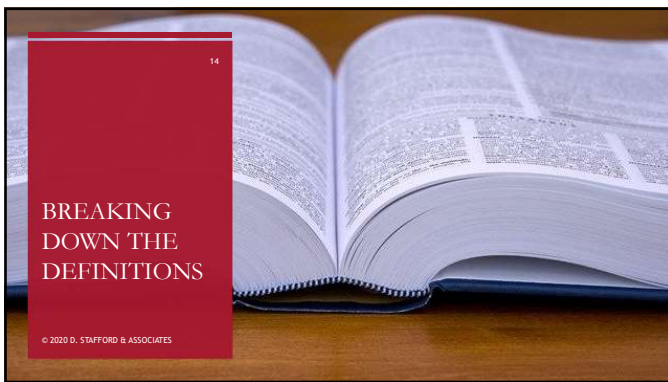
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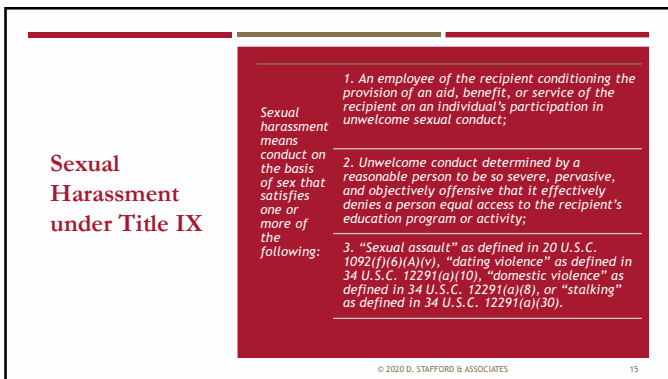
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PRONG 1: Quid Pro Quo

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

17

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

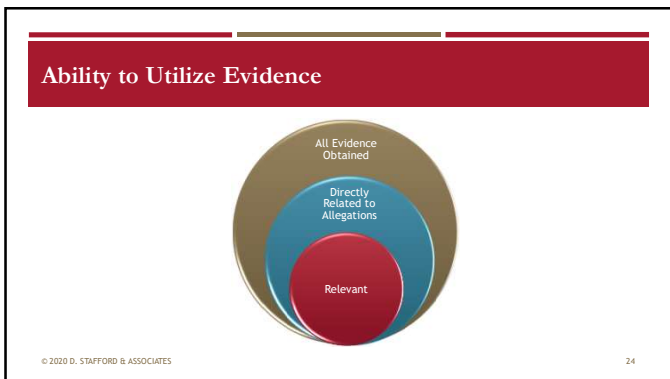
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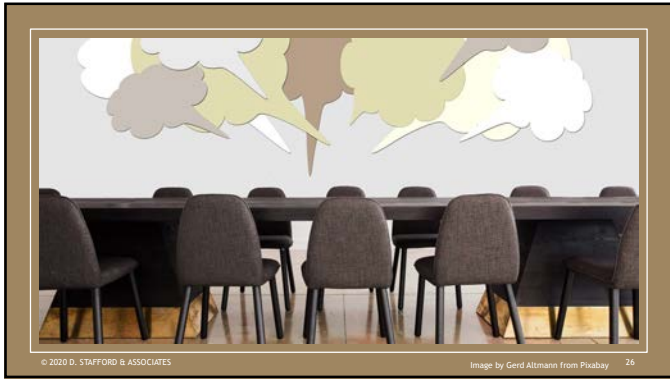
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Research

- 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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REPORTS



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Versions of the Report

 <p>Preliminary Report: Scope Methodology Evidence Obtained</p>	 <p>Final Report: Scope Methodology (edited) Evidence Obtained Summary of Evidence</p>	 <p>Written Determination: Scope Methodology (edited), Summary of Evidence (edited), Results (including rationale, sanctions, remedies)</p>
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The Regs on Evidence

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

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Evidence Collection

Everything Collected

Directly Related

Relevant

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Everything BUT...

