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Title IX Coordinator- Sex Discrimination Response (Tier 2)

Presented by DSA Associates:

Cathy Cocks

Adrienne Murray

Ann Todd

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Title IX Coordinator – Sex Discrimination Response

- Bonus: Proposed 2023 Regulations
- Module 1: Intake and Notice
- Module 2: Informal Resolutions
- Module 3: Investigation Stage
- Module 4: Formal Resolutions
- Module 5: Institution Integrity and Training



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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.

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.

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.

INVESTIGATION CLASS ACRONYMS

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

SART: Sexual Assault Response Team

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

SWA: Senior Women's Administrator (Athletics)

TWN: Timely Warning Notice

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

VAWA: Violence Against Women Act



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TITLE IX

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- Public inspection upon request.*

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ISSUANCE OF CERTIFICATES FOR COMPLETION

To receive a certificate, attendees must attend the majority of the class and have paid class invoice in full. This applies to both in-person classes and virtual classes. We understand 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. If an attendee misses a significant amount of the class (depending on the length of the class) or they miss an attendance poll, they will not be issued a certificate of completion for the class.

Attendees should report each absence using the online form provided (each class has its own unique form that is sent to all attendees via email prior to class). Attendees should complete the form twice for each absence: once to record their departure, and again to record their return. Attendees should complete the form immediately before leaving class and as soon as practicable upon their return. If an attendee signs out but does not sign back in, they will be marked absent for the remainder of the day.

The criteria for receiving a certificate is determined based on missed class time 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 to ensure that everyone who is present can respond to the poll. If an attendee is unable to respond to the attendance poll, the attendee would need to **immediately post "I am here"** in the chat feature within the Zoom platform. That way we can give the attendee credit for being in attendance for that specific poll. Notifying us after the attendance poll has been closed will not allow us to give the attendee credit for being in class during the poll.

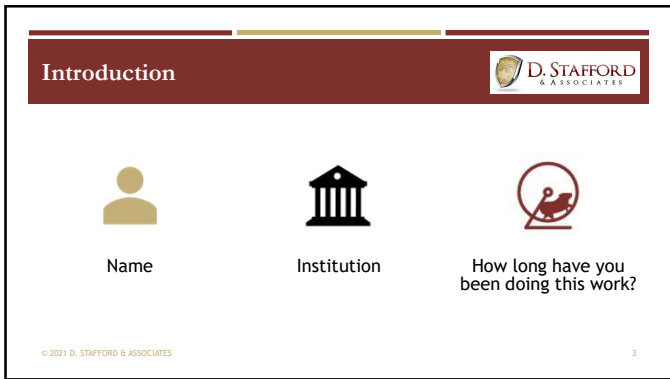
Some of our classes may qualify for credit toward a Master's Degree at New England College (and regardless if you decide to seek credit or not, accreditation requirements mandate that we follow the same standards for all class attendees), so we have strict attendance standards that we follow for issuance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



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Course Logistics



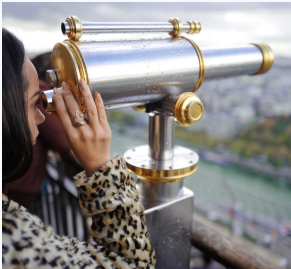
- Daily Polls
- Camera
- Certificates
- Breaks
- Interact

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LOOKING AHEAD -
THE 2022
PROPOSED
REGULATIONS



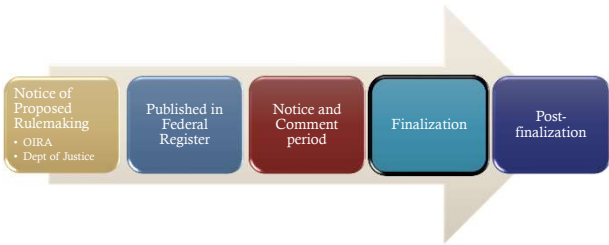
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REGULATORY PROCESS - WHERE WE ARE



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THE PROPOSED REGULATIONS

Just a draft

Current rules
STILL IN
EFFECT

Not about
athletics and
gender identity
(coming later)

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SCOPE OF TITLE IX - SEX DISCRIMINATION

