



D. STAFFORD
& ASSOCIATES

Advanced Investigation Class

(2 Day Version)

Presented by:

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Associates

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Advanced Sexual Misconduct Investigation Training

Two Day Agenda

SCTCC-June 21-24, 2021; 9am-1pm Eastern

This 2-day intensive virtual training class is designed for campus administrators and investigators who have responsibility for conducting and overseeing sexual misconduct investigations under the auspices of Title IX on their college campuses. The class will focus primarily on two key advanced topics advanced interviewing techniques and report writing.

Day 1-June 21, 2021 (breaks from 10:15am-10:30am and 11:45am-12 noon)

9:00 a.m. – 1:00 p.m. Title IX and Investigations (Legal)

- Introductions
- Overview of the Laws
- Title IX on Campus

Day 2-June 22, 2021 (breaks from 10:15am-10:30am and 11:45am-12 noon)

9:00 a.m. – 1:00 p.m. Understanding Sexual Misconduct (Advanced Concepts in Investigations)

- Detailed Unpacking of the Elements
- Case Studies

Day 3-June 23, 2021 (breaks from 10:15am-10:30am and 11:45am-12 noon)

9:00 a.m. – 1:00 p.m. Advanced Interviewing Techniques
Case Study

Day 4-June 23, 2021 (breaks from 10:15am-10:30am and 11:45am-12 noon)

9:00 a.m. – 1:00 p.m. Report Writing
DSA Report Writing Template



TITLE IX

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ISSUANCE OF CERTIFICATES FOR COMPLETION OF DSA/NACCOP CLASSES

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

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

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

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

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



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



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

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

Drawing on her experiences as a trained criminal and civil rights investigator, Murray also oversees independent investigations of complex sexual misconduct cases; conducts audits of Title IX/VAWA



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

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



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 while also serving as the deputy Title IX Coordinator.

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



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



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Agenda

- Title IX for Investigators
- Overview of the Elements
- The Clery Act for Investigators
- Title VII for Investigators

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Definitions

Parties

- Complainant
- Respondent
- Witness

Title IX Personnel

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

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Impact on Employees



- Expectation that recipients handle any formal complaint that occurs through the education program or activity in the United States through the Title IX grievance process
- Impact on the employee grievance process

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Report vs. Formal Complaint



Report



Formal Complaint

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Definition of Sexual Harassment



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

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

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Jurisdiction Determinations



Impact educational program or activities



Occurred in the context of the educational program or activities (Online)



Control over the Respondent



In the United States

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Additional Definitions



Consent

Retaliation

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Complaint Actions



Dismiss



Consolidate

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Actions Impacting Parties



Supportive Measures



Emergency Removal

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Notice Requirements

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

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Investigations and Evidence Gathering



- Burden of proof
- Witnesses and facts
- No restrictions on discussing allegations

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Hearings



Live hearing



Cross-examination

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Written Determination



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



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Appeals 

- MUST have**
 - Procedure
 - New evidence
 - Conflict or bias That impacted outcome
- Additional grounds permitted**
- No other role**
- Reasonably prompt time frames**

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Informal Resolution 

-  **Notice**
-  **Voluntary**
-  **Not allowed for employee respondent - student complainant**

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Recordkeeping (Seven Years) 

-  **Case Materials**
-  **Training materials**

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Training for All Title IX Personnel



- Definition of sexual harassment
- Scope of education program/activity
- Conduct grievance process
- Serve impartially

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Additional Training - Investigators



Relevance



Investigative Report

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Additional Training - Decision-makers



Technology



Relevancy

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Sexual Harassment Under Title IX 



PRONG 1: QUID PRO QUO



PRONG 2: HOSTILE ENVIRONMENT+



PRONG 3: VAWA OFFENSES

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Title IX – On the Basis of Sex 

“In *Bostock v. Clayton County*, 590 U.S. ____ (2020), the Supreme Court held that Title VII’s prohibition on discrimination “because of . . . sex” covers discrimination on the basis of gender identity and sexual orientation. Under *Bostock*’s reasoning, laws that prohibit sex discrimination – including Title IX of the Education Amendments of 1972 . . .”

Executive Order on Preventing and Combating Discrimination on the Basis of Gender Identity or Sexual Orientation, January 20, 2021

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PRONG 1: Quid Pro Quo 



Sex or gender-based



Employee respondent



CONDITIONING aid, benefit, or service



UNWELCOME conduct (or threat of conduct)

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PRONG 2: Hostile Environment+ 



Sex Gender-based



Unwelcome



Conduct Severe, Pervasive, Objectively offensive



Impact on education (or employment)

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PRONG 3: The VAWA Offenses 

 Sexual Assault

 Dating Violence Domestic Violence

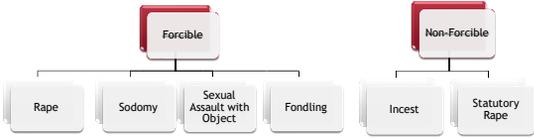
 Stalking

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Sexual Assault



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Intimate Partner Violence



- Dating Violence
 - Social or romantic relationship
 - Sexual or physical abuse, or threats of such abuse
- Domestic Violence
 - Felony or misdemeanor
 - Current or former spouse, share a child, cohabitate, similarly situated

Q: What if the son of the athletic director physically assaulted the athletic director on campus?

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Stalking



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Key Requirements of the Clery Act 

-  Collect, classify, and count crime reports/statistics
-  Public disclosures
-  Publish Annual Security Report
-  Submit crime statistics to the Department

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Key Requirements (part 2) 

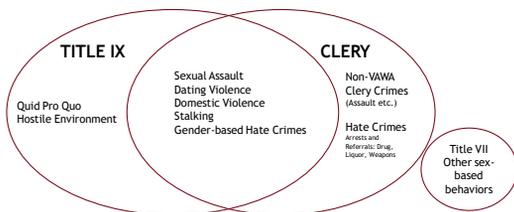
-  Provide educational programs and campaigns on dating/domestic violence, sexual assault, & stalking (DV/DV/SA/S)
-  Have procedures for institutional disciplinary action for DV/DV/SA/S
-  If you have a campus police or security department: Publish Daily Crime Log
-  If you have residential facilities: Fire Log, Fire Safety Report, Missing Persons Procedures

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Overlapping Conduct Violations



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Duties Under VAWA



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VAWA Offenses



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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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Response Requirements for VAWA Offenses



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Written Explanation of Rights and Options



- Preserve evidence
- Reporting options, including law enforcement
- Institutional responsibilities
- Services
- Accommodations
- Confidentiality
- Disciplinary procedures

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Clery Requirements for Disciplinary Proceedings



- Anticipated timelines (“reasonably prompt”)
- Decision-making process
- 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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Additional Requirements



Advisors



Standard of evidence



Formal complaint rights



Written determination

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Additional Requirements



Training



Recordkeeping

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No Requirements



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Warnings and Prevention



Warnings



Prevention

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	Timely Warning	Emergency Notification
Legal Standard:	Potential ongoing or serious threat	Immediate threat to health and safety
Circumstances:	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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Prevention and Education 



Primary



On-going

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Title VII of the Civil Rights Act of 1964 

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

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29 CFR § 1604.11 EEOC Guidelines



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

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

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Sexual Harassment



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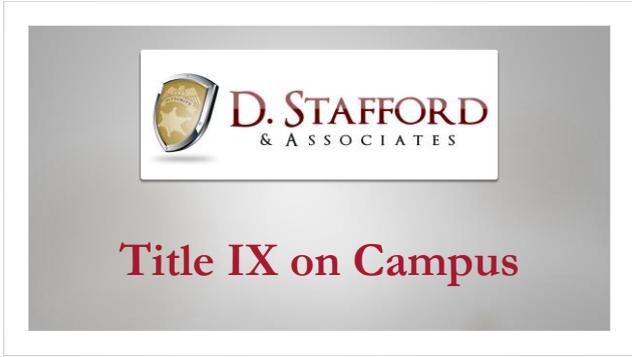
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Agenda

- Campus Personnel
- Campus Partners
- Potpourri

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Title IX Coordinator Responsibilities



- Coordinates all Title IX efforts
- Disseminates policy
- Receives reports and/or outreach to complainant
- Accepts or signs formal complaints
- Accepts complainant's withdrawal of complaint
- Coordinates effective implementation of supportive measures and remedies

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Title IX Coordinator Responsibilities



- Dismissal/consolidation
- Bias and conflict of interest
- Investigate?
- Assign investigators
- Informal resolution decisions
- Update parties
 - Notice documents
 - Appeals process
- Training

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Investigator Responsibilities



- Gather directly related evidence
- Summarize relevant evidence
- Write final investigative report
- Other responsibilities?