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

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“Directly Related”: in the comments

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

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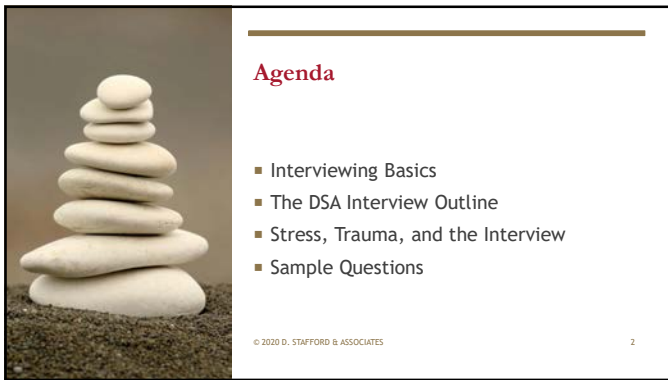
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Interview Golden Rules

- Preparation
- Environment
- Flexibility

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Interview Preparation

- Research**
 - The incident
 - The policy
 - Topics of inquiry
- Pre-draft questions**
 - Background questions
 - Narrative question
 - Case Specific Questions
- Preliminary Info**
 - Procedural
 - Recordkeeping
 - Notice

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INTERVIEW – WHAT TO BRING

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Flexibility



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

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THE INTERVIEW

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The DSA Interview Outline

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

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PRELIMINARIES:
You do the talking



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BACKGROUND:
Build the Rapport



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NARRATIVE:
The Big Question



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CLARIFICATION:
Filling in the holes



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CASE QUESTIONS:
The Pre-Drafted
Must Asks



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CLOSING:
Loose Ends

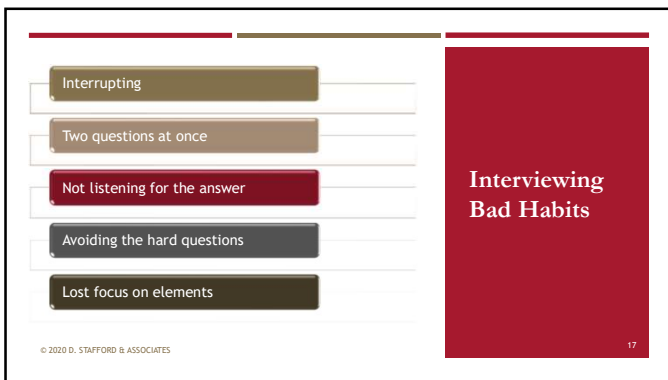


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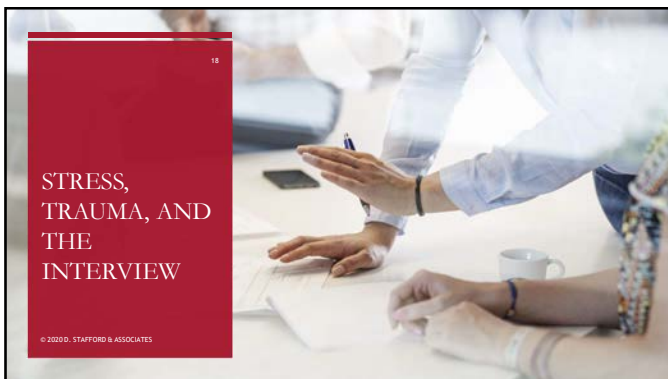
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Re-traumatization

-  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

- 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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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

To lie


Pressure

Past relationships


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Bias



Personal preference



Impartiality



Internal Biases

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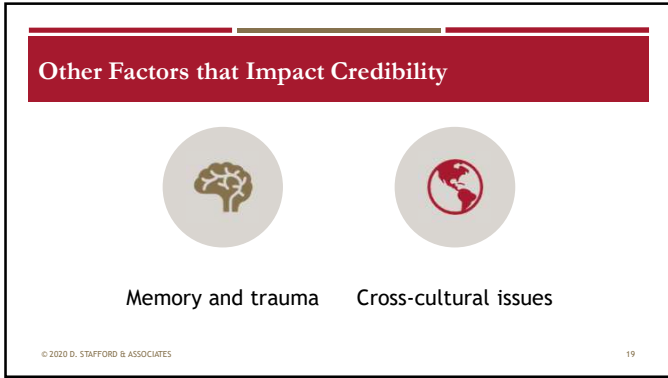
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Bias

