



D. STAFFORD
& ASSOCIATES

Investigation Class

(2 Day Version)

Presented by:

D. Stafford & Associates

Dolores A. Stafford

President and CEO

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D. STAFFORD & ASSOCIATES

Title IX Investigation Training

Title IX and VAWA for Investigators

- Title IX Law
- Title IX Regulations
- Title IX Grievance Procedures
- VAWA Procedural Requirements
- Addressing “Non-Title IX” Cases
- Looking Ahead - The 2022 Proposed Regulations

Sex-Based Harassment Investigations

- The Investigator
- Sex-based Harassment
- Unwelcome Conduct & Consent
- Investigative Strategy & Evidence Collection
- Interviewing
- Trauma & The Interview
- Evidence Evaluation
- Reports



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 Clerly 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, Vice President, Equity Compliance and Civil Rights Services



In January 2014, Adrienne Meador Murray joined D. Stafford & Associates where she currently serves as the Vice President, Equity Compliance and Civil Rights Services after having been affiliated with D. Stafford & Associates as a part-time Associate since 2012 and the National Association of Clery Compliance Officers & Professionals (NACCOP) where she currently serves as Director of Training and Compliance Activities. 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.).

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.

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



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

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

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

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

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

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

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

INVESTIGATION CLASS ACRONYMS

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

SANE: Sexual Assault Nurse Examiner

SART: Sexual Assault Response Team

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

TWN: Timely Warning Notice

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



TITLE IX & VAWA FOR INVESTIGATORS



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AGENDA

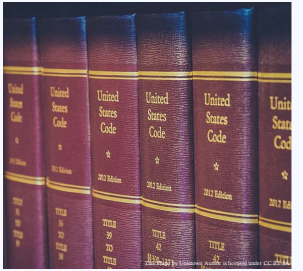
- Title IX Law
- Title IX Regulations
- Title IX Grievance Procedures
- VAWA Procedural Requirements
- Addressing “Non-Title IX” Cases
- Looking Ahead - The 2022 Proposed Regulations

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TITLE IX LAW







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FEDERAL LAW

 Statutes 20 U.S.C.D. §1681-1688	 Regulatory Guidance 34 C.F.R. § 106	 Sub-Regulatory Guidance DCLs Preamble to Regs Executive Orders OCR Website	 Case Law Circuit courts District courts
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**TITLE IX
STATUTE**



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**TITLE IX, EDUCATION AMENDMENTS OF 1972,
20 U.S.C. § 1681**

No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance.

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§ 1681(a) - EXCEPTIONS

- Admission policies
- Institutions changing from single-sex status
- Religious institutions
- Military services or merchant marines
- Public traditional single-sex institutions
- Social fraternities or sororities
- Voluntary youth organizations
- Boy or girl conferences
- Father-son/mother-daughter activities
- "Beauty" pageants

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§ 1681(c) - "EDUCATIONAL INSTITUTION"

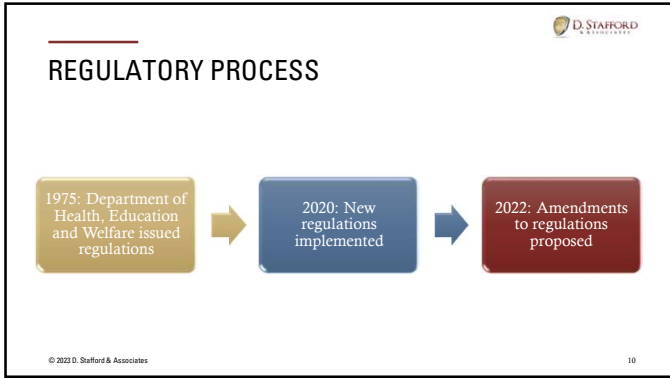
Any public or private preschool, elementary, or secondary school, or any institution of vocational, professional, or higher education, except that in the case of an educational institution composed of more than one school, college, or department which are administratively separate units, such term means each such school, college, or department.

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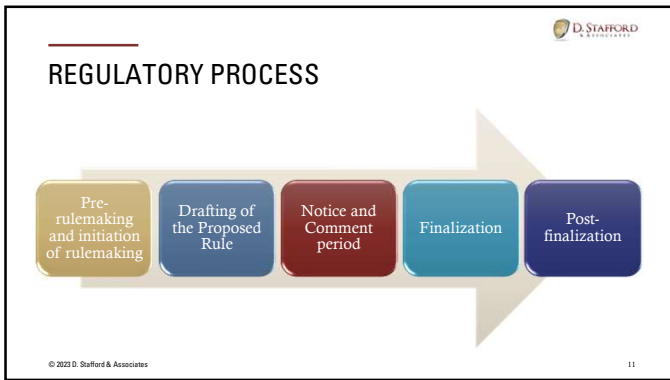
REGULATORY GUIDANCE ("TITLE IX REGULATIONS")



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SUB-REGULATORY GUIDANCE

UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS
THE ASSISTANT SECRETARY

April 4, 2011

Dear Colleague:

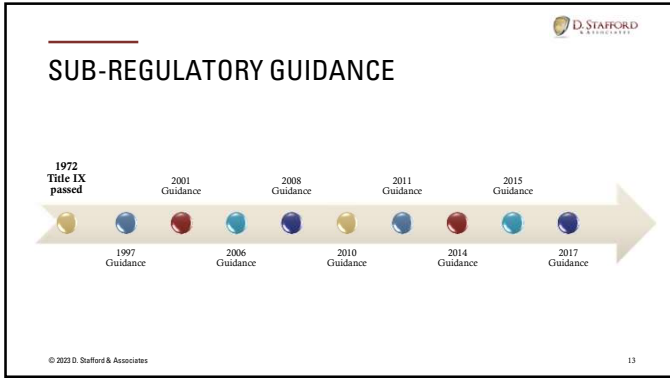
Education has long been recognized as the great equalizer in America. The U.S. Department of Education and its Office for Civil Rights (OCR) believe that providing all students with an educational environment free from discrimination is extremely important. The sexual harassment of students, including sexual violence, interferes with students' right to receive an education free from discrimination and in the case of sexual violence, is a crime.

Title IX of the Education Amendments of 1972 (Title IX), 20 U.S.C. §§ 1681 et seq., and its implementing regulations, 34 C.F.R. Part 106, prohibit discrimination on the basis of sex in education programs or activities operated by recipients of Federal financial assistance. Sexual harassment of students, which includes acts of sexual violence, is a form of sex discrimination prohibited by Title IX, in order to assist recipients, which include school districts, colleges, and universities (hereinafter "schools" or "recipients") in meeting these obligations, this letter explains that the requirements of Title IX pertaining to sexual harassment also cover sexual violence, and they can be searched for "requirements" applicable to sexual violence.¹ Sexual violence, as that term is used in this letter, refers to physical sexual acts perpetrated against a person without that person's reasonable or informed consent due to the victim's use of drugs or alcohol. An individual also may be unable to give consent due to an intellectual or other disability. A number of different acts fall into the category of sexual violence, including rape.

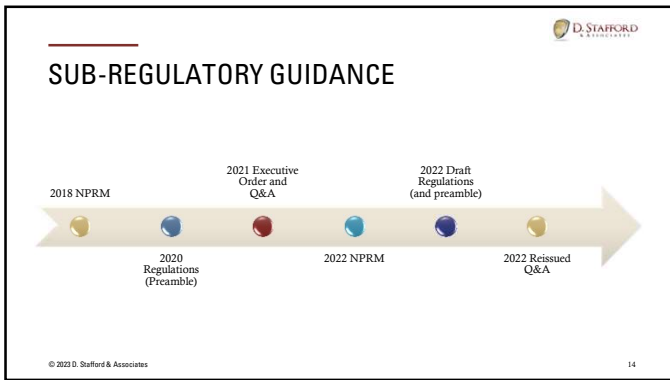
¹ This language has been used in the Dear Colleague Letter to "highlight guidance issued" under the Office of Education's authority under Title IX, 20 U.S.C. § 1681, and 34 C.F.R. § 106.70.

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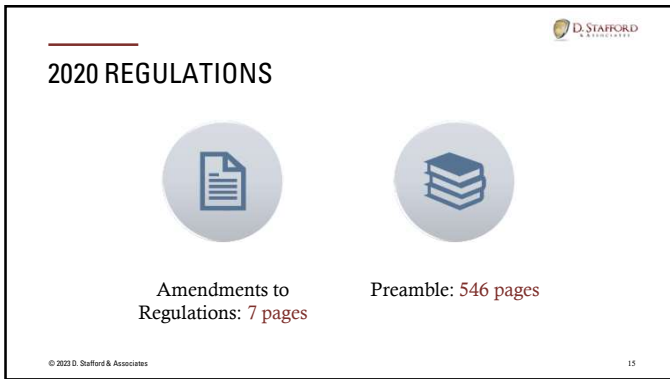
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 **FEDERAL REGISTER**
The Daily Journal of the United States Government 

 Rule

**Enforcement of Title IX of the Education Amendments of 1972
With Respect to Discrimination Based on Sexual Orientation
and Gender Identity in Light of Bostock v. Clayton County**

A Rule by the Education Department on 09/22/2021

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BRIEFING ROOM

**Executive Order on Preventing and
Combating Discrimination on the
Basis of Gender Identity or Sexual
Orientation**

JANUARY 20, 2021 • PRESIDENTIAL ACTIONS

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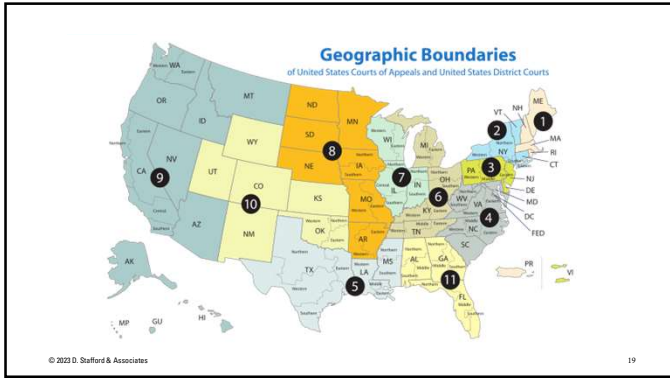


CASE LAW

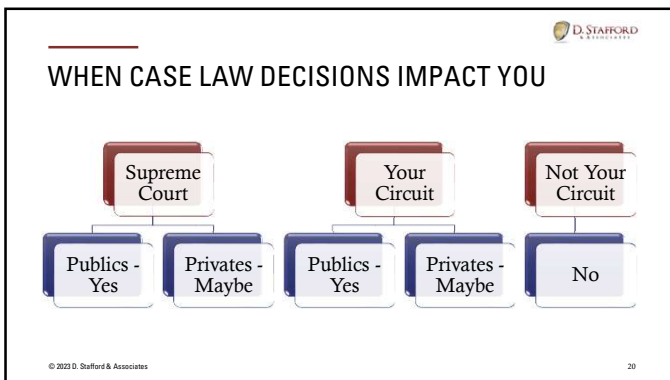


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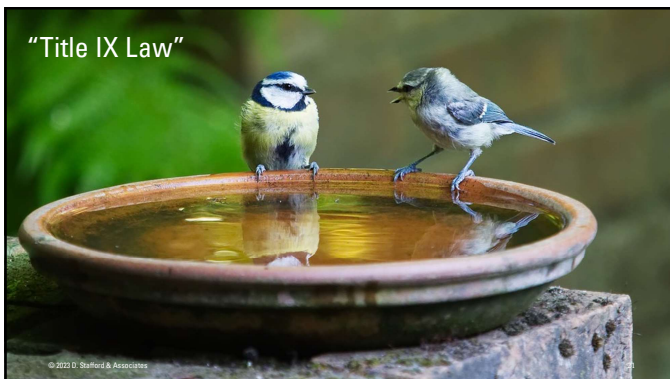
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TITLE IX REGULATIONS



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34 C.F.R. § 106 - SUBPARTS

- Subpart A: Introduction (106.1 – 106.9)
- Subpart B: Coverage (106.11 – 106.18)
- Subpart C: Admission and Recruitment (106.21 – 106.24)
- Subpart D: Education Programs/Activities (106.31 – 106.46)
- Subpart E: Employment (106.51 – 106.62)
- Subpart F: Retaliation (106.71 – 106.72)
- Subpart G: Procedures (106.81 – 106.82)

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TITLE IX REGULATIONS OVERVIEW

- Applies to Higher Education and K-12
- Covers wide range of sex discrimination

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SUBPART A: INTRODUCTION




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SUBPART A: A FEW FYIS...