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Decision-maker Categories



Appeals of dismissals of complaint



Live hearing



Appeals of findings



Others

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Decision-Maker Hearing Responsibilities



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

May ask questions in hearing

Determine relevancy of questions in hearing

Determine findings

Determine sanctions

Issues written determination of responsibility

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Appeals of Dismissal and Findings



Procedure



New evidence



Conflict of interest and bias



Additional grounds permitted

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Informal Resolution Facilitator Responsibilities



Facilitate the informal resolution process

Receive same training as other Title IX Personnel

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Institution-provided Advisor Responsibilities



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

Conducts cross-examination of witnesses and opposing party

Receives evidence and investigative report

No training requirement

Separate institutional requirements?

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Working with Campus Personnel



- Dual roles
 - Title IX Coordinator/Investigator
- Separate roles
- Reporting back
- Information sharing

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Working with Human Resources 



Is the Title IX Coordinator housed in Human Resources?



Referral of reports



Nature of complaints can vary



Recordkeeping concerns

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Working with Student Conduct 



Reporting structure



Information and reports



Involvement in process Investigators



Intersecting behaviors



Recordkeeping

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Working with Campus Safety 



Involvement in Process/
Investigators



Concurrent Investigations



Reports and Other Information



Recordkeeping

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Working with Threat Assessment Teams 



Are you a member of the team? Should you be?



Are you involved in emergency removal decisions?



Information sharing considerations

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Working with Information Technology 



Reports



Witnesses



Access to Information

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Dismissal of Formal Complaints





Must Dismiss

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



May Dismiss

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



Notification and appeal

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Case Study: Dismissal

You are investigating a formal complaint for sexual harassment involving a student complainant and a faculty member who is the respondent. Specifically, the student has complained that the faculty member often makes comments about women being the stronger sex and that all men are weak and do not understand their privilege. During the initial interview with the student, he tells you that the comments have “basically” stopped. He still is attending and participating in class. In fact, his grade has gone up since filing the formal complaint against the faculty member.

WHAT DO YOU DO?

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Consolidation of Complaints



Multiple respondents

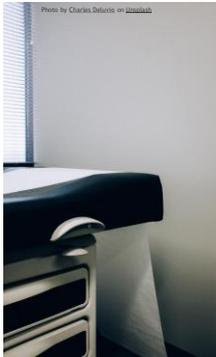
More than one complaint against one or more respondents

One party against another party

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Case Study: Consolidation

You are investigating a sexual assault complaint involving a student and their athletic trainer. The alleged incident happened during one of the complainant's treatments for her lower back. During the course of your investigation, a witness (who is a teammate of the complainant) tells you that it is an "open secret" within the athletic department and that the trainer's nickname is "Dr. Happy Hands."

WHAT DO YOU DO?

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Multiple Respondents



Group dynamics

Role of the leader

Impact on complainant

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Additional Charges - 106.45(b)(2)(B)(ii)



“If, in the course of an investigation, the recipient decides to investigate allegations about the complainant or respondent that are not included in the notice . . . the recipient must provide notice of the additional allegations to the parties whose identities are known.”

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Cross-claims



Mutual incapacitation

Intimate partner violence

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Case Study: Multiple Respondents

You are investigating a dating violence case in which both students were “charged” with violating the policy as the police report indicated that both parties had injuries. During the course of the investigation, there is information to suggest that one of the respondents acted in self-defense. Specifically, the male respondent had grabbed the female respondent by the neck, and she scratched him so that he would release her.

WHAT DO YOU DO?

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Participation – 106.71



“No recipient or other person may intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by Title IX or this part, or because the individual has made a report or complaint, testified, assisted, or participate or refused to participate in any manner in an investigation, proceeding, or hearing under this part.”

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New Information Provided



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Photo by Christian Wiefziger on Unsplash

Case Study: Participation & New Information

You are investigating a sexual assault complaint (incapacitation) involving two students. During the investigation, the respondent provided a written response to the allegations stating, “These allegations are false. The complainant consented to all sexual behaviors that evening.” The respondent did not provide a written response after he was allowed access to all relevant evidence. However, after receiving the final investigation report, the respondent sent a 15-page response refuting the allegations, providing text messages with new witnesses, and the complainant’s social media posts from that evening stating that she was not drinking.

WHAT IS YOUR PROCESS?

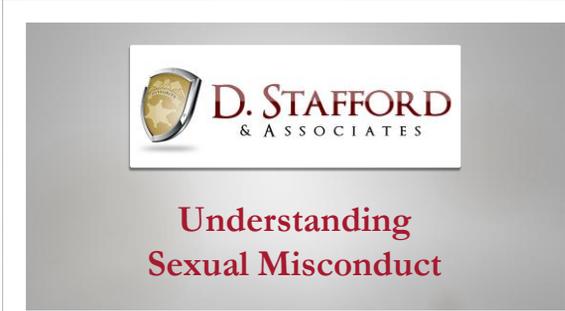
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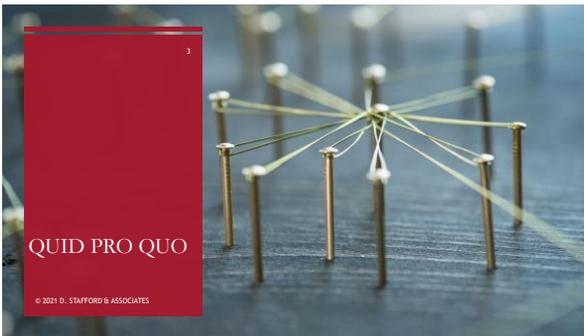
Agenda

- Quid Pro Quo
- Hostile Environment
- Sexual Assault
- Intimate Partner Violence
- Stalking
- Myths and Facts

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Examples



Student/employee



Supervisor /supervisee



Third party complaints

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Consensual Relationship Policies



Separate policy?

Who investigates?

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Investigation Considerations



Reporting



Power dynamics



Aid, benefit, or service



Past behaviors

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Case Study: Quid Pro Quo

You are investigating a complaint involving a female faculty member and a male student. The complainant alleges that a separate student was awarded a TA position because that student was involved romantically with the faculty member.

WHAT ARE YOUR INVESTIGATIVE STEPS?

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HOSTILE ENVIRONMENT

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Gender-based Harassment



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Investigation Considerations



Recognition



Reporting



Pattern of behaviors



Threshold

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Case Study: Hostile Environment

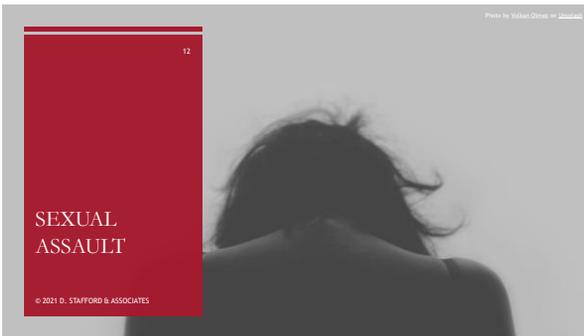
You are investigating a complaint involving the chair of the STEM department. Specifically, multiple female faculty members have filed a complaint that the department is a "boys club" and that they overheard a conversation after the department meeting (it was conducted over Zoom) in which the male faculty members were "rating" the female faculty members regarding who they would like to sleep with. The female faculty members have stated that they are not going to attend future meetings.

WHAT ARE YOUR INVESTIGATIVE STEPS?

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SEXUAL ASSAULT

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Consent



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Consent Factors



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Incapacitation



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Incapacitation is a Two-Step Determination 

Was the complainant incapacitated?