Sex-based Harassment

- Sexual Assault
- Dating/Domestic Violence
- Stalking
- Hostile Environment
- Quid Pro Quo
- Harassment based on sex discrimination (see above)

Sex Discrimination

- Gender, sexual orientation, & identity
- Pregnancy & related conditions
- Parental, family, or marital status
- Applies to
 - Admission
 - Employment
 - Educational programs
 - Athletics

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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

- 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

Specific Offenses

- Sexual assault
- Dating violence
- Domestic violence
- Stalking

Hostile Environment

- 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

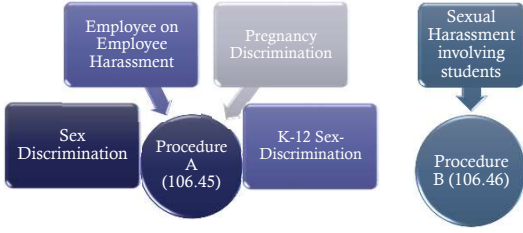
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TWO GRIEVANCES PROCEDURES



```
graph TD; A[Employee on Employee Harassment] --> P1((Procedure A 106.45)); B[Pregnancy Discrimination] --> P1; C[Sex Discrimination] --> P1; D[K-12 Sex-Discrimination] --> P1; E[Sexual Harassment involving students] --> P2((Procedure B 106.46));
```

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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

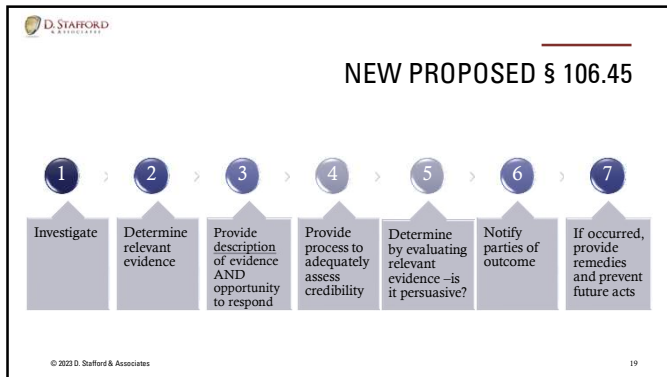
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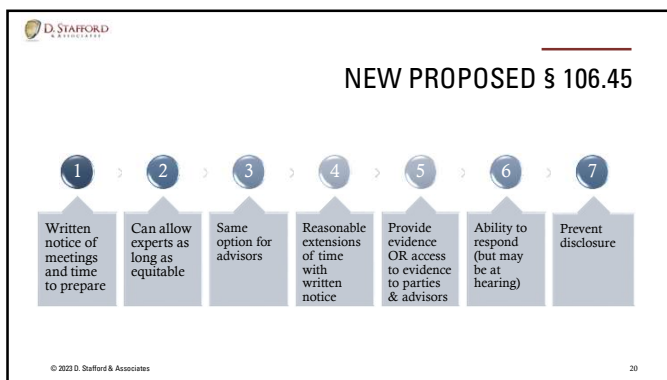
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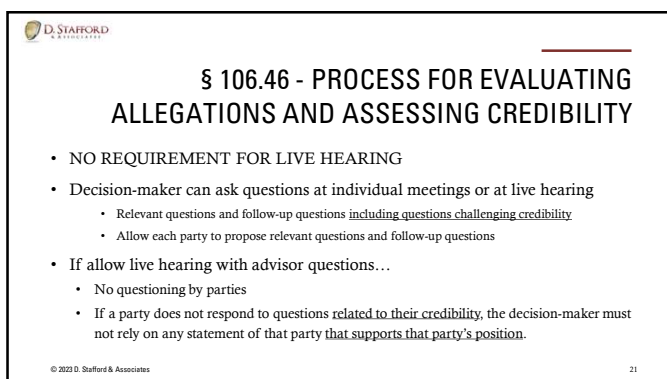
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APPEALS (§ 106.46 ONLY)

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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REMINDERS!

It's a DRAFT

Nothing changes NOW

But...how do you address Sex DISCRIMINATION?