§ 106.2
Definitions



§ 106.3
Remedial Action



§ 106.3
Affirmative Action



§ 106.6
Preservation of rights

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§ 106.8(a) - DESIGNATION OF COORDINATOR

Designate	Designate at least one person
Notify	Notify people of name and contact information
Receive	Receive reports in person, by mail, by phone, by email, or other
Accept	Accept reports during non-business hours

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§ 106.8(b)(1) - NOTIFICATION OF POLICY

Who

- Applicants - admission
- Applicants - employment
- Students
- Employees
- Unions, etc.


What

- Does not discriminate
- Required by Title IX
- Includes admission & employment
- Inquiries to Title IX or OCR
- Grievance procedures & process
- How to report or file complaint of discrimination
- How to report or file complaint of harassment
- How the school will respond

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Our Title IX
Coordinator
is...



§ 106.8(b)(2) – PUBLICATIONS

What


- Contact information
- Policy

Where

- Website
- Handbook and/or Catalogs

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§ 106.8(c) - ADOPTION OF GRIEVANCE PROCEDURES

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

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§ 106.8(d)
Applies only to sex
discrimination occurring
against a person in the
United States



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SUBPART F:
RETALIATION



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§ 106.71 RETALIATION

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 participated or refused to participate in any manner in an investigation, proceeding, or hearing under this part. . .

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§ 106.71 RETALIATION

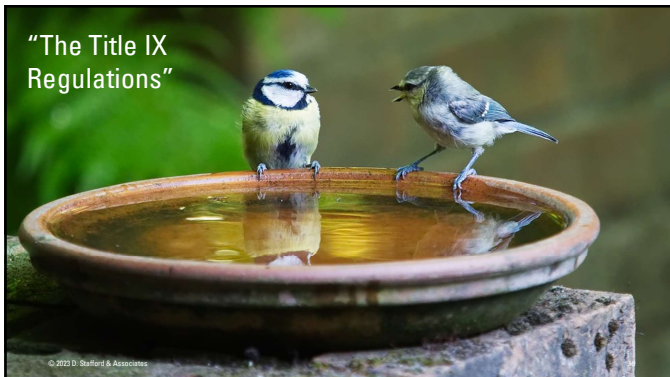
Intimidation, threats, coercion, or discrimination, including charges against an individual for code of conduct violations that do not involve sex discrimination or sexual harassment, but arise out of the same facts or circumstances as a report or complaint of sex discrimination, or a report or formal complaint of sexual harassment, for the purpose of interfering with any right or privilege secured by title IX or this part, constitutes retaliation.

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§ 106.71 - RETALIATION

- Must keep confidential the identity of parties and witnesses
- May use sex discrimination grievance procedures
- Exercise of First Amendment does not constitute retaliation
- Discipline for "materially false statement in bad faith" is not retaliation
- But determination of responsibility alone does not mean a person provided a false statement...

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TITLE IX GRIEVANCE PROCEDURES



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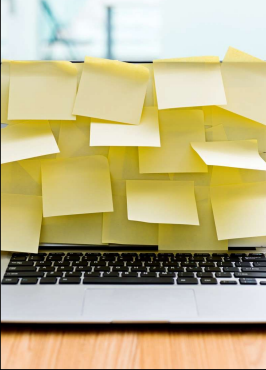


BEFORE WE BEGIN...

<p>Sex Discrimination § 106.8(c)</p> <ul style="list-style-type: none"> • “grievance procedures that provide for the prompt and equitable resolution of student and employee complaints.” • Any person may report sex discrimination to the Title IX Coordinator • Must publish grievance procedures to address sex discrimination • No requirement other than “prompt” and “equitable” 	<p>Sexual Harassment § 106.44 and § 106.45</p> <p>Other Behaviors Conduct codes</p>
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MORE REMINDERS

- Applies to K-12
- Incorporates the Clery Act
- Lots of guidance: 500+ pages of preamble plus more recent Q&As
- (This section is not in order of regulations)

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PEOPLE DEFINITIONS



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§ 106.30(a) - DEFINITIONS

Complainant

- *An individual who is alleged to be the victim of conduct that could constitute sexual harassment*

Respondent

- *An individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment*

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TITLE IX PERSONNEL

Title IX Coordinator


Investigator

Decision-maker

Informal Resolution Facilitator

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 **DUTIES OF THE TITLE IX COORDINATOR**

- § 106.8(a) Must be referred to as the “Title IX Coordinator”
- § 106.8(a) Coordinate efforts to comply
- § 106.44(a) Receive reports and promptly contact the complainant
- § 106.30 Sign formal complaints
- § 106.30 Responsible for coordinating the effective implementation of supportive measures

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 **§ 106.45(b)(1)(iii) - TRAINING**

All Title IX Personnel

- Definition of sexual harassment
- Scope of the recipient’s education program or activity
- How to conduct an investigation and grievance process including hearings, appeals, and informal resolution processes, as applicable
- How to serve impartially, including by avoiding prejudgment of the facts at issue, conflicts of interest, and bias

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 **§ 106.45(b)(1)(iii) - TRAINING**

Decision-makers

- Technology to be used at a live hearing
- Issues of relevance of questions and evidence, including when questions and evidence about the complainant’s sexual predisposition or prior sexual behavior are not relevant


Investigators

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


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ADVISOR OF CHOICE




May be but is not required to be an attorney




May accompany to any meeting or proceeding



Institution may restrict participation (except at hearing)



Receives the draft and final reports




Conducts cross-examination at hearing

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SEXUAL HARASSMENT DEFINITIONS



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§ 106.30(a) - SEXUAL HARASSMENT

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

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


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**PRONG 1:
QUID PRO QUO**

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






(§ 106.30(a))




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QUID PRO QUO (FROM THE PREAMBLE)

-  "This for that" harassment
-  Must be an employee respondent (not volunteer, visitor, student)
-  "Unwelcome" is subjective element (submission vs. consent)
-  Does not need to meet pervasiveness element
-  Limited need to show impact - single instance could jeopardize access




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**PRONG 2:
HOSTILE ENVIRONMENT+
(THE DAVIS STANDARD)**


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

(§ 106.30(a))



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§ 106.30(a) - HOSTILE ENVIRONMENT+

Referred to in preamble as “The Davis Standard”

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

First Amendment protections

Must show the “effectively denies” to reach the bar


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**PRONG 3:
THE VAWA
OFFENSES**

“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)

(§ 106.30(a))




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THE VAWA OFFENSES




- Severity, pervasiveness, and offensiveness are not elements
- Denial of equal access not an element - it is assumed
- Includes multiple offenses



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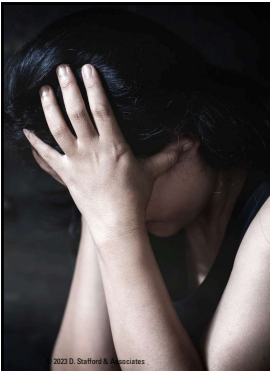
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§ 106.30(a) - THE VAWA OFFENSES

 Sexual Assault	Rape Fondling Incest Statutory Rape
 Intimate Partner Violence	Dating Violence Domestic Violence
 Stalking	

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SEXUAL ASSAULT

“Sexual assault” as defined in 20 U.S.C. 1092(f)(6)(A)(v)

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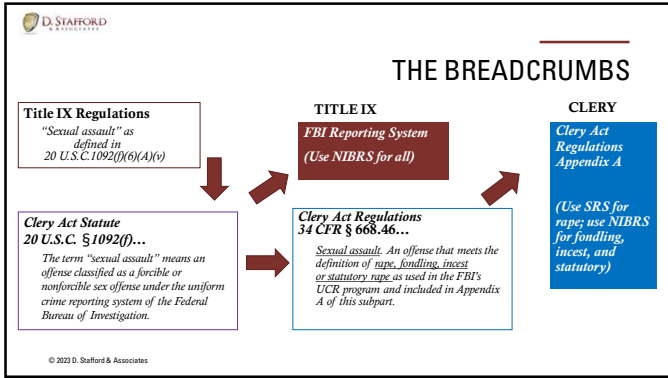
SEXUAL ASSAULT

```

    graph TD
      SA[SEXUAL ASSAULT] --> F[Forcible]
      SA --> NF[Non-Forcible]
      F --> R[Rape]
      F --> S[Sodomy]
      F --> SAO[Sexual Assault with Object]
      F --> Fnd[Fondling]
      NF --> I[Incest]
      NF --> SR[Statutory Rape]
  
```

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OPTION 1: SEXUAL ASSAULT - RAPE (FROM SRS)

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

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OPTION 2: SEXUAL ASSAULT-RAPE (FROM NIBRS)

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

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

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

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

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SEXUAL ASSAULT - FONDLING

Fondling - The touching of the private body parts of another person for the purpose of sexual gratification, without the consent of the victim, including instances where the victim is incapable of giving consent because of age or because of temporary or permanent mental incapacity.

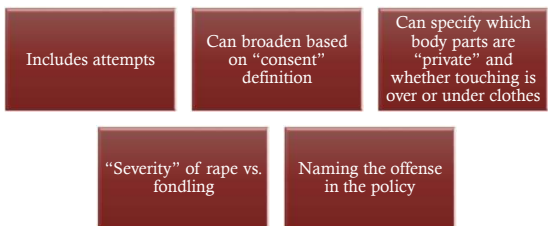
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§ 106.30(a) - CONSENT


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

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SEXUAL ASSAULT DEFINITION CONSIDERATIONS



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 **SEXUAL ASSAULT - INCEST & STATUTORY RAPE**

Incest - Sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.

Statutory Rape - Sexual intercourse with a person who is under the statutory age of consent.

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 **INCEST AND STATUTORY RAPE CONSIDERATIONS**

State law definitions

Complainant as a non-student

Conduct codes

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 **INTIMATE PARTNER VIOLENCE**

“dating violence” as defined in 34 U.S.C. 12291(a)(10),
“domestic violence” as defined in 34 U.S.C. 12291(a)(8)

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THE BREADCRUMBS

Title IX Regulations
"dating violence" as defined in 34 U.S.C. 122291(a)(10) "domestic violence" as defined in 34 U.S.C. 12291(a)(8)

↓

TITLE IX

YAWA Statute
 34 U.S. Code § 12291
 Definitions and grant provisions


→

CLERY

Clery Act Regulations
 34 CFR § 668.46(a)
 Expanded Definition of Dating Violence

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DATING VIOLENCE - 34 U.S.C. 12291(A)(10)

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

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DATING VIOLENCE - CLERY REGULATION ADDITIONS

(ii) For the purposes of this definition -

- (A)** Dating violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse.
- (B)** Dating violence does not include acts covered under the definition of domestic violence.