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

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Dual Incapacitation Considerations 

Investigative Responsibility

Investigation Impacts

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Investigation Considerations 

 Reporting

 Pattern of behaviors

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Case Study: Sexual Assault

You are investigating a "cross-complaint" of sexual assault involving two male students. One party has stated that they are not able to speak to the specific behaviors as they were incapacitated, but they do have a text message from the respondent the morning after the incident checking in because "your first time can be a lot." The other party has stated that he too was incapacitated and does not recall what occurred that evening, but that he would not have had sex with the other party as he is in a committed relationship.

WHAT ARE YOUR INVESTIGATIVE STEPS?

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Understanding the issue

Understanding the parties

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How Do You Interpret...



- "We were not getting along."
- "We were having trouble."
- "It was nothing. People overreacted."
- "It wasn't that bad. They are blowing it out of proportion."
- "It was an accident; they didn't mean it."

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Behaviors



Quick courtship	Coercive control	Isolation	Family/Friends
Spying	Threats and intimidation	Physical abuse	Sexual abuse

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Additional Violations



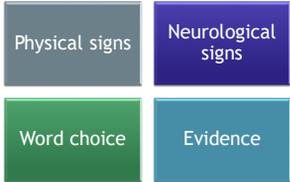
- Unauthorized entry
- Theft
- Network use policy
- Vandalism
- Other
- What policy would you use to address?
- What is the impact if you do not have a formal complaint or if the complainant no longer participates?

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Strangulation



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Patterns

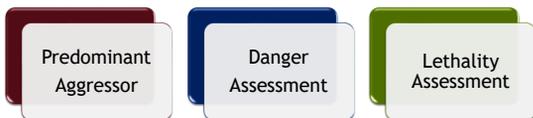


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Ancillary Actions



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Case Study: Intimate Partner Violence

You are investigating a report of dating violence involving two female students. The police report indicates that both students were arrested after they arrived on the scene. The report indicates that one of the students stated that "it was nothing and that everyone overreacted."

WHAT ARE YOUR INVESTIGATIVE STEPS?

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STALKING

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Understanding the issue

Understanding the parties

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Harassment v. Stalking



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Stalking Behaviors



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Additional Violations



- Unauthorized entry
- Theft
- Network use policy
- Vandalism
- Other
- What policy would you use to address?
- What is the impact if you do not have a formal complaint or if the complainant no longer participates?

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Investigation Challenges



Recognition



Pattern



Varying behaviors



Varying locations



Relationship between the parties

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Image by Aleni Hava from Pixabay

Case Study: Stalking

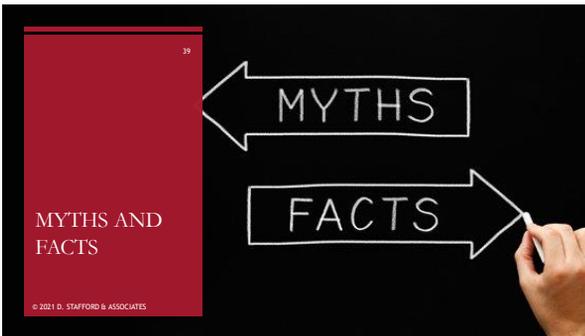
You are investigating a stalking complaint involving a faculty member and a student. The faculty member has stated that he tried to "handle it" themselves and told the student to stop contacting him. However, since this occurred, he has been receiving emails and text messages from an unidentified number. He has also reported that he has seen the student more often around campus but is not sure if that is because he is more aware of things since making a report.

WHAT ARE YOUR INVESTIGATIVE STEPS?

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Case Study: Jordan and Cecelia

In Cecelia's bedroom, Cecelia and Jordan engaged in consensual kissing and touching, removing each other's shirts. She then says Jordan pushed for more and she replied, "No, not tonight" and resisted with her arms and knees but did not hit him or attempt to claw his eyes. She says he told her to turn over and he raped her.

Jordan acknowledges sex occurred but says she did not say no and they did not talk except when she asked if he had a condom.

Cecelia's male roommate was in the other room and said Cecelia never yelled out. She did not attempt to leave the room. While Jordan was in the bathroom, she texted a friend, "OMG, I think I might have just gotten raped." She then drove Jordan home. She did not call the police. A few days later, she sent a message to a friend and says she blames herself for what happened because of what she was wearing and for making out with him.

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FACT OR MYTH:

Society often blames victims for their assault.

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Impact on Investigations



"[It is] incredibly difficult to watch as these two young men who had such promising futures, star football players, very good students...literally watched as [their lives] fell apart." (CNN Anchor, 2013)



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Predictors of Victim Blaming

- Individual Factors
 - Identity
 - Gender role attitudes and "benevolent sexism"
 - Political attitudes
 - Power differentials
- Situational Factors
 - Drugs/alcohol
 - Victim appearance
 - Sexual history
 - Level of force
- Societal
 - Sexual scripts and stereotypes
 - Religion
 - Media
 - Legal definition

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FACT OR MYTH:

Only stranger rape is "real rape" and acquaintance rape is less severe.

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Stranger vs. Acquaintance Rape



"If it's legitimate rape, the female body has ways to try to shut the whole thing down." (Member of Congress, 2012)



Definitions



Differences



Similarities



Impact on Investigations

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FACT OR MYTH:

Trauma victims have poor memories.

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Non-traumatic memories

- Normal Forgetting
- Motivated Forgetting
- Confabulation

Typical Forgetting Curve for Newly Learned Information

Ebbinghaus decay curve: <https://practicalpie.com/ebbinghaus-forgetting-curve/>

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Trauma Memories



Trauma Memories - Weaken

- Posttraumatic symptomatology
- Assimilation/Accommodation
- Dissociation
- Amnesia/Repression



Trauma Memories - Strengthen

- Hypernesia
- Emotional processing
- Memory encoding

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Memory Encoding



Central details



Peripheral details



Time and context

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Trauma Memory Encoding



Sensory



Emotional



Flashbulb memories

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FACT OR MYTH:

Victims of previous sexual assault or child abuse are almost twice as likely to experience victimization again compared to those that have never been victimized.

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VULNERABILITY

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FACT OR MYTH:

Sexual assault victims may behave in ways that seem counterintuitive - to society and to the victim themselves.

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Degraded Prefrontal Cortex



Alcohol



Age



Prolonged stress exposure

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Response



Reflex



Habit

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FACT OR MYTH:

Sexual violence should be handled by law enforcement and not colleges and universities.

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Sexual Assault Case Attrition



In a study of 6 different communities following a forensic medical exam and a police report...

- Not Charged 86%
- Charges Dropped 3%
- Plea Bargained 8%
- Trial: Acquittal 1%
- Trial: Conviction 2%

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FACT OR MYTH:

False allegations of rape occur at a significantly higher rate than false reports of other crimes.

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- **Unfounded: False or Baseless**
 - A case is determined to be false when (1) evidence discovered demonstrates that the accused person did not commit the offense, or (2) evidence refutes the occurrence of a crime.
 - A case is determined to be baseless when it was improperly reported as a sexual assault.

How do we define "insufficient evidence"?

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"There is no shortage of politicians, victims' advocates and news articles claiming that the nationwide false report for rape and sexual assault is almost nonexistent, presenting a figure of around 2 percent," writes Mr. Turvey, who directs the Forensic Criminology Institute. "This figure is not only inaccurate, but also it has no basis in reality." A recent study supports this assessment. The Pentagon issues an annual report on sexual assaults in the military. Nearly one-quarter of all cases last year were thrown out for lack of evidence, according to a report released in May. (AP news, 2018)

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Lack of evidence
≠
False report

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Case Study: Michael & Mary

Students Michael and Mary had a sexual encounter that began with consensual kissing. Mary said that she withdrew consent and said "no" when Michael touched her breasts and when he placed her hand on his penis. She said she said "no" eight times. Michael said he asked permission before he touched Mary's breasts and buttocks and asked her what she wanted to do. He said she asked him what he wanted, and he suggested a "hand job," and he put his hands around hers to perform the sexual act.