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Intake and Notice

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Sandbox A University
Title IX Referral Form
Submitted on January 5, 2022 at 10:59:42 am EST

Nature Urgency Incident Date and Time Incident Location Reported by Name: Title: Email: Phone: Address:	Title IX Normal 2021-10-31 12:00 AM Alcott Residence Hall Room 3A Randy Donovan Resident Director rd@DSA.edu 555-555-5551
--	--

Involved Parties		
Carrie Chase (012345)	cc@dsa.edu	555-555-5552
Complainant	3A Alcott Hall	
Rich Reynolds (12346)	rr@dsa.edu	555-555-5553
Respondent	1A Alcott Hall	
Wendy White (12347)	ww@dsa.edu	555-555-5554
Witness	3A Alcott Hall	

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Incident Narrative

Narrative:

On 1/4/22 I, Randy Donovan was on-call. At 8:30 pm, Resident Carrie Chase and Resident Wendy White asked if they could talk with me. Chase and White asked if Donovan could make Resident Rich Reynolds "move" because they did not feel comfortable with them living in Alcott Hall. Donovan stated that he could not do that without knowing the reason. Chase stated that there had been an "incident" between Chase and Reynolds on Halloween and that he "took advantage of her." Donovan told Chase that he was a Responsible Employee and that anything she told Donovan, he would have to report to the Title IX Coordinator. Chase told Donovan that she did not want to tell Donovan anything else and abruptly left Donovan's office. Donovan was unable to provide Chase with any additional information at this time.

At 9:30 PM, Donovan went to Chase's room and asked to come in and speak with her. Chase let Donovan into her room. Donovan provided to Chase a copy of the Explanation of Rights and Options Brochure and asked if she needed anything at this time. Donovan stated that based on the information provided by Chase, he would be contacting Trey Titus, the Title IX Coordinator, who would reach out to Chase. Chase thanked Donovan. Donovan left Chase's room.

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Case Study: Next Steps

What are your steps after receiving the report?

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Evidence collection

- Additional reports
- Video

Clery

- Notification requirements
- Review for Emergency Notification or Timely Warning

Public Safety

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Meeting with the Complainant

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Title IX Assessment

Title IX Definition

Eligible Complainant

Education Activity or Program

Wishes of the Complainant

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Be Prepared

1

READ THE REPORT

- Real-time In-person reports?

2

Learn about the party

- Year, major, grades, department, organization, athlete
- Discipline history?

3

Set the Space

- Accessible?
- Table or behind a desk?
- Tissues
- Fidget toys

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Materials

Policy

Rights and Options

Flowcharts

FERPA waiver

Extra computer

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Complainant Checklist

Policy and Procedures

Reporting options

Medical attention

Preserving evidence

Supportive measures

On-off campus resources

Mutual no-contact orders

Right to an advisor

Free from retaliation

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Meeting
Follow-up

Review

Checklist

Supportive measures

Formal Complaint

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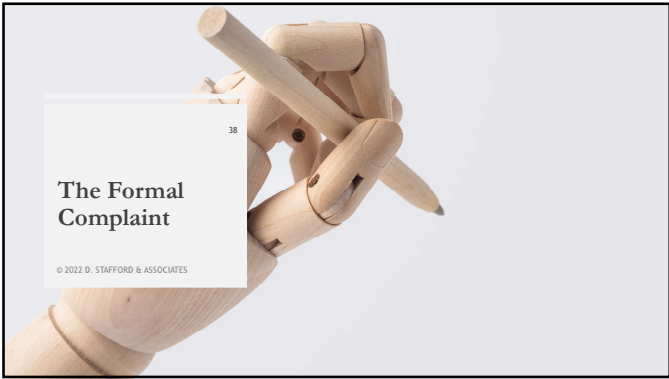
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The Formal
Complaint

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Sandbox A University

Title IX Complaint Form

Submitted on January 5, 2022 at 11:29:47 am EST

Nature

Urgency

Incident Date and Time

Incident Location

Reported by

Name:

Title:

Email:

Phone

Address:

Formal Title IX Complaint

Normal

2021-10-31 12:00 AM

Alcott Residence Hall 3A Alcott hall

Carrie Chase

cc@dsa.edu

555-555-5552

Involved Parties

Carrie Chase (12345)

Complainant

Rich Reynolds (12346)

Respondent

Wendy White (12347)

Witness

ca@dsa.edu

3A Alcott Hall

rr@dsa.edu

1A Alcott Hall

ww@dsa.edu

3A Alcott Hall

555-555-5552

555-555-5553

555-555-5554

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Complaint

Please provide a detailed description of the incident(s) using specific and concise language (who, what, where, when, and how). Please include as much detail as possible, including dates, times, and locations.