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DOMESTIC VIOLENCE - 34 U.S.C. 12291(A)(8)

The term "domestic violence" includes felony or misdemeanor crimes of violence committed by

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

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INTIMATE PARTNER VIOLENCE CONSIDERATIONS

Consistency in assigning violations

Severity, pervasiveness, and offensiveness not elements

Denial of equal access is not an element

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STALKING

"stalking" as defined in 34 U.S.C. 12291(a)(30)

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STALKING - 34 U.S.C. 12291(A)(30)

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

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

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STALKING - CLERY REGULATION ADDITIONS

(ii) For the purposes of this definition -

(A) Course of conduct means two or more acts, including, but not limited to, acts in which the stalker directly, indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to or about a person, or interferes with a person's property.

(B) Reasonable person means a reasonable person under similar circumstances and with similar identities to the victim.

(C) Substantial emotional distress means significant mental suffering or anguish that may, but does not necessarily, require medical or other professional treatment or counseling.

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TITLE IX JURISDICTION - PERSON



At the time of filing a formal complaint...the complainant must be participating in or attempting to participate in the education program or activity." (§106.30(a))



The recipient exercised substantial control over over both the respondent and the context in which the sexual harassment occurs.

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“ATTEMPTING TO PARTICIPATE”

- Has withdrawn due to alleged harassment and has desire to re-enroll
- Has graduated but intends to apply to new program or participate in alumni programs
- Is on a leave of absence and still enrolled or intends to re-apply
- Has applied for admission

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SIDEBAR: NON-STUDENT OR NON-EMPLOYEE COMPLAINANTS (Q&A)

There are circumstances when a Title IX Coordinator may need to sign a formal complaint that obligates the school to initiate an investigation regardless of the complainant's relationship with the school or interest in participating in the Title IX grievance process.

- Examples:
 - Perpetrator in a position of authority
 - Potential for harm to other students

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TITLE IX JURISDICTION – CONTEXT OF EDUCATIONAL PROGRAMS OR ACTIVITIES

Locations, events or circumstances in which the institution has control over the respondent AND context

Or


Any building owned or controlled by a student organization that is officially recognized

And


Occurred in the United States

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OFF-CAMPUS JURISDICTION




Hotel
On field trip




Home
While tutoring



Bus
For athletic travel



Virtual
During class



Business
At internship

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RECEIVING REPORTS

RECEIVING
REPORTS



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§ 106.44(a) - GENERAL RESPONSE TO SEXUAL HARASSMENT

Prompt

Not Deliberately Indifferent

i.e., clearly unreasonable in light of the known circumstances

Equitable

Offer supportive measures to complainant

Follow grievance process before imposing sanctions

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§ 106.30(a) - ACTUAL KNOWLEDGE

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NO ACTUAL KNOWLEDGE § 106.30(a)

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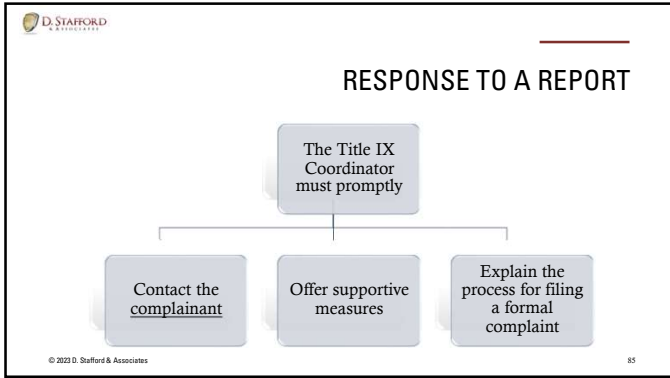
WHO MAY REPORT (FROM THE Q&A)

“A school may receive actual knowledge of sexual harassment from any person. There is no requirement that the person be participating in or attempting to participate in a school program or activity to report sexual harassment.”

- Complainant
- Friend
- Parent
- Witness

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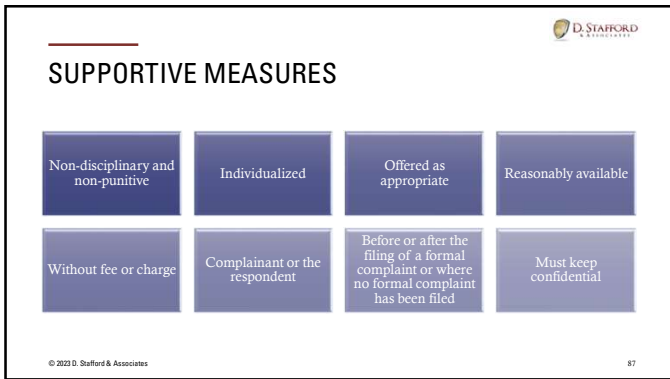
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§ 106.30(a) - SUPPORTIVE MEASURES


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

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 **SUPPORTIVE MEASURE EXAMPLES § 106.30(a)**

- Counseling
- Extensions of deadlines or other course-related adjustments
- Modifications of work or class schedules
- Campus escort services
- Mutual restrictions on contact between the parties
- Changes in work or housing locations
- Leaves of absence
- Increased security and monitoring of certain areas of the campus
- Other similar measures

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 **WHAT COULD "UNREASONABLY BURDEN"?**

Change in
class schedule

Housing
adjustment

Sports team
membership

Student
government
position


Extracurricular
activity
participation


Suspension

Expulsion


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 **LEAVE OPTIONS**



Emergency removal




Administrative leave

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§ 106.44(c) - EMERGENCY REMOVAL



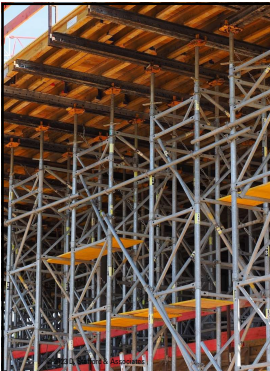
Immediate threat to physical health or safety

Must arise from the allegations

Provide notice and opportunity to challenge

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SUPPORTIVE MEASURES FROM GUIDANCE

- Fact specific determinations of supportive measures
- If considered as a potential sanction, it is a burden
- Emergency removal can remove from all or part of educational program
- No contact orders do not have to be mutual
- Student workers straddle both removal options

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§ 106.30(a) - FORMAL COMPLAINT

filed by a complainant

↔

signed by the Title IX Coordinator

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**§ 106.45 -
GRIEVANCE
PROCESS FOR
FORMAL
COMPLAINTS OF
SEXUAL
HARASSMENT**

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§ 106.45(a) - RECIPIENT'S TREATMENT OF PARTIES

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

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§106.45 (b)(1)(i-iii) - GRIEVANCE PROCESS

Equitable

Objective Evaluation
(inculpatory and
exculpatory)

No conflict of
interest or bias

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§ 106.45 (b)(1)(iv-x) - GRIEVANCE PROCESS

Presumption of not responsible

Prompt time frames

Range of sanctions

Standard of evidence

Appeal Procedures

Range of supportive measures

Limits on privileged evidence

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§ 106.45(b)(2) - NOTICE OF ALLEGATIONS

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

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§ 106.45(b)(2)(ii) - Additional Allegations

An amended notice must be sent to the parties when additional allegations will be investigated that were not in the original notice letter.

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§ 106.45(b)(3) - DISMISSAL OF FORMAL COMPLAINT

Must Dismiss

- If the conduct alleged in the formal complaint would not constitute sexual harassment
- Did not occur in the educational program or activity
- Did not occur in the United States

May Dismiss

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

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§ 106.45(b)(4) - CONSOLIDATION OF COMPLAINTS

Multiple respondents

More than one complainant against one or more respondent

One party against other party

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§ 106.45(b)(9) - INFORMAL RESOLUTION



Notice



Voluntary

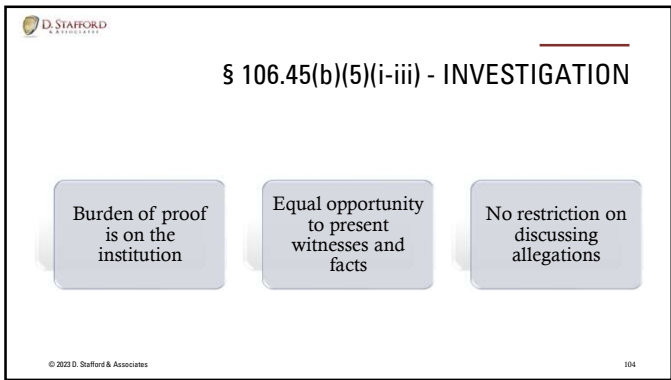


Not allowed for Employee/student

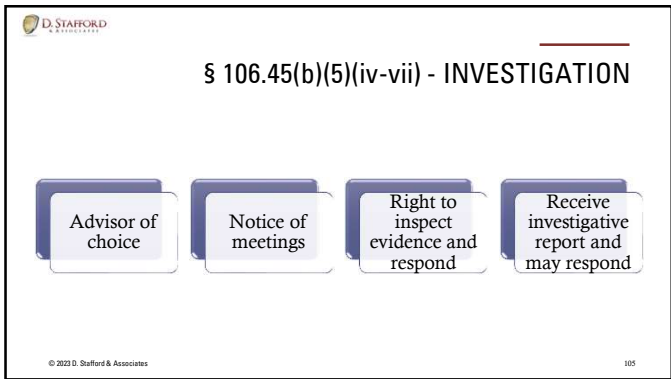
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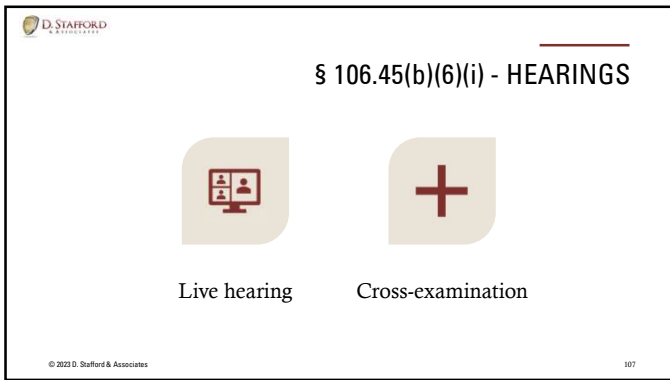
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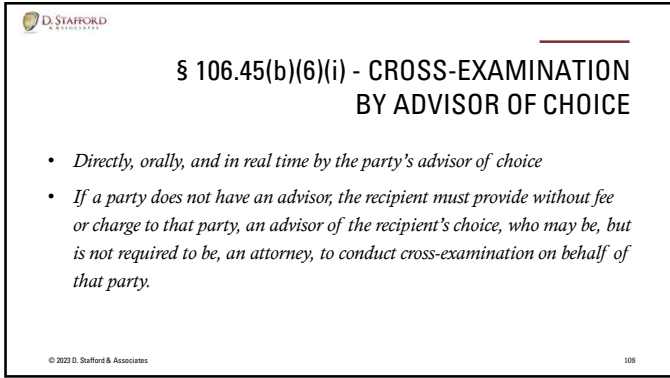
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§ 106.45(b)(6)(i) - RELEVANCY DETERMINATION

Before a complainant, respondent, or witness answers a cross-examination or other question, the decision-maker(s) must first determine whether the question is relevant and explain any decision to exclude a question as not relevant.