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Investigations Overview

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Agenda

- The Formal Title IX Process
- Overview of Title IX Investigations
- Virtual Investigations
- Non-Title IX Investigations

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THE FORMAL TITLE IX PROCESS

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Three Primary Stages



Intake



Investigation



Resolution

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Title IX Definition

Eligible Complainant

Education Activity or Program

Wishes of the Complainant

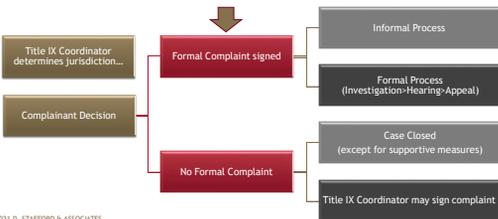
Title IX Assessment

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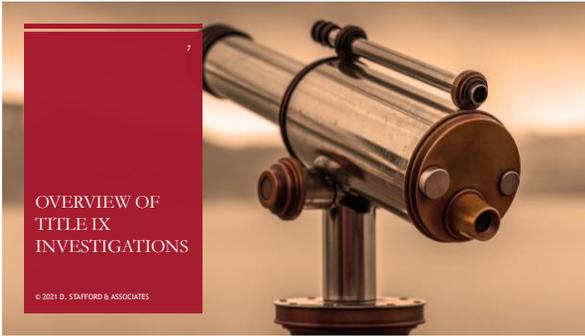
Title IX Case Flowchart Post Outreach



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Formal Process 

 Notice  Assign to Investigator  Investigation

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Logistical Decisions

 WHO SENDS NOTICE?	 WHO SCHEDULES?	 HOW ARE STEPS DOCUMENTED?
 WHO COLLECTS INSTITUTIONAL EVIDENCE?	 WHO SENDS EVIDENCE /REPORT?	 WHO DETERMINES DEADLINES?

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Title IX Investigations



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Investigations in the Regulations



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Title IX Investigation Steps



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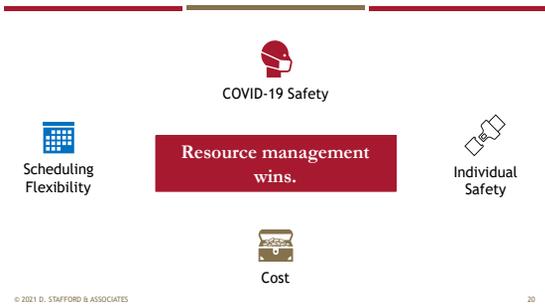
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Cameras On



Rapport

Break the virtual wall.



Line of Sight



Communication Cues

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Request Location Photos



Evidence Sharing - Parties & Witnesses

Get creative with evidence collection and sharing.



Google



Evidence Sharing - Investigators

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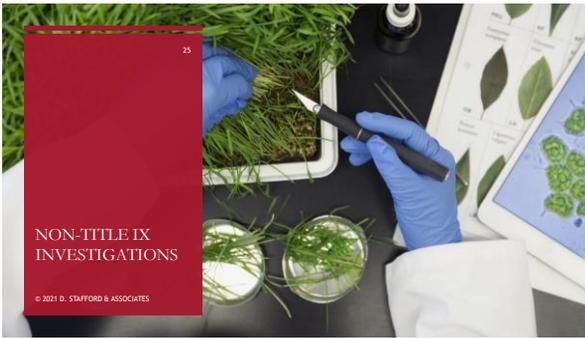
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Other Types of Investigations 



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Possible Policy Differences 



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Likely Similarities



Interviews



Evidence collection



Advisors

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Agenda

- Evidence Overview
- Interviews
- Interview Goals
- The DSA Interview Model
- Alternative Interview Techniques and Memory Theory
- Developing YOUR technique

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Types of Evidence



Real Evidence



Demonstrative



Documentary



Testimonial

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Evidence



Statements

Witness statement

Physical evidence

DNA

Prior record

Medical reports

Video

Follow-up photographs

Post-incident information

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What are Interviews?



Part of Evidence (Testimonial)



Neutral Conversation



Structured

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Interview Golden Rules



Preparation



Environment



Quality

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			Pre-Draft Questions
Confirmation	Evidence Collection	Policy refresh	
Dates Location Witnesses Respondent	What can you get? What should you get? What more do you need?	Elements Process Report Rights	

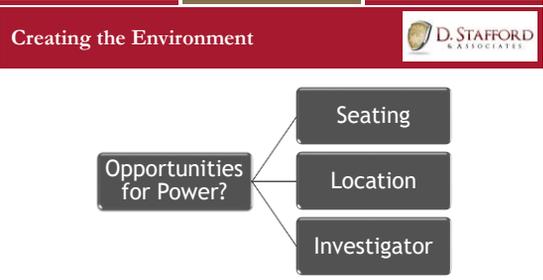
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Discussion: Do you audio or video interviews? What are the pros and cons?



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Who is in the Room?



- Investigator(s)
- Parties
- Advisor
- Support Person
- Interpreter
- General Counsel

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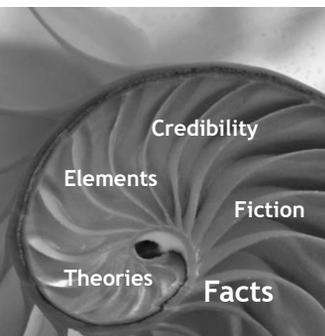
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INTERVIEW GOALS

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Goal 1: Just the Facts



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Goal 2: Responses

Response to other statements

Response to rebuttal evidence

Alternate theories of the case

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Goal 3: Evidence Around Credibility



Truthfulness



Credibility of the Story



Credibility of the Storyteller

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Truthfulness

We all lie.

Lies

Omissions

Evasions

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The Credibility of the Story



- Corroborating evidence
- Plausibility
- Motivation

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The Credibility of the Storyteller



- Ability to Perceive
- Ability to Remember
- Bias

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Do These Impact Credibility?



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

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**TRAUMA INFORMED:
Question Format**




Tone



Phrasing



Open-
ended



Safe



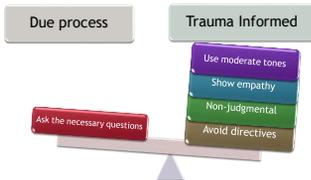
Judgment-
free

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The Investigator's Role

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Ethical Interviewing



Notice



Honesty



Bias

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Case Study: Doe and Roe (book)

- What additional information do you wish you had?
- How does your knowledge of trauma and memory impact your reading of the facts?
- What facts support a finding of “in violation/not in violation”?
- If you were the decision-maker, how would you decide?

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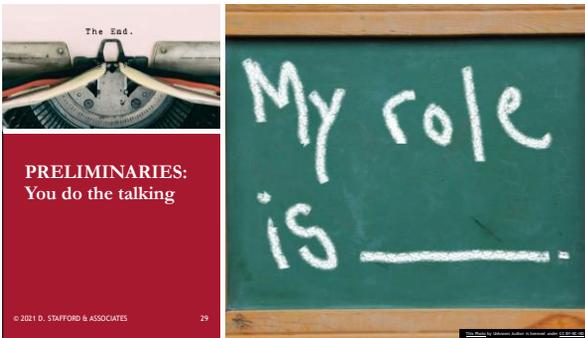


The DSA Interview Outline

- Preliminaries
- Rapport
- Narrative
- Clarification
- Case Questions
- Closing

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PRELIMINARIES:
You do the talking

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Goal of the Preliminaries




Legal



Policy



Roles



Rapport

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RAPPORT: Break the Ice 



Utilization



Goals



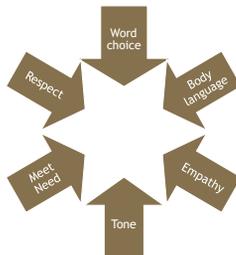
Techniques

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Continuing The Rapport



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NARRATIVE:
The big question

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NARRATIVE: Goals 

- Encourages detailed recall
- Identifies what is important to witness
- Gives witness control and power
- Establishes tone for interview



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NARRATIVE: Set the Ground Rules 

-  Witness has center stage
-  Detail
-  Take your time
-  Memories not guesses

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NARRATIVE: Investigator Role

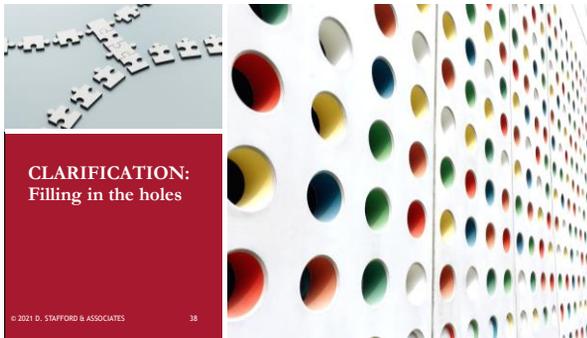


- Pre-draft opening question
- DO NOT INTERRUPT
- Patience and silence
- Prompts for continuation only
- Continue with open-ended questioning
- Do not settle for "I don't remember"