On Halloween night, me and Wendy were hanging out in our room getting ready for the Halloween Party at Ziggy's. We drank some shots. We then went to Rich's room to get him and walk to the party. Rich and I were hanging out. We were dancing and I drank a couple more drinks. Me and Rich left and went back to my room. I am not sure what happened when we got back as I only have flashes of things. I remember Rich putting on a condom and him having sex with me. I did not want to have sex with him. I woke up the next morning and there was vomit and a used condom in the trash by my bed. Rich was not there. I sent him a Snapchat asking what happened. He said not to worry about anything. I don't have the messages saved. We have not talked since.

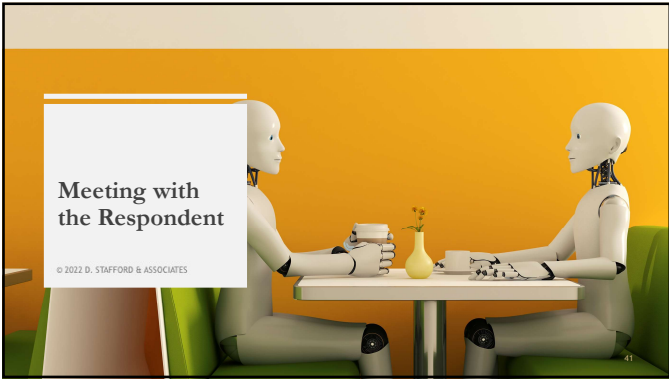
I thought I would be fine after break, but I am not. I keep seeing him and I am afraid to leave my room because I do not want to run into him. We are in one of the same classes and I do not want to go to that class anymore.

By entering my name in the box below, I am submitting this formal complaint requesting the institution investigate. I understand that all evidence, including this statement, will be shared with the Respondent. I have been explained my rights and options by the Title IX Coordinator or designee.
[PLEASE ENTER YOUR FULL NAME IN THE BOX BELOW]

Carrie Chase

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Meeting with
the Respondent

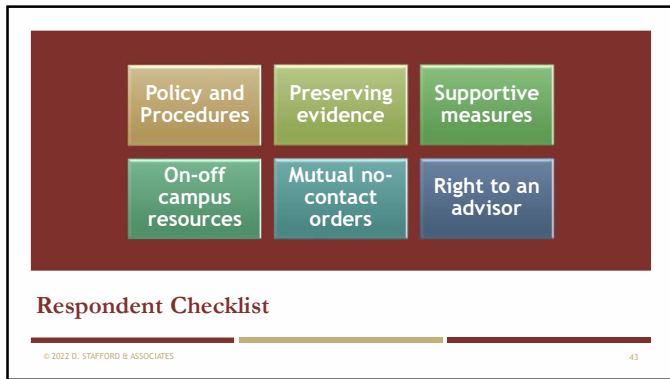
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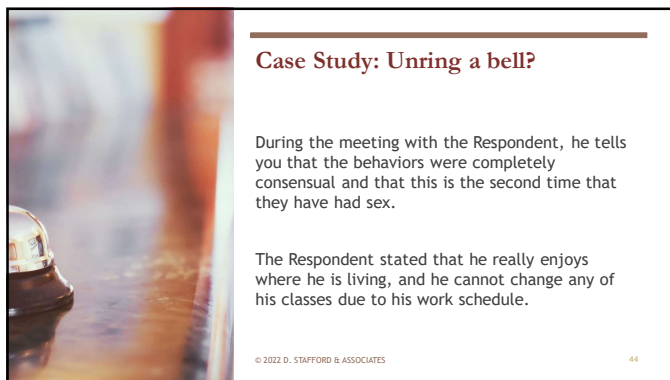
How Does this Meeting
Differ?