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§ 106.45(b)(6)(i) - RELEVANCY - SEXUAL PREDISPOSITION AND HISTORY

Questions and evidence about the complainant's sexual predisposition or prior sexual behavior are not relevant, unless



- offered to prove that someone other than the respondent committed the conduct, or
- if the questions and evidence concern specific incidents of the complainant's prior sexual behavior with respect to the respondent and are offered to prove consent.

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§ 106.45(b)(6)(i) - "PHYSICALLY PRESENT"



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 § 106.45(b)(6)(i) - HEARING RECORDING



Audio



Video



Transcript

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 § 106.45 (b)(7)(i) - DETERMINATION REGARDING RESPONSIBILITY



Made by the decision-maker




Decision-maker can have no other role



Applying the standard of evidence

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 § 106.45 (b)(7)(ii) - DETERMINATION REGARDING RESPONSIBILITY

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

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 **SANCTIONS AND REMEDIES**



Sanctions:
Disciplinary/punitive



Remedies:
Restore or preserve access

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§ 106.45(b)(8) - APPEALS



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 **§ 106.45(b)(8) - APPEALS**

- Mandatory grounds
 - Procedural irregularity that affected the outcome
 - New evidence that was not reasonably available when the determination of responsibility was made that could affect the outcome
 - The Title IX Coordinator, investigator, or decision-maker had a general or specific conflict of interest or bias against the complainant or respondent that affected the outcome
- Additional grounds are permitted

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§ 106.45(b)(8)(iii) - APPEALS

- Notification to both parties of an appeal submission
- Appeal officer cannot be the hearing decision-maker
- Appeal officer must be trained and be without bias/conflict
- Give both parties an opportunity to respond
- Notification of decision to both parties


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§ 106.45(b)(10) - RECORDKEEPING

 Case Materials

 Training materials

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"Title IX Grievance Procedures"



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VAWA PROCEDURAL REQUIREMENTS

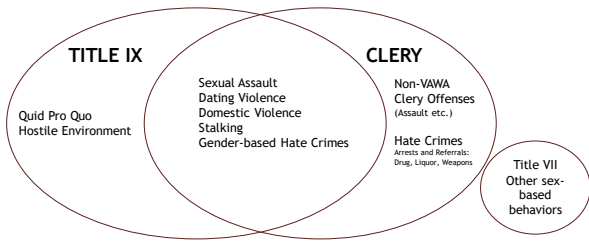


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OVERLAPPING CONDUCT ALLEGATIONS



TITLE IX

Quid Pro Quo
Hostile Environment

CLERY

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

Non-VAWA
Clery Offenses
(Assault etc.)

Hate Crimes
Arrests and Referrals:
Drug, Liquor, Weapons


Title VII
Other sex-based behaviors

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34 C.F.R. § 668.46(c) - VAWA OFFENSES




Rape




Fondling




Incest




Statutory Rape



Dating Violence




Domestic Violence



Stalking

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§ 668.46 - RESPONSE REQUIREMENTS FOR VAWA OFFENSES

Procedures victims of VAWA Offenses should follow

↓


Procedures an institution will follow when offense reported

↓

and make sure it is all in WRITING.

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§ 668.46(b)(11)vii) - WRITTEN EXPLANATION OF STUDENT OR EMPLOYEE'S RIGHTS

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

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§ 668.46(b)(11)(ii) - WRITTEN EXPLANATION OF RIGHTS AND OPTIONS

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

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§ 668.46(b)(11)(ii) - WRITTEN EXPLANATION OF RIGHTS AND OPTIONS

3. Notification of the victim’s option to


- Notify proper law enforcement authorities, including on-campus and local police
- Be assisted by campus authorities in notifying law enforcement authorities if the victim so chooses
- Decline to notify such authorities

4. The rights of victims and the institution’s responsibilities for

- Orders of protection
- “No contact” orders
- Restraining orders
- Similar lawful orders issued by a criminal, civil, tribal, or institutional

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§ 668.46(b)(11)(ii) - WRITTEN EXPLANATION OF RIGHTS AND OPTIONS

5. To students AND employees about existing


- Counseling, health, mental health services
- Victim Advocacy
- Legal Assistance
- Visa and Immigration Assistance
- Student Financial Aid
- Other services available for victims

6. Options for, available assistance in, and how to request changes to (if requested and reasonably available)

- Academic, living, transportation, working

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§ 668.46(b)(11)(ii) - WRITTEN EXPLANATION OF RIGHTS AND OPTIONS

7. Confidentiality


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

8. Disciplinary Procedures

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

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RESPONSE TO "ACTUAL KNOWLEDGE"








<p>Title IX</p> <ul style="list-style-type: none"> • Contact the complainant • Offer and/or implement supportive measures • Explain the process for filing a formal complaint 	<p>Clery Act</p> <ul style="list-style-type: none"> • Written explanation of victim's rights and options including • Assess for Timely Warning Notice OR Emergency Notification
---	--

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CLERY ACT 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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§ 668.46(k)(2)(iii-iv)- ADVISORS

- *Provide the accuser and the accused with the same opportunities to have others present during any institutional disciplinary proceeding, including the opportunity to be accompanied to any related meeting or proceeding by the advisor of their choice*
- *Not limit the choice of advisor or presence for either the accuser or the accused in any meeting or institutional disciplinary proceeding; however, the institution may establish restrictions regarding the extent to which the advisor may participate in the proceedings, as long as the restrictions apply equally to both parties*

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INFORMAL RESOLUTIONS

Title IX

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

Clery Act

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

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FORMAL COMPLAINT RIGHTS

Title IX

- Treat equitably with goal to restore/preserve access to education; due process for respondent
- Reasonably prompt timeframes

Clery Act

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

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WRITTEN DETERMINATION


Title IX

- Identification of the allegations
- Procedural steps taken from receipt through determination
- Findings of fact supporting the determination
- Conclusions regarding the application of code of conduct to the facts
- Result (responsibility, rationale, sanctions, remedies for each allegation)
- Appeals procedures
- When results become final (post appeal)

Clery Act

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

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§ 668.46(k)(2)(iii-iv) - BIAS FREE AND TRAINING FOR "OFFICIALS"

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

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APPEALS

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

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"VAWA Procedural Requirements"



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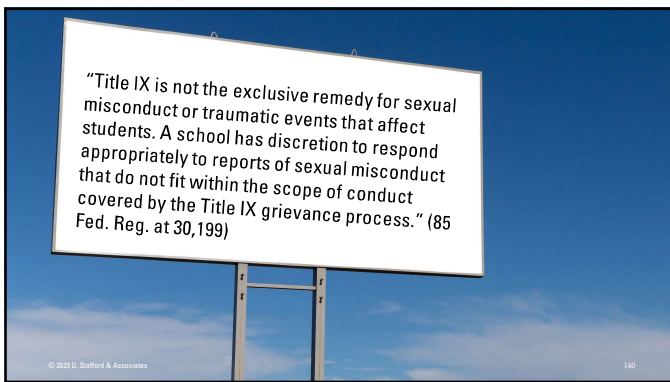
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ADDRESSING "NON-TITLE IX" CASES



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EXAMPLE BEHAVIORS OUTSIDE THE TITLE IX DEFINITIONS

- Administering a date rape drug
- Touching non-private body part with perpetrator's private body part

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**LOCATIONS
OUTSIDE THE
DEFINITION**

- Outside an education program or activity
- Outside the U.S.



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**“Addressing
Non-Title IX”**

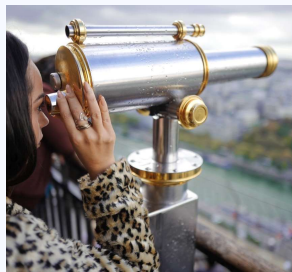


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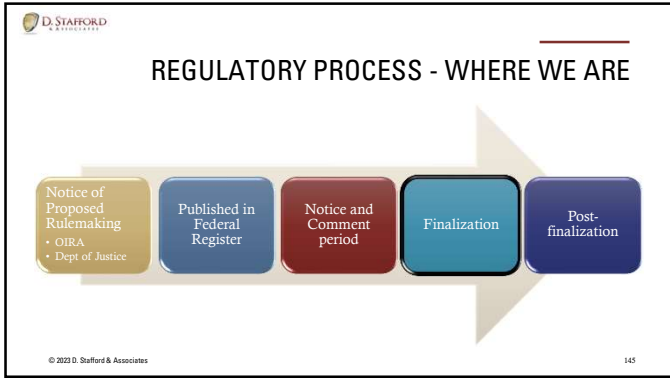
**LOOKING AHEAD -
THE 2022
PROPOSED
REGULATIONS**



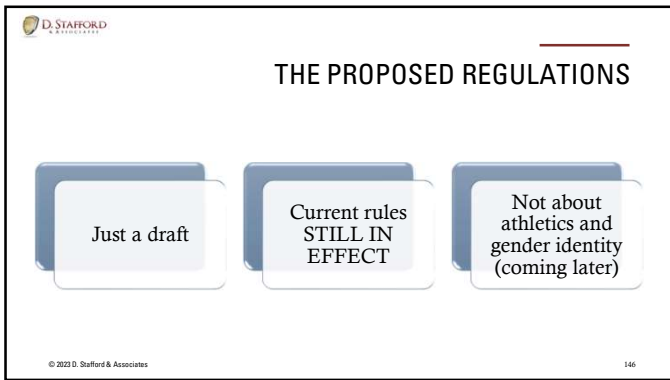
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PROHIBITIONS

Sex Discrimination

- Sex stereotypes
- Sex characteristics
- Pregnancy or related conditions
- Sexual orientation
- Gender identity

Sex-based harassment

- Sexual harassment:
 - Quid pro quo
 - Hostile environment
- Sexual assault, dating violence, domestic violence, and stalking
- Harassment based on sex discrimination (see above)

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SEX-BASED HARASSMENT

Quid Pro Quo	Specific Offenses	Hostile Environment
<ul style="list-style-type: none"> • When an employee or other person authorized by a recipient to provide an aid, benefit, or service explicitly or impliedly conditions that aid, benefit or service on a person's participation in unwelcome sexual conduct 	<ul style="list-style-type: none"> • Sexual assault • Dating violence • Domestic violence • Stalking 	<ul style="list-style-type: none"> • Unwelcome sex-based conduct that is sufficiently severe or pervasive that, based on the totality of the circumstances and evaluated subjectively and objectively, it denies or limits a person's ability to participate in or benefit from the recipient's education program or activity

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REPORTERS

2001 Guidance **Responsible Employees:** Employee with authority to take action; given the duty of reporting misconduct; or student would reasonably believe has this authority

2020 Regulations **Officials with Authority** to institute corrective measures

2022 Proposed Regulations **Employees with authority to take corrective action** or, for incidents involving students, has responsibility for administrative leadership, teaching, or advising . . . or all other employees . . .

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REPORTING REQUIREMENTS (POST-SECONDARY)

Employee Role	Involving	Notify Title IX	Provide Title IX info
Confidential Employee	Student or Employee	No	Yes
Employee with ability to institute corrective measures	Student or Employee	Yes	
Employee responsible for administrative leadership, teaching, or advising	Student	Yes	
Employee responsible for administrative leadership, teaching, or advising	Employee	Yes	Yes
All other employees	Student or Employee	Yes	Yes


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CONFIDENTIAL EMPLOYEES DEFINED



Privileged (in role)



Designated (when providing services)



Human-subjects research on sex discrimination

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NOTIFICATION REQUIREMENT


Must notify the Title IX Coordinator when the employee has information about conduct that may constitute sex discrimination under Title IX.