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CLARIFICATION: Filling in the Holes



- Follow up questions from the narrative
- Chronological questions
- Verify statements, words, people
- Request corroborating evidence where expected
- Dates/Times/Locations

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CLARIFICATION:
Investigator tasks

- ✓ Open-ended
- 🗨️ Topical Explanation
- 🔊 Repeat what heard
- 🤝 Maintain rapport

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OBJECTION!
LEADING THE
WITNESS



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CASE QUESTIONS:
THE PRE-DRAFTED MUST ASKS



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CASE QUESTIONS:
The Pre-drafted Must Asks



- Case-specific questions
- Close-ended questions
- Confirmations
- Contradictions
- Defenses/alternative theories

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CASE QUESTIONS - Losing Rapport



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CLOSING: LOOSE ENDS

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Interviewing Bad Habits

- Interrupting
- Asking two questions at once
- Not listening for the answer
- Avoiding the hard questions
- Losing focus on elements

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Party Interview Issues

- Embarrassing
- Uncomfortable
- Counterintuitive
- Consensual

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Witness Interview Topics

- Definitions
- Capacity
- Baselines
- Credibility

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Topic Considerations 



Sexual history



Character



Privileged



Other

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Interview Decisions 



Order of interviews



Evidence sharing



Follow-up interviews

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Investigative Challenges



Passage of time



Alcohol impairment



Memory issues

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Neurobiological



Tap the primitive portions of the brain



Improving recall of memories



Finding memories we did not know we had

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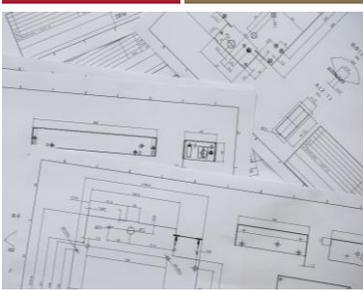


SENSORY & EMOTIONAL MEMORIES

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MENTAL
PICTURE

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TRIVIAL
DETAILS

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CHANGE
PERSPECTIVE

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REVERSE
ORDER

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YOUR Interview Technique



Planning - what do you need to know?

Pros and Cons to each technique - study them

Practice, Practice, Practice!

Be nimble - may need to change formats mid-interview

GOAL - Control the interview

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YOUR Interview Technique



- Review/watch/listen to your interviews when you are finished
- Look for bad habits
- Look for good habits
- ASK FOR FEEDBACK

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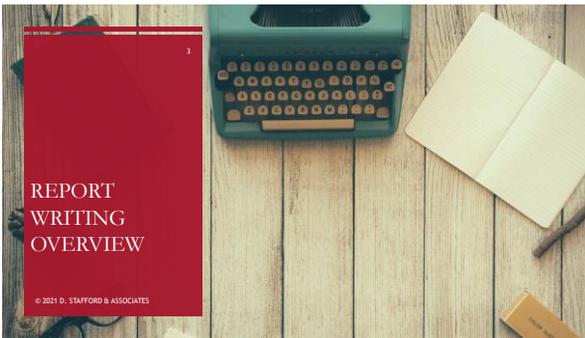
Agenda

- Report Writing Overview
- Documentation of the Process
- Compilation of the Evidence
- Summary of Relevant Evidence
- Putting It All Together

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Major Case Documents



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Starting at the End:

Starting at the End:

The Written Determination

- *The decision-maker... must issue a written determination regarding responsibility.*
- *(ii) The written determination must include—*

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Written Determination



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

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Written Determination



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

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Evidence Review



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



IMAGE BY JERZY GORBECKI FROM PIXABAY

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Inspect and Review Stage



Send to party and advisor



Provide at least 10 days to review



Allow submission of written response



Investigator must "consider" written response prior to completion of report

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Versions of the Report



Preliminary Report:

Scope
Methodology
Evidence obtained



Final Report:

Scope
Methodology (edited)
Evidence obtained
Summary of evidence



Written Determination:

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

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Considerations in Drafting



Institutional Policy

Preliminary vs. final
Process for comment
Mandated sections



Who views

General Counsel
Title IX
Human Resources/Dean of Students
Complainant and respondent
Advisors
Decision-maker



How shared

Electronic format
Hard copy

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Report Writing Golden Rule



What does your policy say and FOLLOW YOUR POLICY!

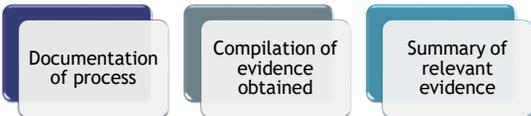
(oh, yeah, and make sure your policy is compliant)

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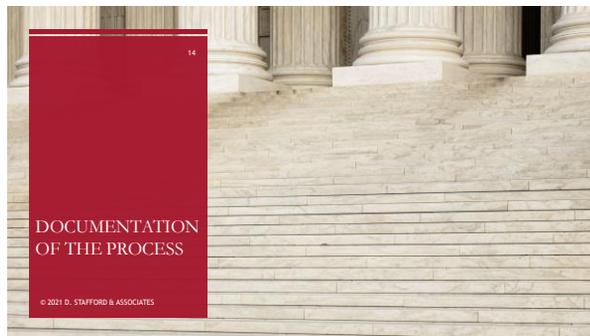
Report Writing Goals



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Keeping Track of the Dates



- Actual knowledge
- Formal complaint
- Notice of allegation/investigation
 - One week minimum (best practice)
- Temporary delays
- Preliminary report and evidence
 - Minimum 10 days (regulations)
- Final report and evidence
 - Minimum 10 days (regulations)
- Hearing

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Conflict of Interest and Bias



Investigator background



Training



Acknowledge any relationship to parties



Opportunity to request new investigator

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Training



Evidence gathering



Evidence assessment



Equitable process

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Investigative Methodology



Party rights

Present fact witnesses
Present expert witnesses
Present evidence



Quality investigation

Burden on school
Exculpatory & inculpatory

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Party Evidence 



Witness list



Evidence submission



Expert testimony

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Obtained Evidence

“[A]ny evidence obtained as part of the investigation that is directly related to the allegations raised in a formal complaint, including the evidence upon which the recipient does not intend to rely in reaching a determination regarding responsibility and inculpatory or exculpatory evidence whether obtained from a party or other source, so that each party can meaningfully respond to the evidence prior to conclusion of the investigation.”

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Evidence Collection



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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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What IS NOT Directly Related



Medical
(unless signed waiver)



Other

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Sexual History of Complainant



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Testimonial: Interviews



How do you capture the interview in the report?

Verbatim Record

Question/Answer format

Reorganization for clarity

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Other Evidence



Incorporated



Attached



Available

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Neutral vs. Accurate



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CONVEY THE MESSAGE

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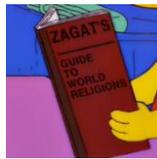
29

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Use Quotations



It's "whole chicken heaven" at this acclaimed Flatiron offshoot of a Paris standout where "French country-style" dishes featuring responsibly farmed birds (including hens, duck and squab) are "seriously delicious" (as are the egg starters); tabs run "pricy", but "lovely" service is another reason this place is "taking off."



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“Relevant” in the Comments 

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

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When is Evidence Relevant? 