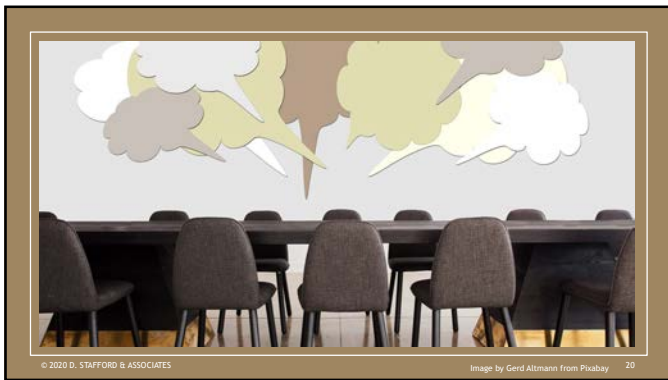
Confirmation Bias <ul style="list-style-type: none">Confirmed preconceived opinion
Availability Bias <ul style="list-style-type: none">Most important to the memory immediately recalled
Hindsight Bias <ul style="list-style-type: none">See things as more predictable than they were
Foresight Bias <ul style="list-style-type: none">Ability to predict future events
Gender Bias <ul style="list-style-type: none">More likely to believe one gender over another
Race <ul style="list-style-type: none">More likely to believe one race over another

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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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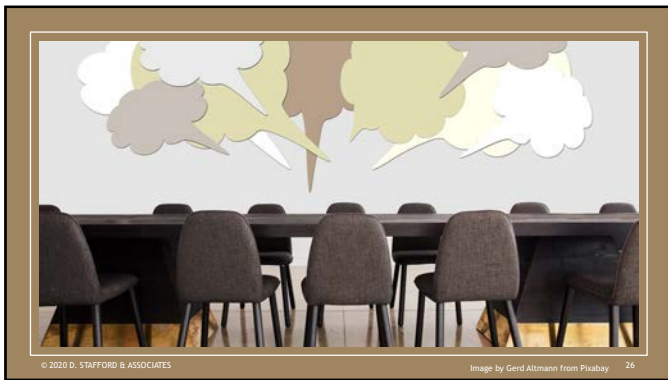
Relevancy Exceptions

“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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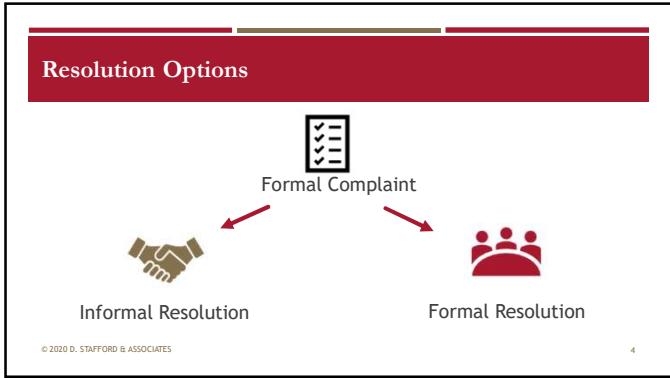
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§106.45(b)(9) – Informal Resolution

“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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The slide features a light gray background with a red horizontal line at the top. The title "§106.45(b)(9) – Informal Resolution" is written in a bold, dark font. Below the title, a quote in a smaller font reads: "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...". At the bottom left, there is a small copyright notice "© 2020 D. STAFFORD & ASSOCIATES" and a small number "6" at the bottom right.

6

Informal Resolution

Notice Voluntary Not allowed for Employee/student

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Informal Resolutions – Conduct Conferences

Both parties must agree Acceptance of Responsibility Sanctions

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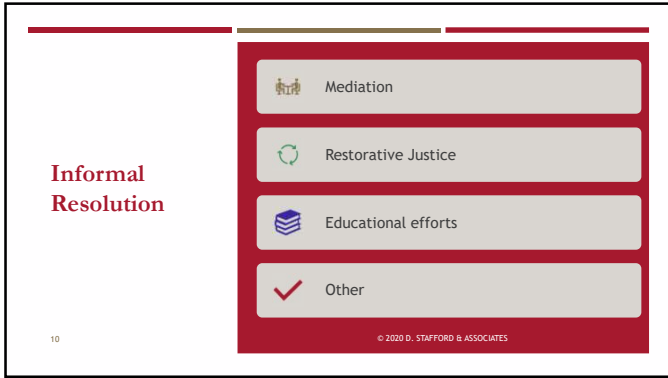
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Informal Resolution Recordkeeping Considerations