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LOCATION JURISDICTION CHANGES


A recipient has an obligation to address a sex-based hostile environment under its education program or activity, even if sex-based harassment contributing to the hostile environment occurred outside the recipient's education program or activity or outside the United States.



Outside the US?



Off campus?



Still includes student orgs

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ADDITIONAL TIDBITS

Can have temporary supportive measures that “burden” a respondent (with some parameters)

While different treatment is permissible, cannot cause more than “de minimis harm”

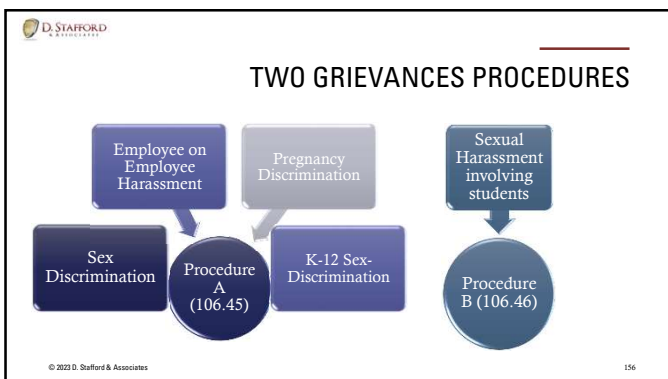
Permissive dismissal (not mandatory dismissal)

Complaint can be written or oral (and not formal)

Informal is option without “formal” complaint

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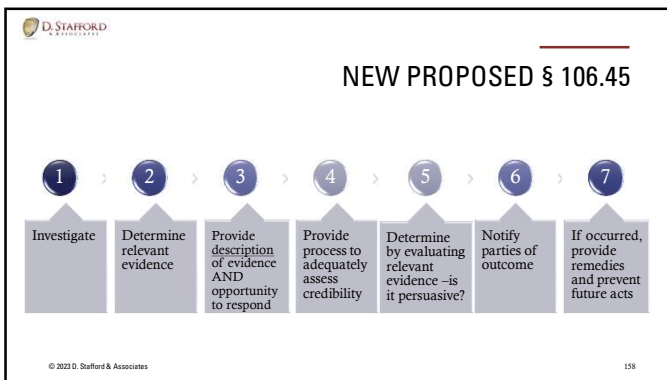
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COMPARING NOTICE

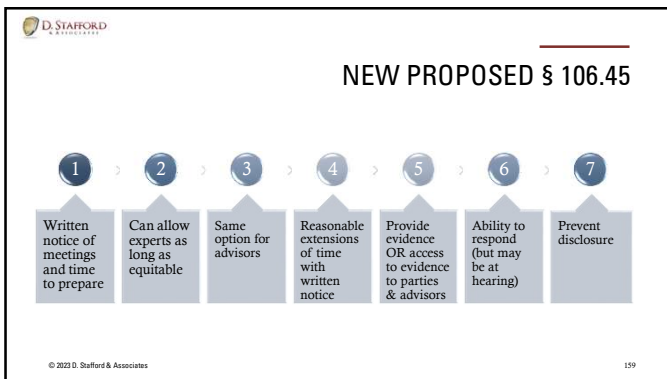
2020	NEW 106.45 (DOES NOT NEED TO BE IN WRITING!!!)	NEW 106.46
Grievance Procedures	YES	YES
"Sufficient details" (parties, conduct, date, location)	YES "Sufficient information"	YES "Sufficient information"
Statement that retaliation prohibited	YES	YES
Respondent is presumed not responsible		YES
Right to advisor of choice		YES
Right to inspect and review evidence		YES (Evidence OR summary in report with evidence by request)
Prohibition on false statements*		YES

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 **§ 106.46 - PROCESS FOR EVALUATING ALLEGATIONS AND ASSESSING CREDIBILITY**

- NO REQUIREMENT FOR LIVE HEARING
- Decision-maker can ask questions at individual meetings or at live hearing
 - Relevant questions and follow-up questions including questions challenging credibility
 - Allow each party to propose relevant questions and follow-up questions
- If allow live hearing with advisor questions...
 - No questioning by parties
 - If a party does not respond to questions related to their credibility, the decision-maker must not rely on any statement of that party that supports that party's position.

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 **APPEALS (§ 106.46 ONLY)**


Procedural irregularity that would change the determination of whether sex-based harassment occurred


New evidence that would change the outcome of the matter and that was not reasonably available at the time the determination of whether sex-based harassment occurred or dismissal was made

Title IX Coordinator, investigator, or decision-maker had a conflict of interest or bias that would change the outcome

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 **PREGNANCY AND PARENTAL STATUS**



- Employees and students
- Lactation time and space
- Comparable treatment to temporary disabilities or conditions
- When an employee is informed of student pregnancy ...promptly inform that person of how to notify the Title IX Coordinator

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PREGNANCY CONTINUED...

- When Title IX learns...must inform student
 - Prohibit sex discrimination
 - Reasonable modifications
 - Allow access to separate and comparable program or activity (but not require)
 - Allow voluntary leave of absence
 - Lactation space
 - Grievance procedures

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REMINDERS!

It's a **DRAFT**

↓

Nothing changes **NOW**


↓

But...how do you address Sex **DISCRIMINATION?**

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"Looking Ahead"

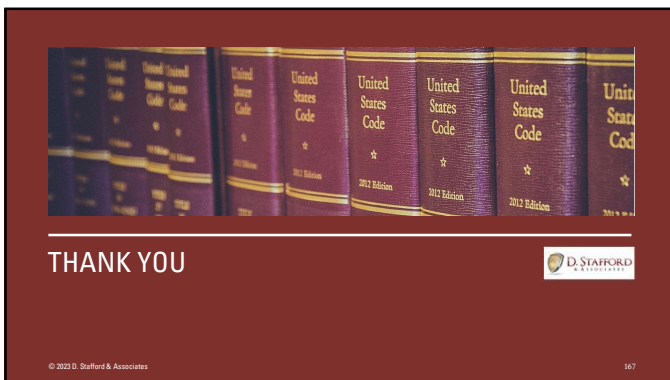
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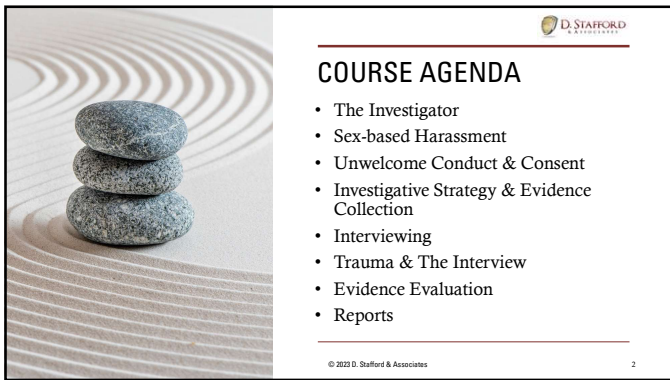
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167



1



2



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4



5



6

CONFLICT OF INTEREST OR BIAS

Generally

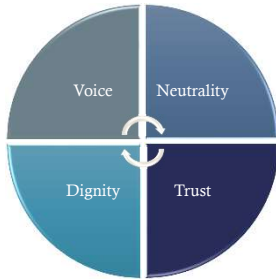


Individually



7

PROCEDURAL FAIRNESS



8

"The Investigator"



9

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SEX-BASED HARASSMENT

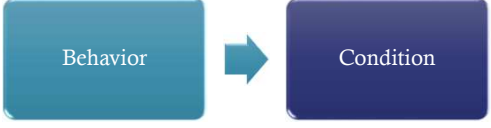


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UNDERSTANDING THE ELEMENTS



```
graph LR; Behavior[Behavior] --> Condition[Condition]
```

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DECISION-MAKER'S PATH

- What was the conduct?
 - Was the conduct on the basis of sex?
 - Was the conduct unwelcome or without consent?
- Does the conduct meet the definition of a violation of institutional policy?

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SAMPLE DEFINITIONS

definitive /defɪˈnɪtɪv/ *adj.* a statement or answer that is clearly defined, not vague, and usually definitive *adv.* [Latin: *definitivus* (final)]

Usage See note at *definitive*.

definite article *n.* the word (English) preceding a noun and having a specific instance.

definition /defɪˈnɪʃ(ə)n/ *n.* **1 a** a statement of the meaning of a word, etc. **2** distinctness in outline, etc. **3** a photograph, etc. [Latin: *definire* (to define)]

definitive /drɪˈfɪnɪtɪv/ *adj.* an answer, verdict, etc.) decisive, final **2** (of a book)

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QUID PRO QUO



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QUID PRO QUO - SAMPLE DEFINITION

An employee, agent, or other person authorized to provide an aid, benefit, or service under the recipient’s education program or activity explicitly or impliedly conditioning the provision of such an aid, benefit, or service on a person’s participation in unwelcome sexual conduct.

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QUID PRO QUO INVESTIGATIONS

Respondent

- Is the respondent an employee?
- What is the relationship to the complainant?
- What, if any, perceived or actual power exists?

Aid, Benefit, or Service

- What was offered?
- How was it communicated?

Sexual Conduct

- What was the conduct requested?
- Was it sex-based?
- How was it unwelcome?
- How was it communicated?

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HOSTILE ENVIRONMENT - SAMPLE DEFINITION

Unwelcome sex-based conduct that is sufficiently severe or pervasive, that, based on the totality of the circumstances and evaluated subjectively and objectively, denies or limits a person's ability to participate in or benefit from the recipient's education program or activity.

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 **HOSTILE ENVIRONMENT INVESTIGATIONS**

Type, frequency, and duration of the conduct	Location of the conduct, context, and control
Parties' ages, roles, previous interactions, other factors	Impact on ability to access program or activity

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SEXUAL ASSAULT



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 **SEXUAL ASSAULT - SAMPLE DEFINITIONS**

- **Rape** - The penetration, no matter how slight, of the vagina or anus, with any body part or object, or oral penetration by a sex organ of another person, without the consent of the victim. This offense includes the rape of both males and females.
- **Fondling** - The touching of the private body parts of another person for the purpose of sexual gratification, without the consent of the victim, including instances where the victim is incapable of giving consent because of age or because of temporary or permanent mental incapacity.
- **Incest** - Sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.
- **Statutory Rape** - Sexual intercourse with a person who is under the statutory age of consent.

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SEXUAL ASSAULT INVESTIGATIONS

What was the sexual behavior?

Who was the initiator?

What, if any, were the words or actions to indicate consent?


- Is there an issue of incapacitation or force?

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STALKING

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STALKING - SAMPLE DEFINITION

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


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

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STALKING INVESTIGATIONS



What was the course of conduct?



What was the frequency?




What was the impact?