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Key Relevancy Points



The evidence does not need to be conclusive

Is sufficient if it constitutes a link in the chain

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

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NOT RELEVANT (from the Title IX Regulations)



Past Sexual Behavior

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

Privileged Information

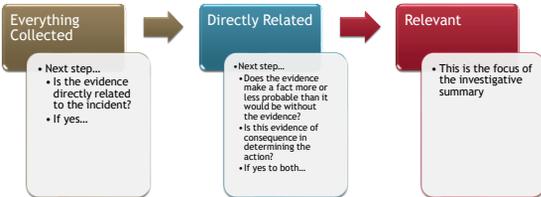
- Physician, psychiatrist, psychologist records in connection with the provision of treatment to the party unless
 - Voluntary, written consent

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Relevancy Workflow



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Formatting 

 Page numbers	 Line numbers	 Footnotes	 Capitalization
 Punctuation	 Titles	 Redacting	 Disclaimers/ Legalese

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Cover Page: What This Is 



- Case identifier
- Title
- Drafter
- Reviewer
- Date

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Scope: Why Did We Do it



- Allegation
- Policy
- Notice timeline (or summary)

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Methodology: How Did We Do It



- How the investigation was conducted
 - Safety and security of evidence (including people)
 - Investigators (bias, background, training)
- Steps taken
 - Evidence collected, viewed
 - Persons interviewed
 - Places visited
- Report versioning

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Summary of Relevant Evidence: What We Learned



- The regs: "fairly summarizes relevant evidence"
- How do you organize?
- Facts in agreement/facts in dispute
 - Disputed and undisputed facts
 - Exculpatory and inculpatory evidence
 - Factual summary
 - Timeline

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Evidence Obtained



- Testimonial
- Documentary
- Demonstrative
- Real

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Recommended Finding?



“The Department does not wish to prohibit the investigator from including recommended findings or conclusions in the investigative report. However, the decision-maker is under an independent obligation to objectively evaluate relevant evidence, and thus cannot simply defer to recommendations made by the investigator in the investigative report.”

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<p style="text-align: center;"><u>Case: 20200812 ML/JT</u></p> <p style="text-align: center;"><u>Final Report of Investigation</u></p> <p style="text-align: center;">Ann Todd and Cathy Cocks, D. Stafford & Associates</p> <p style="text-align: center;">Reviewed by: Adrienne Murray, DSA Associate</p> <p style="text-align: center;">April 6, 2020</p> <p style="text-align: center;"><i>This Document may not be downloaded, duplicated or distributed without written permission from ABC.</i></p>	<p>Case Identifier</p> <p>Use the name from your policy. Will also identify WHICH report if your policy references two different reports (one pre-party review and one post with or without findings).</p> <p>Do you have a review stage in process or policy?</p> <p>If distributed, consider a disclaimer—include on each page. Also consider a watermark—do different watermark (and therefore different version) for Complainant and Respondent</p>
<p>Table of Contents</p> <p><u>Scope and Methodology.....2</u></p> <p> <u>Scope.....2</u></p> <p> <u>Policy.....2</u></p> <p> <u>Notice Timeline.....2</u></p> <p> <u>Methodology.....3</u></p> <p> <u>Persons Interviewed.....4</u></p> <p> <u>Questions Submitted by Parties.....4</u></p> <p> <u>Documents Received and Referenced.....4</u></p> <p> <u>Information Regarding the Final Report of Investigation.....4</u></p> <p> <u>Investigators’ Comments to Written Response from the Parties ...5</u></p> <p><u>Summary of Relevant Evidence.....5</u></p> <p> <u>Case Summary.....5</u></p> <p> <u>Timeline.....6</u></p> <p><u>Evidence Obtained.....6</u></p> <p> <u>Interview Summaries.....6</u></p> <p> <u>Complainant.....6</u></p> <p> <u>Witness 1.....7</u></p> <p> <u>Exhibits.....7</u></p> <p> <u>Exhibit A-Text messages to Complainant from Witness 1.....7</u></p>	<p>Not always necessary but helpful when it is a complex case or there are multiple witnesses.</p> <p>Sections can have different names and/or be split into different sections. But capture this content SOMEWHERE.</p>

Scope and Methodology

Scope

On February 25, 2020, the ABC University (hereinafter “ABC” or “University”) began an investigation into a report that the Respondent violated the ABC Student Conduct Code.¹ Specifically, per the notice letter is it alleged that:

“On or about August 26, 2019, the Respondent engaged in nonconsensual sexual touching with the Complainant in the Smith Residence Hall...”

Policy

ABC’s Title IX Policy (hereinafter “Policy”) prohibits Discriminatory Harassment, Sexual Harassment, Sexual Assault and all other forms of sexual violence, Dating Violence, Domestic Violence, and Stalking. This Policy applies to all members of the ABC community (all students, faculty and staff) as well as to individuals not directly affiliated with ABC (e.g., contractors, vendors, and visitors). The Policy likewise applies to online behavior and social media that may affect the educational or employment experience. The full policy may be found at www.abc.edu/titleixpolicy.

The specific definitions to this allegation are as follows:

Sexual Assault: *Sexual Assault is any sexual act directed against another person, without consent of the victim, including instances where the victim is incapable of giving consent. Sexual Assault may include any of the following:...*

Consent: *Sexual activity requires consent, which is defined for purposes of this Policy as clear, unambiguous, and voluntary agreement between the participants to engage in specific sexual activity....*

The standard of evidence used to determine responsibility is...

Notice Timeline

Feb. 22, 2020: Complainant completes and signs *Title IX Complaint*

Feb. 25, 2020: *Notice of Allegations* and *Title IX Rights and Responsibilities* sent to both parties

Feb. 28, 2020: *Title IX Communication: Interview Date* sent to parties

Mar. 12, 2020: *Notice of Allegation (Amended)* sent to both parties

Mar. 20, 2020: Investigators complete *Preliminary Report of Investigation*

Mar. 20, 2020: *Title IX Communication: Preliminary Report Complete; Invitation to Review* sent to both parties.

SCOPE: Keeps the Investigators focused on the specific charge. Could also include a copy of the notice of investigation or charge letter. At a minimum, the “triggering” report.

Quote directly from Notice of Allegation: parties, conduct, date, location. If anything changed during investigation, the scope should indicate the adjustment.

POLICY: Include jurisdiction sections of the policy (location, timing, persons)

Include the specific definitions for all conduct charged and other applicable definitions such as consent and incapacitation.

Should also include here the standard of evidence

NOTICE TIMELINE: This can be a good way to capture the communications (particularly if parties come back later and allege rights violated)

Demonstrate parties were given time to prepare before interviews (and time to review report.

Methodology

DSA Associates Ann Todd and Cathy Cocks (hereinafter “Investigators”) were assigned to conduct the investigation. Todd is the Director of Compliance Activities and Senior Investigator for DSA and a licensed attorney (NC Bar #25717) and private investigator in North Carolina. Cocks is an Associate for DSA and higher education professional specializing in investigating and assessing behavioral matters.

Todd and Cocks are trained on issues related to domestic violence, dating violence, sexual assault, and stalking and how to conduct an investigation that protects the safety of all parties and promotes accountability as required by the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act, as amended by the Violence Against Women Reauthorization Act of 2013. They have also received training on the definition of sexual harassment, how to conduct an investigation, including issues of relevance, and how to serve impartially, including avoiding prejudgment of the facts at issue, conflicts of interest and bias, all as required by Title IX of the Education Amendments of 1972 (Title IX).

The Investigators did not know or have had previous contact with the Complainants or Respondent, prior to conducting the investigation and have no known conflict of interest or bias for or against either party. Both parties were given the opportunity to request an alternative Investigator and declined to do so as outlined per the policy.

The Investigators were on-site March 11-12, 2020. While at ABC, the Investigators toured Smith Residential Hall and the Dining Hall.

The Investigators conducted the interviews in a secure workspace on campus and all evidence collected was in the exclusive possession of the Investigators until submitted with the report. The interviews were scheduled to provide for safety and privacy for all participants. Follow up interviews following the on-site visit were conducted using a secure pro account on the Zoom video conferencing platform.

Interviews were recorded when possible to aid the Investigators in report-writing. The interviews were summarized, rather than a full transcription, to improve information sharing. Recordings are maintained by the University for three years.

In addition to the interviews, the Investigators reviewed school policies and evidence provided by the University and the parties. Information pertinent to the investigation is incorporated into the body of the report or included as part of the attached exhibits.

No one interfered with or attempted to influence the work of the Investigators or this report. The timely assistance and cooperation of all parties has led to an investigative process that has produced a fair, objective, and comprehensive report that fairly summarizes relevant evidence.

METHODOLOGY:

Background of Investigators and if internal or external

Training of Investigators (can also include specific date of any training) per the regs

Lack of bias per the regs

Site visits

Location and scheduling considerations—focusing on safety and security.

If recording, include information (would have been shared in the interview). If no recording may want to say that as well.