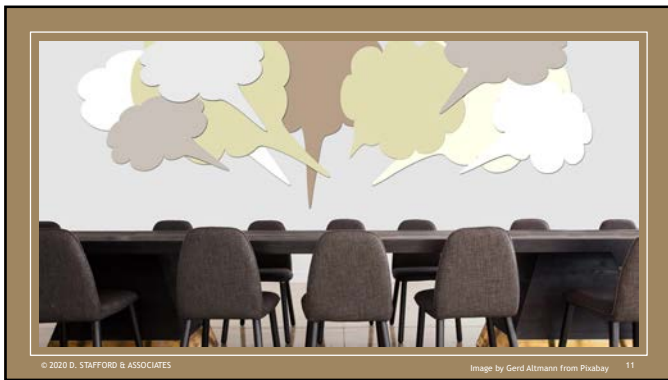
Records subject to subpoena What happens if go formal? Incomplete requirements Required record keeping Is it considered "conduct history?"

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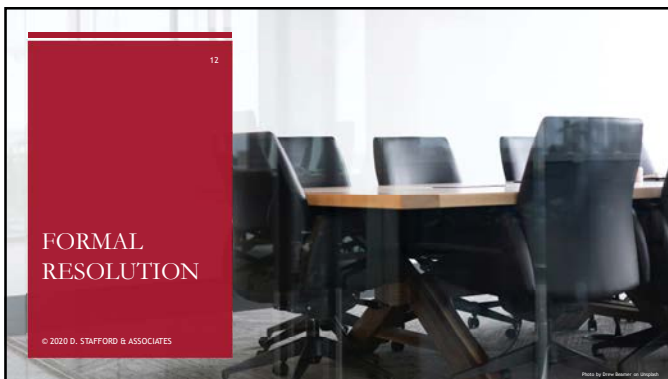
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Single Adjudicator Model



“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

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

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Live Hearings

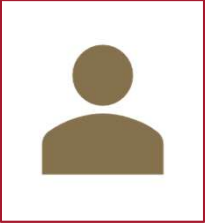


- Must provide for a live hearing
- At the request of either party, the recipient must provide for a live hearing to occur with the parties located in separate rooms with technology enabling the decision-maker(s) and parties to simultaneously see and hear the party or the witness answering questions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

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Advisors




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

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Cross Examination




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

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Relevancy



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

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Relevancy

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

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Participation



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

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Formal Resolution – Making a Finding

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

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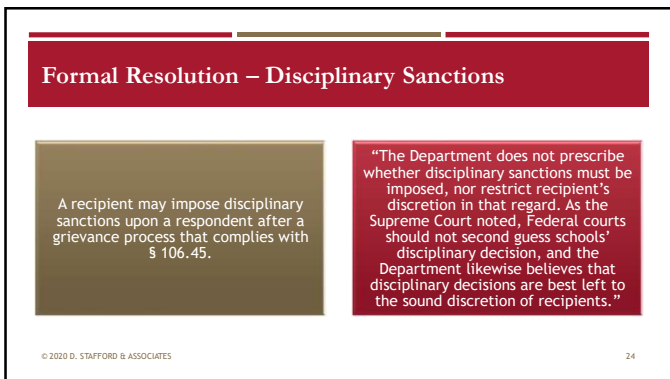
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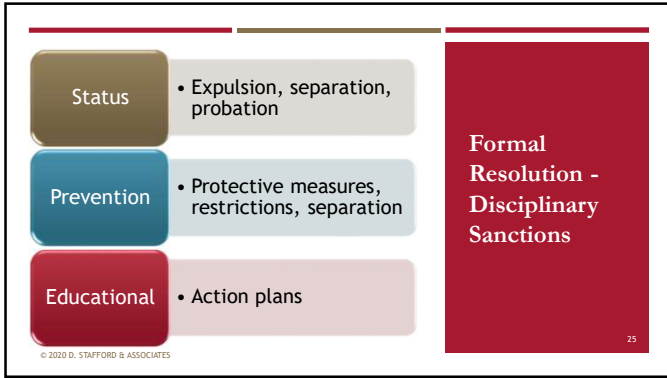
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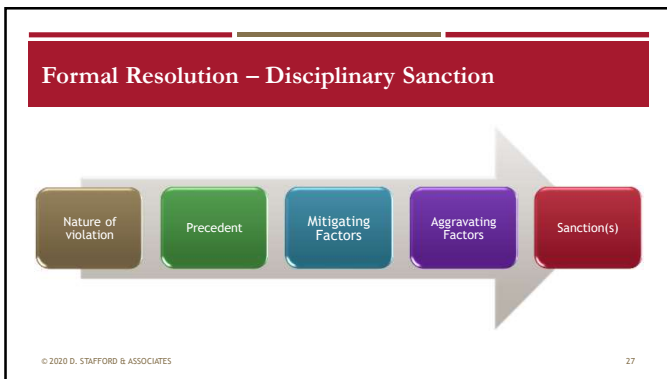
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Formal Resolution – Remedies