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INTIMATE
PARTNER
VIOLENCE

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DATING VIOLENCE - SAMPLE DEFINITION

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

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DOMESTIC VIOLENCE - SAMPLE DEFINITION

Violence committed—

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

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INTIMATE PARTNER VIOLENCE INVESTIGATIONS

Parties

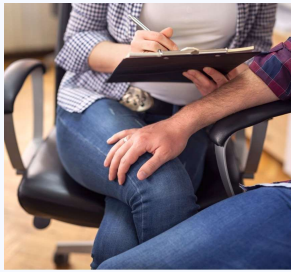
- Type of relationship
- Length of the relationship
- Frequency of interaction between the persons

Behaviors

- Type of violence
- Possible patterns of behaviors
- Other behaviors that may fall under other policy definitions

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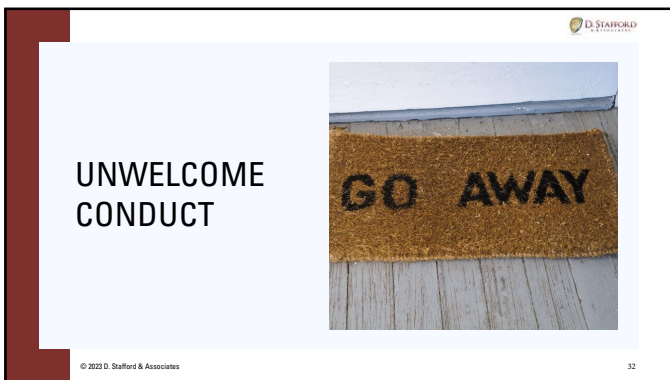
UNWELCOME CONDUCT & CONSENT



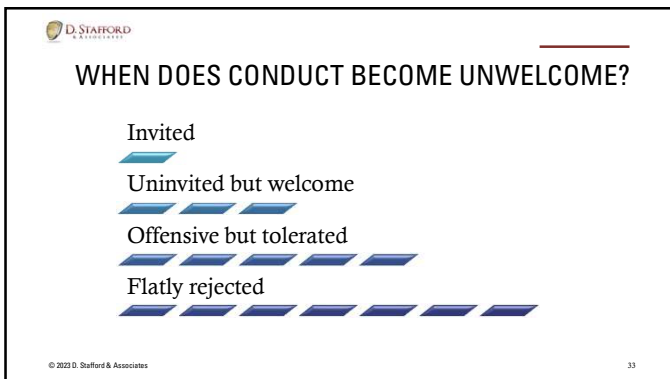
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TESTING FOR UNWELCOMENESS

Objective Subjective

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CONSENT

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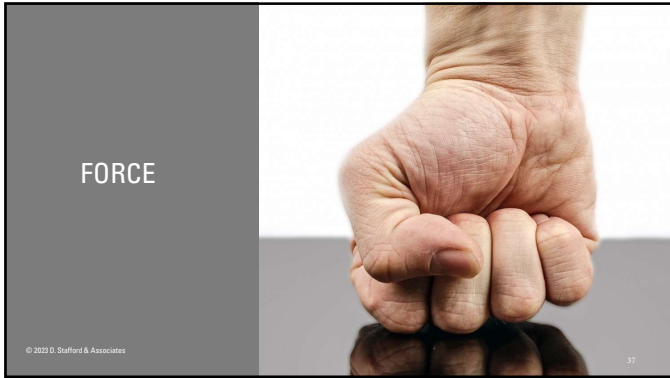
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CONSENT

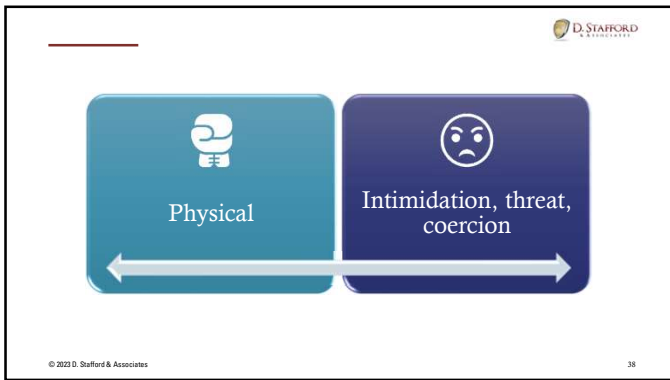
Sexual Permission Verbal or Nonverbal Absent if force or incapacitation

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INCAPACITATION - SAMPLE DEFINITION


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




Alcohol



Drugs



Disability



Other

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TWO-STEP DETERMINATION

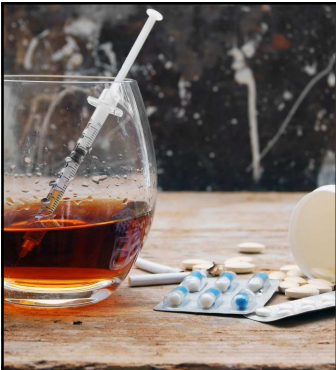
Was the complainant incapacitated?

➔

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

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ALCOHOL & OTHER DRUGS

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SUBSTANCE USE AND SEX

“...analysis of SHIFT survey data showed that two-thirds of sexually active students who had sex in the prior three months reported some substance use prior to or during sex.”

Jennifer S. Hirsch & Shamus Khan. "Sexual Citizens: A Landmark Study of Sex, Power, and Assault on Campus."
SHIFT survey = Alexander Wamboldt et al. "Wine Nights, 'Bro-Dinners,' and Jungle Juice: Disaggregating Practices of Undergraduate Binge Drinking." Journal of Drug Issues, 2019, 49(4): 643-67.

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HALLUCINOGENS AND OPIOIDS

Hallucinogens

- Change how the world is perceived
- Colors, sounds, movement and time are all experienced in an altered state of mind

Opioids

- Block pain by sealing off the receptors that trigger the sensation
- Provide a sense of euphoria

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STIMULANTS AND DEPRESSANTS


Stimulants (Uppers)

- Raise levels of physiological or nervous activity in the body
- Enhance alertness, concentration, and energy


Depressants (Downers)

- Inhibit the function of the central nervous system
- Reduce intrusive thoughts, providing a sense of relaxation


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ALCOHOL STANDARD MEASUREMENTS



12 oz. of beer



4-5 oz. of wine



1.5 oz. and 80 proof of liquor

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HOW DO COLLEGE STUDENTS MEASURE THEIR DRINKS?

Hint: They don't!

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Levels of Alcohol/Drug Consumption



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IMPAIRMENT

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

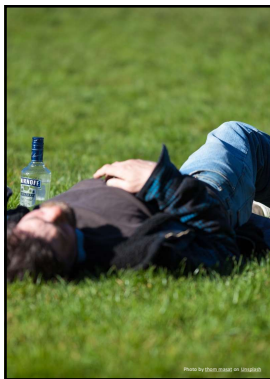
49



INTOXICATION

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

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INCAPACITATION

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

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BLACKOUTS

Fragmentary Blackout

Also known as
"grayout" or
"brownout"

Gaps in memory with
some level of
recollection

En Bloc Blackout

No recollection of
events

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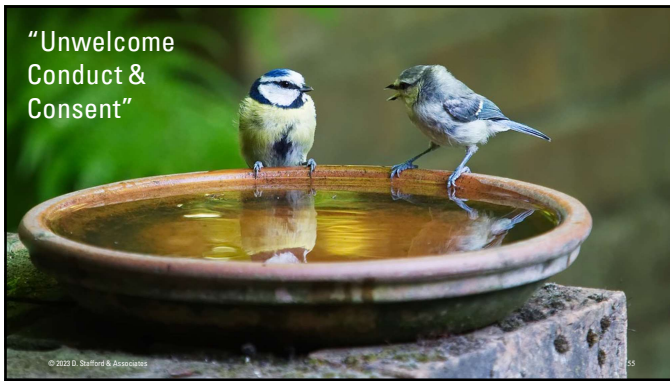
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ASKING ABOUT INCAPACITATION

Context	Alcohol	Behaviors
Timelines Location Respondent's role Witnesses Other factors (e.g., food)	Type(s) of alcohol Alcohol content Quantity Pace	Baseline Presenting behaviors Witness observations Party observations

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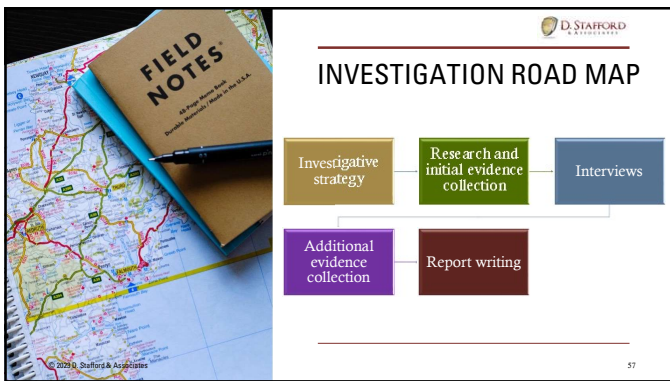
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DEVELOPING AN INVESTIGATIVE STRATEGY



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INVESTIGATIVE STRATEGY





-  Scope
-  Methodology
-  Preparation
-  Challenges

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SCOPE

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

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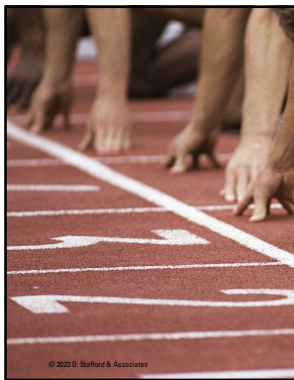


METHODOLOGY

- File Management
- Liaisons
- Logistics
- Internal Communications

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PREPARATION

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

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Investigation Challenges

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SIDEBAR:


INVESTIGATIVE
CASE FILE



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Internal vs. External
Notes and Documents

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ORGANIZE IT!

- Formal complaint
- Communications
- Notices
- Evidence (who provided, when it was received)
- Research
- Interview times/locations/attendees
- Names/nicknames/pronouns/titles/relationships
- Timeline

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EVIDENCE COLLECTION

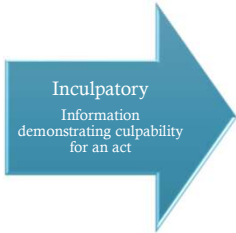


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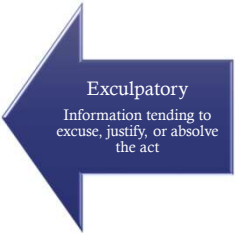
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EVIDENCE



Inculpatory
Information demonstrating culpability for an act




Exculpatory
Information tending to excuse, justify, or absolve the act

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TYPES OF EVIDENCE




Real evidence



Demonstrative




Documentary




Testimonial


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 **PROVIDERS OF EVIDENCE**




Parties



Witnesses




Institution



Investigators

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 **INITIAL EVIDENCE COLLECTION**

Complaint

Other "statements"

Evidence from campus sources

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 **RESEARCH**



Websites



Organizations



Calendars



Schedules



Party
"directory
information"

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OTHER SOURCES OF EVIDENCE

Photographs	Text messages	Social media/dating apps	Documents (memos, letters, notes)
Voicemail	Phone logs	Guest lists	Investigator-created evidence

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FLOORPLANS

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INVESTIGATOR-CREATED EVIDENCE

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

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

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CASE STUDY: THE DANCE

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

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

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"Investigative Strategy & Evidence Collection"

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INTERVIEWING




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INTERVIEWING BASICS



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INTERVIEWS



Testimonial Evidence Conversation Structured

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THE INTERVIEWEES

Complainant

Respondent

Witness

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KEYS TO A GREAT INTERVIEW

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PREPARATION


Logistics Procedures (communication, scheduling)
 Notice documents
 Case file

Research Policy review
 Preliminary evidence
 Topics of inquiry

Pre-drafted questions Background
 Narrative
 Case specific

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COMFORTABLE ENVIRONMENT

- The space
- Investigative tools
- Coping items
- Safety measures


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HELPFUL PROMPTS


Recreate the Scene



Physical Space




Sensory



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AVOID BAD HABITS

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

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BE FULLY PRESENT

- Treat the interviewee ethically and with dignity
- Be non-judgmental and non-adversarial
- Be objective - you are not “making a case” or pushing a theory
- Adjust and adapt