Evidence collection and what else the Investigators reviewed

Per the regulations

INTERVIEW LIST:

Persons Interviewed

- John Doe (hereinafter “Complainant”) - ABC student. (3/5/20)
- Jane Roe (hereinafter “Respondent”) - ABC student. (3/17/20)
- Ray Johnson (hereinafter “Student Witness 1”) – ABC student. (3/6/20)
- Randall Jones—Resident Director, Smith Residence Hall (3/5/20)

Persons Not Interviewed

- Lou Knight (hereinafter “Witness 2”) - Friend of the Complainant. (Did not respond to multiple outreach attempts from Title IX office via email and voicemail)

Questions Submitted by Parties

Neither party submitted questions.

Documents Received and Referenced

- **Exhibit A:** Text messages to Complainant from Witness 1, 8/25/19 (provided by the Complainant)
- **Exhibit B:** Card swipe access for Complainant and Respondent 8/25/19-8/26/19 (provided by ABC)
- **Exhibit C:** Video still and Analysis of video from Smith Residence Dining Hall, 8/26/19 (provided by ABC) *Full video available in Title IX.*
- **Exhibit E:** Floor plan information for Smith Hall (ABC website)

The Investigators also reviewed the following:

- **Notice Documents:** Notice documents provided to the Complainant and the Respondent (provided by ABC and referenced above)
- **Images of Respondent Family:** The Respondent provided images to document dates she was off-campus for family vacation. The Investigators reviewed the images but for privacy purpose have not included here. *Images are available for inspection in the Title IX office..*

To ease in redacting names for FERPA purposes, all students are identified by name ONLY in this section.

Employees and non-students can be listed by name and/or title.

Provide rationale for anyone not interviewed (policy, availability, outside the scope etc.)

Include questions submitted and why not asked or how rephrased by investigator.

Include date(s) for document if known and who provided. May also include a description and/or additional details about it.

If a document is not included but provided by a party, explain why (exclude medical etc.)

Don’t include notice documents (only excerpts) b/c they may contain accommodation language. Easier to reference or footnote. May also exclude medical etc.

Information Regarding the Final Report of Investigation

According to the process at ABC, both parties are given the opportunity to review the *Preliminary Report of Investigation*, which includes all evidence obtained that is directly related to the allegations. The parties are then given ten (10) day to submit a written response to the University. This *Final Report of Investigation* incorporates and/or edit the report based on the written response of the parties following the review period.

Section added for the final report as it will change following feedback and corrections from the parties. (Could also include mention of recommendations or findings if currently at step in the policy).

The Investigators edited/added the following for this *Final Report of Investigation*:

- Added this section, “Information Regarding the Final Report...”
- Added the parties’ comments as an exhibit, added the section, “Investigator’s Comments to Written Response from the Parties,” and made corrections as outlined in the above section.
- Added the section, “Summary of Relevant Evidence”
- Removed line numbering

Investigators’ Comments to Written Response from the Parties

Both parties received an opportunity to review the *Preliminary Report of Investigation (hereinafter “PRI”)*. The Complainant did not submit a written response to the Preliminary Report. ABC received the Respondent’s submitted written response on March 23, 2020. The Respondent’s response is included...

According to the Policy, “the Investigator has the discretion to determine what evidence is directly related to the allegation and the degree to which evidence is relevant.” The policy excludes evidence about the complainant’s sexual predisposition or prior sexual behavior unless offered to prove that someone other than the respondent committed the conduct alleged by the complainant, or if the evidence concerns the respondent and is offered to prove consent.

- **PRI line 330** - The Investigators have edited the report to state that the Respondent left a friend’s room, rather than the common room before going to the party.
- **PRI line 530** – The Investigators agree that the witness’ statement was opinion but decline to make any change.

Sometimes the changes or comments result in no change to the report and this section is unnecessary. But if the comments call into question the accuracy of the investigation (or result in things that should be changed b/c of a typo) this type of section can be useful. It may require quoting of policy to explain why something was or was not included (“past sexual history” or medical records for example).

Why line numbers can be beneficial on preliminary version.

Summary of Relevant Evidence

Case Summary

The summary is based on the interview statements and all available exhibits and notice documents. The primary bullets attempt to capture distinct events and/or facts. The secondary bullets provide additional context and or disputed accounts. Unless otherwise indicated, the information is from interview statements.

Quoted items are written as provided and therefore, grammatical and typographical errors were not corrected.

- Complainant is a first-year student at ABC and lives in Smith Residence Hall on the 3rd floor.

Pro and con to creating a summary but you have to do it at some point because required in written determination.

May need section headers if lengthy.

Use direct quotes where possible.

Organize in bullet form to capture pertinent facts and distinct events.

Use of secondary bullets varies depending on whether the parties

- The Respondent is first-year student at ABC and lives in Smith Residence Hall on the 4th floor.
- The Complainant and the Respondent met during orientation.
 - The Respondent stated that they met through mutual friends.
 - The Complainant stated that they met when the Respondent came up to his group of friends and invited them to party with beer in the woods behind the baseball field.
 - In a text message to Witness 1, the Complainant texted at 11:43pm, “yo jus invited to a party PERIOD” (Exhibit A).
 - Witness 1 stated that...

participated and the number of perspectives.

Focus in writing on making the first bullet an uncontested fact. The fact can also be that they disagree. PRIMARY BULLET: The Respondent stated that the touching was consensual; the Complainant stated it was not. SUB: The Respondent stated that she asked the ...

Timeline

The timeline is based on card swipe information, video, and interview statements.

Date	Time	Action	Source
8/25	≈9:30pm	Complainant leaves for party	Complainant's statement
8/25	≈9:45pm	Complainant returns	Complainant's statement
8/26	1:22am	Complainant accesses Smith	Exhibit B: Card Swipe..
8/26	1:57am	Complainant at dining hall	Appendix C: Security...

TIMELINE: A timeline can be helpful in a number of cases. For example, DV cases (where the relationship is long and incidents occurred over a span of time) Incapacitation determinations (when did drinking occur and over what time frame) and denials (could it have happened based on the timeline).

Evidence Obtained

Interview Summaries

Complainant

The Complainant is an ABC student. She was accompanied to the meeting by a support person. (Interviewed 3/5/20).

At the beginning of the interview, the Investigators discussed the role of the advisor, as outlined in the *Title IX Advisor* brochure.⁵ The Investigators also confirmed that the Complainant received the *Title IX Rights and Responsibilities* document.⁶

The Complainant is a first-year student living in Smith Residence Hall. He rushed a fraternity, Alpha Beta, in the spring semester. He is also a member of the football team; he is the kicker and mostly was a scrimmage player this year. Because of football, he arrived on campus early, moving in to the residence hall of August 8. . . .

INTERVIEW SUMMARIES: Include mention of advisor (but don't need to name).

Include any statements or rights reviewed (another way to state that it occurred). May also include retaliation conversation here.

Ok to include background and icebreaker info, particularly if related to how parties met, timing etc.

<p><u>Witness 1</u></p> <p><i>Witness 1 is an ABC student. He is roommates with the Complainant and a member of the football team. (Interviewed 3/6/20).</i></p> <p>The Complainant is a first-year student living in Smith Residence Hall. He rushed a fraternity, Alpha Beta, in the spring semester. He is also a member of the football team; he is the kicker and mostly was a scrimmage player this year. Because of football, he arrived on campus early, moving in to the residence hall of August 8. . . .</p> <p>Exhibits</p> <p><u>Exhibit A:</u> Text messages to Complainant from Witness 1, 8/25/19 (provided by the Complainant).</p>	<p>Can be helpful to include a brief summary of the witness (which can be repeated in witness list above) if will help the decision-maker.</p> <p>EXHIBITS: Can put the exhibits in a separate document (b/c all PDFs). Include language here: <i>For formatting purposes, the exhibits are included as a separate supplement to this report.</i></p> <p>Audio and Video: Add transcription where possible (and identify who transcribed). Video can be described (although be as neutral as possible). Originals available to parties.</p>
---	---

Case Study: John Doe and Jane Roe

John Doe and Jane Roe were undergraduate students at ABC CC. On the night of May 01, 2021, Jane attended a birthday party for John's girlfriend (eyewitness one) that was held in the on-campus apartment John shared with eyewitness one and another roommate (eyewitness two). Jane was good friends with John and eyewitness one and had spent the night at their apartment many times. She reported that on the night of the incident, she drank wine and mango margaritas, played beer pong, and "hung out" in the living room with the eyewitnesses and others attending the party. At some point, she felt "pretty drunk" and decided to lie down on the mattress of the bottom bunk bed situated against the wall in the living room. The bottom bunk had a full-size mattress and was barely three feet from the couch.