Make permanent supportive measures



One-sided no contact orders



Restrictions from locations



Restrictions from activities

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Written Outcome

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Live Hearing Recording or Transcript



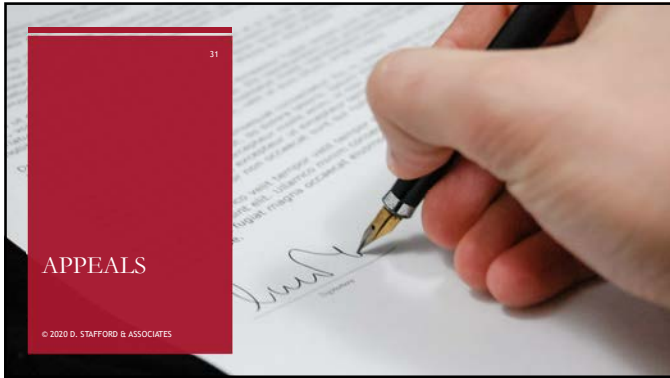
Recording



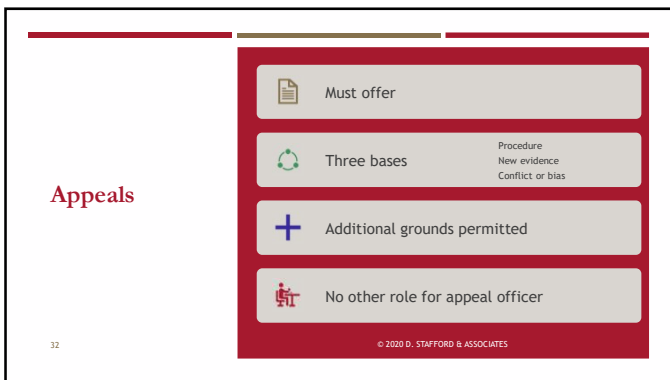
Transcript

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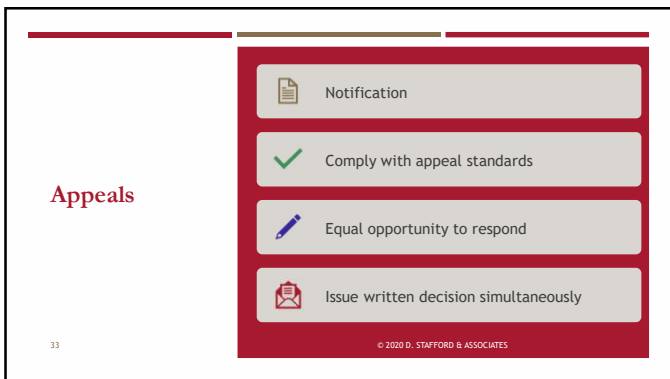
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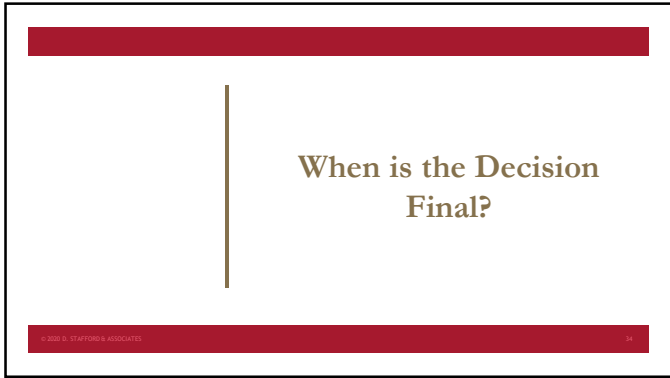
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