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THE INTERVIEW

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THE D. STAFFORD INTERVIEW OUTLINE

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

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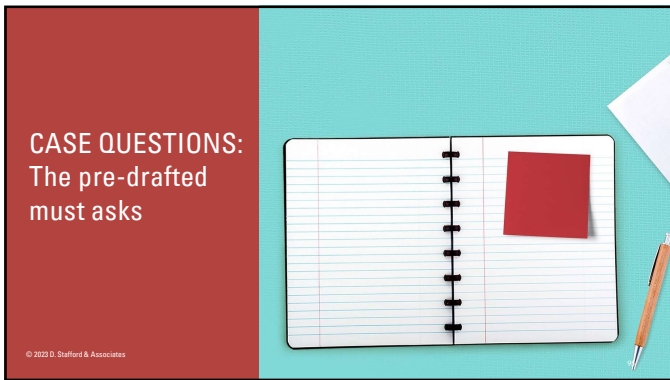
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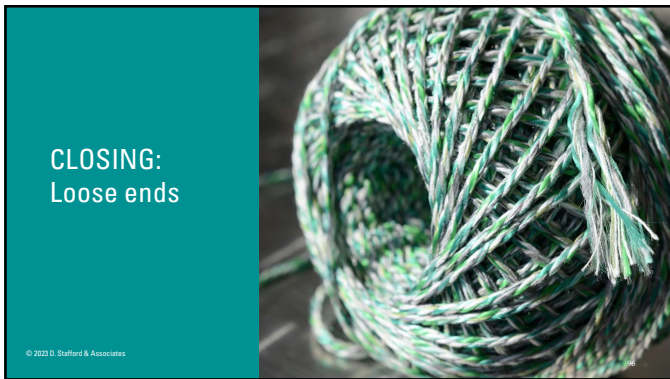
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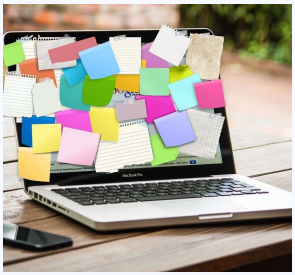
SELF EVALUATION:
How did it go?



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INTERVIEW NOTES



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CAPTURING THE INTERVIEW

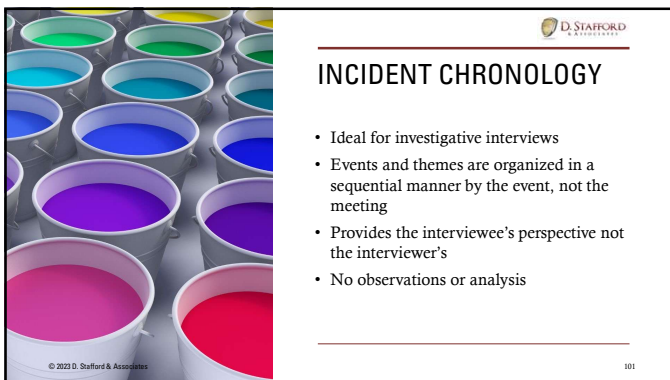


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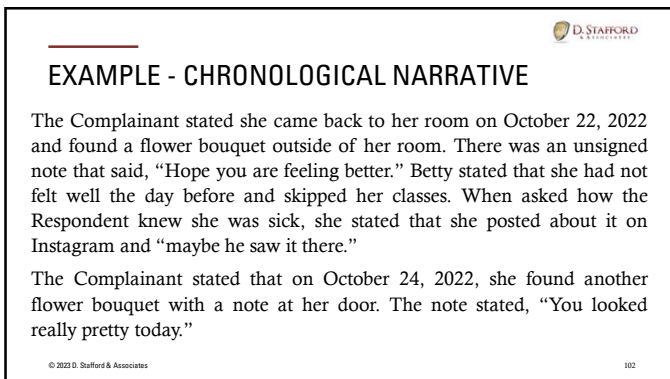
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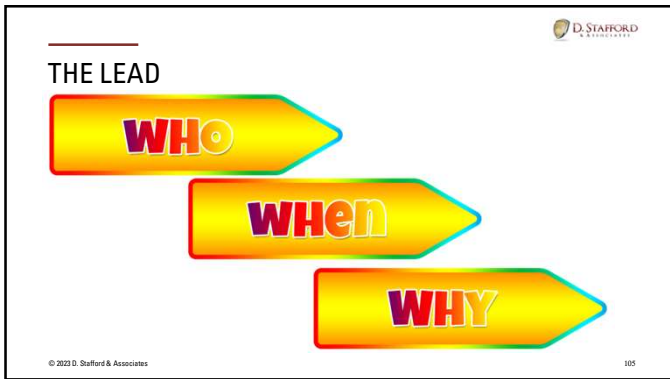
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USING QUOTES

Added Value

- Increases the credibility of your notes
 - demonstrates listening and comprehension
- Provides an opportunity to highlight key points of the meeting
- Gives the interviewees a direct voice on important aspects
- Avoids the appearance of the interviewer having an opinion

Pitfalls

- Quoting for the sake of quoting
- Confuses the reader if there are too many quotes
- Giving importance to something that is irrelevant
- Disrupts the flow or clarity of your notes

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EXAMPLE - THE CONVERSATION



Shelby (interviewer): Tell me about how much alcohol you had that night.

Betty (interviewee): I believe I had four to six shots.

Shelby: Shots of what?

Betty: Pink Whitney Vodka

Shelby: What did you use to drink the shots?

Betty: A shot glass that Riley had

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EXAMPLE - PICK THE BEST OPTION

Version 1

- Betty stated she had four to six shots of Pink Whitney Vodka from Riley's shot glass.

Version 2

- Betty believed she had four to six shots of Pink Whitney Vodka from Riley's shot glass.

Version 3

- Betty stated she "believed" she had four to six shots of Pink Whitney Vodka from Riley's shot glass.

Version 4

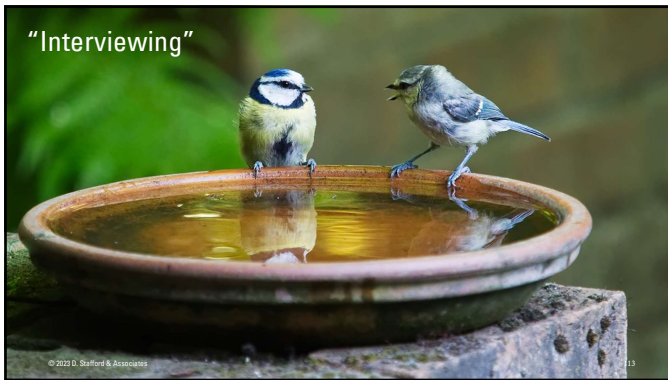
- Betty stated, "I believe I had four to six shots of Pink Whitney Vodka." Betty stated she used one of Riley's shot glass.

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SLANG AND OTHER INFORMAL WORDS

- Quote words or phrases that are slang, informal, or pejorative.
- Examples:
 - Riley stated Betty was “wasted.”
 - Betty stated that she could no longer live with her roommate because “she is unstable.”
 - Riley described Betty’s behavior as “creepy.”
- “Uncommon slang” may need a definition, either in the notes or as a footnote.

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Stress

Trauma

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TYPES OF TRAUMA

Acute

Chronic

Complex

Secondary

Adverse Childhood Experiences (ACE)

Historical/ intergenerational trauma

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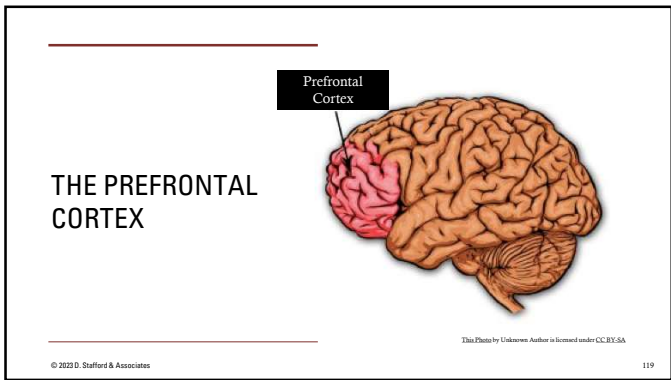
IMPACT OF TRAUMA

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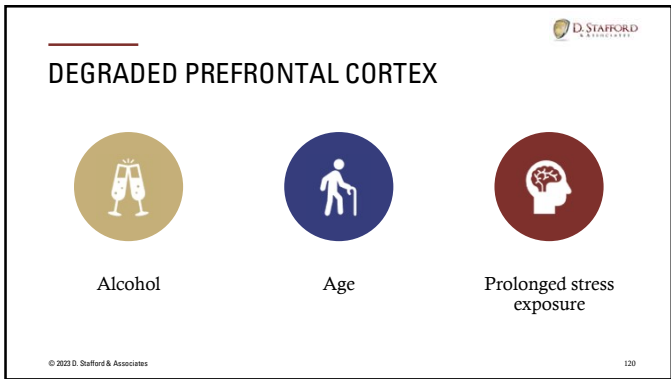
117



118

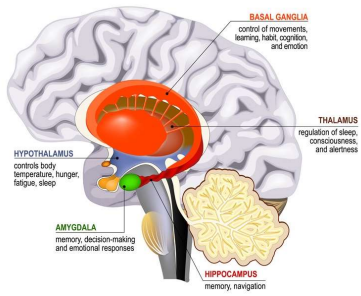


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THE LIMBIC SYSTEM



BASAL GANGLIA
control of movements, learning, habit, cognition, and emotion

THALAMUS
regulation of sleep, consciousness, and alertness

HYPOTHALAMUS
controls body temperature, hunger, fatigue, sleep

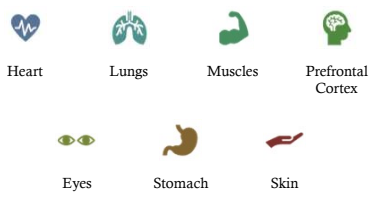
AMYGDALA
memory, decision-making and emotional responses

HIPPOCAMPUS
memory, navigation

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THE BODY'S RESPONSE TO FEAR




Heart **Lungs** **Muscles** **Prefrontal Cortex**

Eyes **Stomach** **Skin**

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RESPONSE



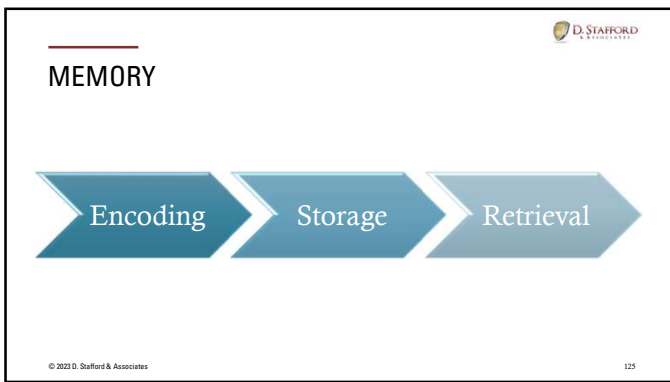
Habit **Reflex**

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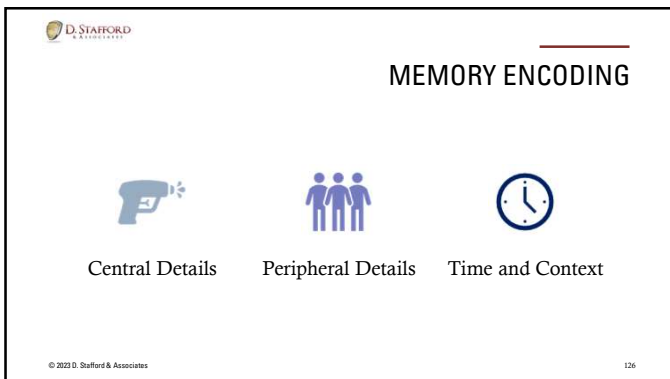
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TRAUMA MEMORY ENCODING