Eyewitness one lent Jane pajamas and Jane lay on her side under the covers facing the back of the couch. The room was well lit and quiet. Several lamps were on and no music was playing. Eyewitnesses one and two were talking, sitting on the couch, approximately two-and-a-half feet away.

Jane stated that, as she was sleeping in the bunk bed, "an intense, throbbing pain jerked [her] out of [her] sleep." She felt her "shirt scrunched up to her neck" and could tell her "stomach and breasts were exposed." She was "completely disoriented and unsure where [she] was or who was touching [her]." She said she "feared for [her] life, not knowing when this person would stop." She stated she "started to panic . . . yet [she] was frozen, paralyzed." She "pretended to be asleep [so] this person would eventually leave [her] alone."

Jane stated that she could hear two people sitting on the couch next to her. She opened her eyes and realized she was in the living room. She said the two people on the couch were immersed in deep conversation. Jane said, "I resumed to act as though I was asleep. The sucking and biting went on for several minutes. . . . [H]e unhooked my bra; I realized this wasn't going to end." She heard the click of a cell phone camera and believed her assailant was taking photos of her naked breasts. Jane testified that her assailant pulled her shirt down to cover her breasts and then pulled the blanket over to cover her. She wondered if she should yell out for attention in the hope that someone would hear her. She rolled over onto her back and the assailant briefly stopped. She then felt "fingers penetrating [her] vagina and anus." Eventually, the person assaulting her got up and she realized it was John.

She said she was in a complete state of shock and disbelief that a good friend was assaulting her. Jane said that John returned to the bed and the assault continued. Jane did not want a confrontation and did not want anyone to know. She felt pain in her anus again, "worse pain that [she] felt in [her] life." She started to mumble, hoping it would appear she was talking in her sleep. Eyewitness one came over to check on her. Jane stated she told eyewitness one in French that "[she] did not feel good and wanted to go home." Eyewitness one got Jane water and then returned to the couch. Jane stated her "attempt at being rescued and going home [was] futile," the "fear was debilitating," she knew John was still there, and she started hyperventilating. She "started making noises again . . . but did not yell," and John stopped. Eyewitness one came back and Jane told her, "[W]hoever's behind me is hurting me badly," this time in English. Jane said her "butt and nipples hurt." Jane testified eyewitness one tried to reassure her, telling her she "must be having a bad dream" and that her pants were still on. Jane claimed that eyewitness one pulled back the blanket, and when she saw that Jane's bottom half was bare (pajamas and underwear completely off), she screamed for everyone to get out of the apartment and started to

cry. The eyewitnesses then walked Jane to her car so she could drive home to her off campus apartment, and Jane told them what happened.

John denied all of Jane's accusations. He said he returned to the apartment around midnight to 12:30 a.m., after playing beer pong at another location. He was very intoxicated and was nodding off while sitting on the floor next to the eyewitnesses. Eyewitness one told him to lie down for a nap on the bottom bunk with Jane, since the top bunk was covered with luggage and other items. John lay down fully clothed on top of the covers facing the wall, with his back to Jane. John testified that "[t]he first [he] heard of [Jane's] allegations was when she woke [him] up by basically yelling about someone hurting her." He was awakened from a deep sleep, thought she was having a nightmare, got up, and left eyewitness one "to figure out what was wrong." John testified he has a genetic neurological disorder, a "form of palsy," which affects his motor skills, especially when tired or drunk. He claimed his condition would render it difficult for him to unzip his pants while intoxicated, much less perform the acts alleged by Jane. John stated he could not take off a bra "quickly, smoothly, or quietly."

Eyewitness one started dating John their first year in 2019. She stated that she was sitting on the couch, with her arm along the back of it, and the bed was often in her peripheral vision. Jane was under the covers, John was on top of the covers, and the two were lying back to back. She saw Jane wake up in the bed confused, disoriented, and mumbling in foreign languages that eyewitness one did not speak. She thought Jane was having a bad dream, and John was still asleep facing the wall. She said he usually "sleeps like a rock." She denied screaming or crying out when Jane woke up. She said she did not see or hear any sexual assault and maintained it was physically impossible for any of Jane's allegations to be true.

Eyewitness one stated that due to John's condition, his movements are not smooth or fluid. "[I]t would have been impossible for him to make any kind of movements toward [Jane], who was under [the] covers, without being noticed by me and my other roommate, and [he] certainly could not unhook a bra" When she and eyewitness two returned to the apartment after walking Jane home, they examined the mattress, sheets, and cover "for any visible signs or smells of bodily fluids" consistent with anal or vaginal penetration but found none. Eyewitness one said Jane was her best friend at the time. She reiterated that if John had done anything, "I would have been on [Jane's] side." In response to questions from the Committee, eyewitness one stated that when Jane got up from the bed, she was wearing a short sleeve shirt and underwear, but not the pajama bottoms. Eyewitness one said that frequently when Jane slept over, she would remove her pajama bottoms if she was hot.

Eyewitness two provided a declaration in which he corroborated eyewitness one's testimony and maintained that what Jane described was "not physically possible." John produced images of the sofa and mattress at the hearing to demonstrate the proximity of the eyewitnesses.

On May 3, 2021, two days after the alleged assault, Jane was medically examined by the local SC Sexual Assault Response Team (SART). During the investigation, the investigator emailed the campus police detective to "reconfirm that there is physical evidence of an assault in this case." The detective replied by e-mail that "[t]he SART report states 'bruising and laceration noted in anal area.'" The detective, however, did not provide the SART report to the investigator.

Jane initially reported the sexual assault to campus police but declined to divulge the identity of the suspect or location of the sexual battery. On May 30, 2021, Jane's complaint was sent to ABC CC Title IX

office. The office attempted to contact Jane for further information, but she did not respond and the file was closed. Two weeks later, on May 15, Jane informed campus police that she wished to proceed with her complaint. On May 16, 2021, the Title IX office initiated an investigation.

Following this, the investigator emailed the campus police detective to “reconfirm that there is physical evidence of an assault in this case.” The detective replied by e-mail that “[t]he SART report states ‘bruising and laceration noted in anal area.’” The detective, however, did not provide the SART report to the investigator and the investigator never received the full report. Jane submitted two pages from the SART report. The first page is the cover page, containing only Jane’s name. The second page identifies the name of the medical professional who performed the SART exam and notes that Jane was taking Viibryd, a prescription antidepressant. In the recommendation section on the second page, it states that Jane “was advised to take [a] warm bath in Epsom salt and relax anal muscles to help sooth discomfort.”

The detective was asked about this statement and the recollection of the SART report. The detective confirmed that the statement from the email was included in the SART report. When asked if there were other details from the report that could be shared, the detective said, “I’m not able to disclose anything in great detail . . . case is open criminally; limits what I am able to share.” The Committee then asked the detective whether this reference to “bruising/laceration” was unusual in a SART report. The detective stated that a reference to “bruising/laceration” “is not uncommon when there is an assault that this verbiage would be seen in a SART report,” and stated the findings of the SART exam were consistent with the allegations in this case.

When asked why the sentence originally sent was the only portion that was shared or could be shared, the detective responded that the information in the SART report was confidential because it was an ongoing investigation. The detective testified that other than this “small snippet” that she selected from the report, it would not be “appropriate to disclose what additional findings came through [the] SART exam.” When John asked if the findings in the SART report could have been caused by anything other than what Jane alleged, the detective said: “Well that’s a tough question for me to answer; I would say the findings in [the SART report] certainly could have occurred based on [the] allegations in [the] criminal case; I don’t know what else could have caused it. . . . It’s out of my realm, my scope to answer the questions.” The DA’s Office ultimately decided not to pursue charges against John.

John provided information that the antidepressant Jane was taking “has many side-effects” that “become severe when alcohol is consumed . . . such as hallucinations and sleep paralysis and night terrors.”

On June 20, 2021, the Title IX office concluded its investigation and a hearing was scheduled for July 12, 2021.