Sensory



Emotional



Flashbulb memories

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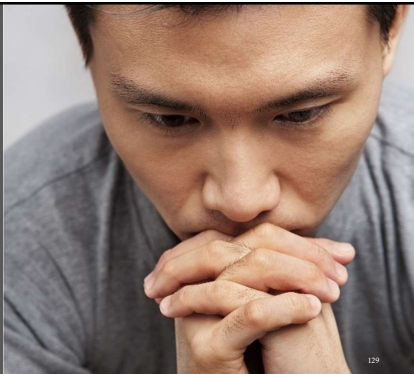


Memory Storage Over Time

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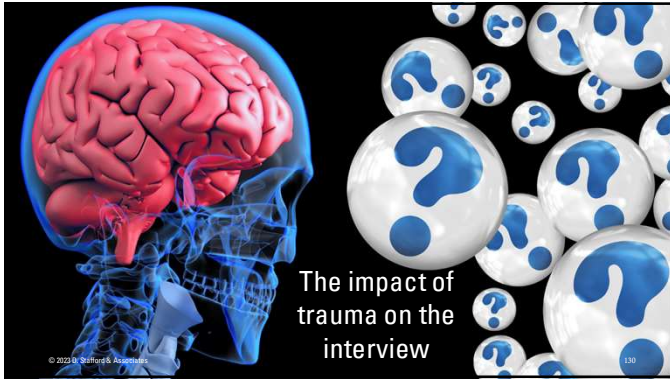
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LONG TERM RESPONSE: IMPACT

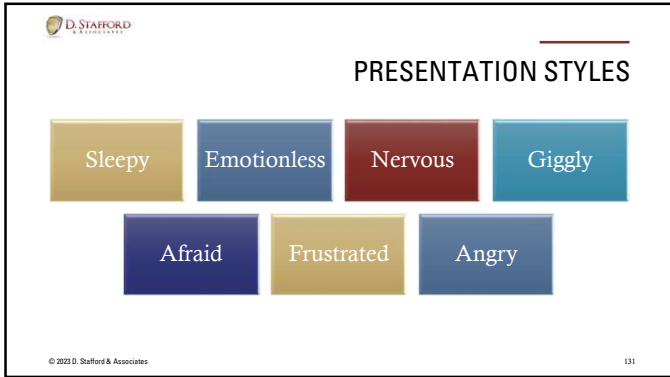


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 **QUESTION FORMAT**

 Tone
  Phrasing
  Open-ended
  Safe
  Judgment-free

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 **INTERVIEW TECHNIQUES**

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

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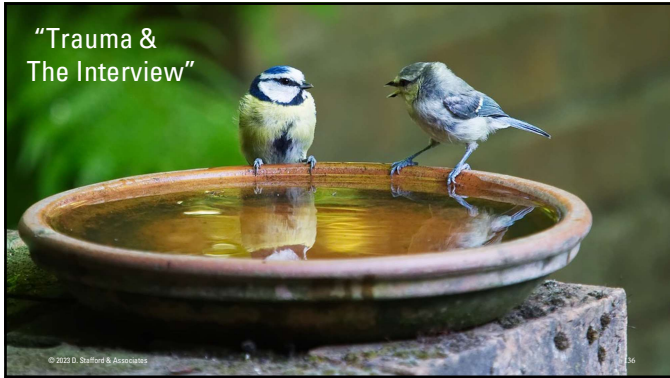
134

 **IMPARTIAL INVESTIGATIONS**

 Consistent application
  Ask clarifying questions
  Avoid bias

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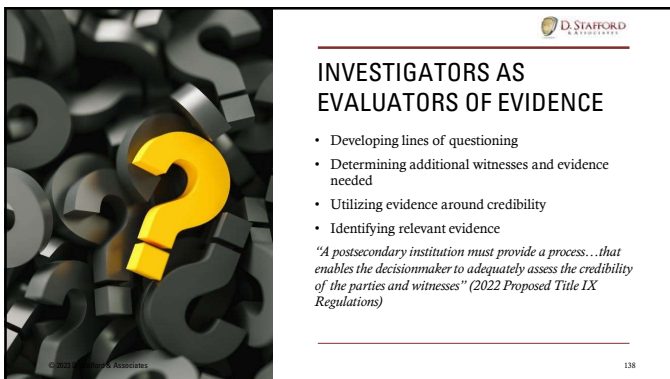
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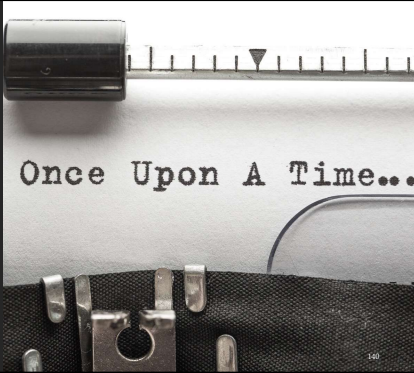
CREDIBILITY



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CREDIBILITY OF THE STORY









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CORROBORATING EVIDENCE

 Physical	 Contemporaneous Documentation	 Personal Documents
 Admissions	 Eyewitness	 Outcry

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PLAUSIBILITY

?

Possible


😊

Believable

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CREDIBILITY OF THE STORYTELLER



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MOTIVATION

Afraid

Pressured


Revenge

History


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BIAS



Past Relationship



Identity



Internal Biases

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ABILITY TO PERCEIVE

Distance

Knowledge


Credentials

Competence


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ABILITY TO REMEMBER




Passage of Time




Alcohol



Trauma



Peripheral Details



History of Memory

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WHAT MAY NOT
IMPACT
CREDIBILITY



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DO THESE IMPACT CREDIBILITY?

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

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DECEPTION

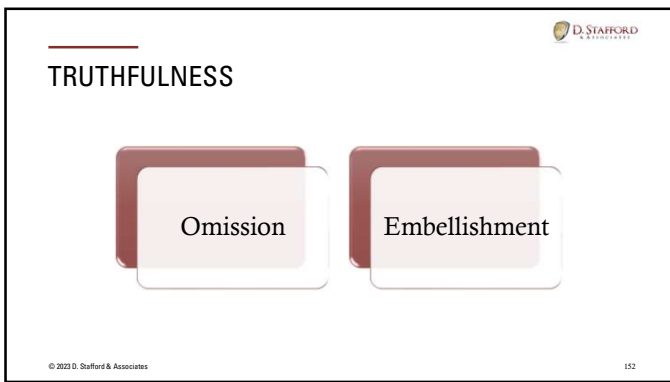


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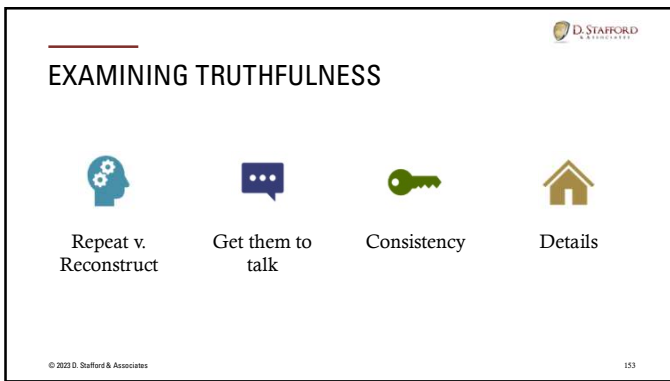
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DID THEY ANSWER THE QUESTION?



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RELEVANCY



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WHEN IS EVIDENCE RELEVANT?


Evidence is relevant if:

- (a) it has any tendency to make a fact more or less probable than it would be without the evidence; and
- (b) the fact is of consequence in determining the action.

- (Federal Rules of Evidence)

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KEY RELEVANCY POINTS

1

The evidence does not need to be conclusive

2


Is sufficient if it constitutes a link in the chain

3

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

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NOT RELEVANT (PER TITLE IX REGULATIONS)

Past Sexual Behavior

Complainant's sexual predisposition or prior sexual behavior unless...

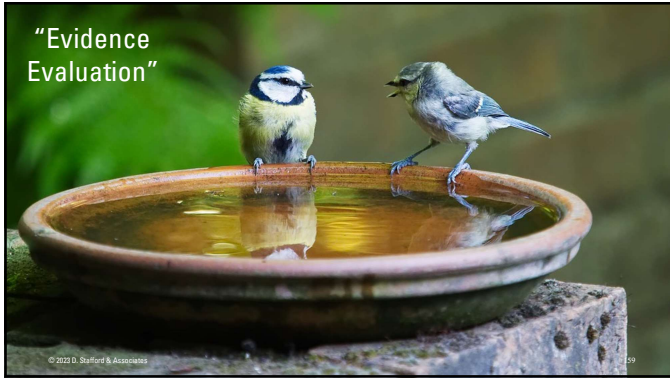
- Offered to prove that someone other than the respondent committed the conduct alleged or
- Complainant's prior sexual behavior with respect to the respondent and are offered to prove consent

Privileged Information

Physician, psychiatrist, psychologist records in connection with the provision of treatment to the party unless there is voluntary, written consent from the party whose record it is

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REPORTS



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REPORT WRITING GOALS


- Documentation of Process
- Compilation of Evidence
- Summary of Facts

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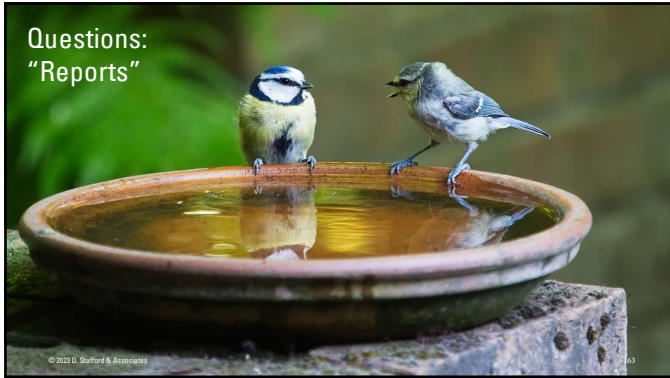
ELEMENTS OF A GOOD REPORT



- SPELLING
- GRAMMAR
- ACCURACY

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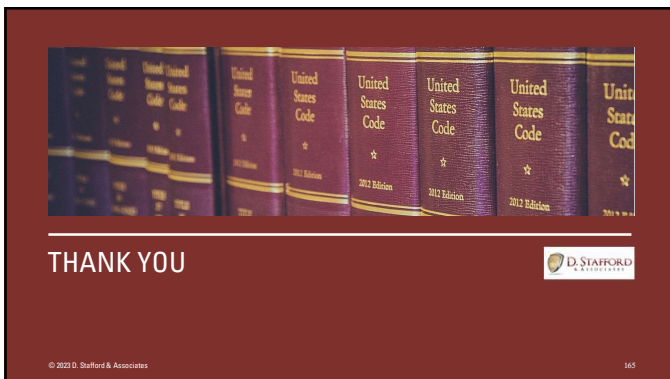
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