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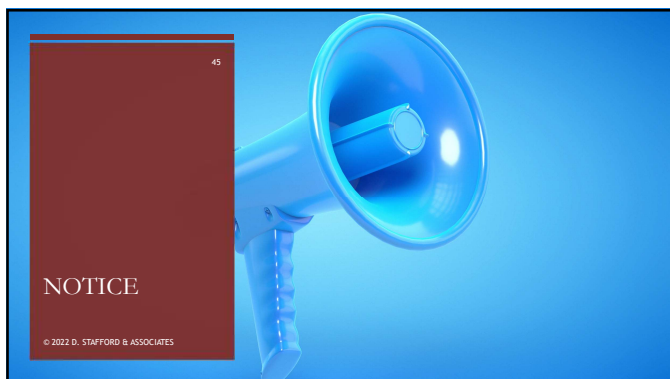
A slide titled "Respondent Checklist" with a dark red background. It features six colored boxes arranged in two rows: "Policy and Procedures" (orange), "Preserving evidence" (green), "Supportive measures" (green), "On-off campus resources" (teal), "Mutual no-contact orders" (teal), and "Right to an advisor" (blue). Below the boxes, the title "Respondent Checklist" is written in white. At the bottom, there is a copyright notice "© 2022 D. STAFFORD & ASSOCIATES" and a small number "43".

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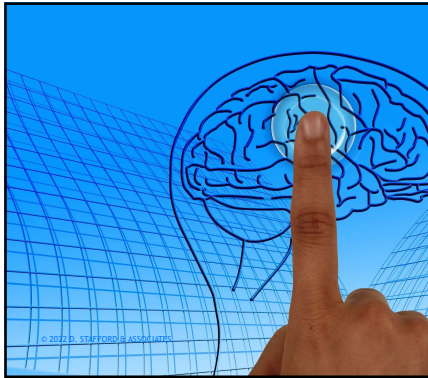
A slide titled "Case Study: Unring a bell?" with a white background. On the left, there is a blurred image of a bell. The text on the slide reads: "During the meeting with the Respondent, he tells you that the behaviors were completely consensual and that this is the second time that they have had sex." and "The Respondent stated that he really enjoys where he is living, and he cannot change any of his classes due to his work schedule." At the bottom, there is a copyright notice "© 2022 D. STAFFORD & ASSOCIATES" and a small number "44".

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A slide titled "NOTICE" with a blue background. On the left, there is a dark red rectangle with the word "NOTICE" in white. On the right, there is a large, glowing blue megaphone. At the bottom, there is a copyright notice "© 2022 D. STAFFORD & ASSOCIATES" and a small number "45".

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Remember!

- Information about preserving evidence and immediate resources should not only be in your first notice letter.
- Do your first responders (Police, residential life, etc.) have written information available to provide to individuals identifying as victims?

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WHOSE JOB IS IT?

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Complainant



Notice of Report/Request for Intake

- Report may be from complainant or third party
- May follow an initial phone call to inform the complainant
- Set up a meeting to discuss supportive measures and options; right to an advisor; provide explanation of rights and options; refer to policy

Notice of Case Closure

- Complainant has declined to sign a formal complaint
- Complainant has not responded to outreach

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Complainant/Respondent



Notice of Investigation

- May be combined with notice of allegation
- Must give sufficient time to prepare for participation
- Provide date, time, location, and purpose of all meetings
- Names of investigators and how to raise a claim of bias or conflict of interest
- Any requests for information such as witnesses
- Provide any known parties or witnesses
- How to request accommodations or interpretive services

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Complainant/Respondent



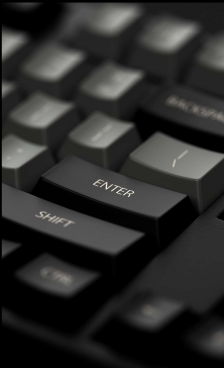
Notice of Allegation

- Identities of parties, if known
- Conduct allegedly constituting sexual harassment
- Allegations may be updated during the course of the investigation
- Date and location, if known
- Respondent is presumed not responsible
- Advisor of choice
- May inspect and review evidence
- Prohibit false statements

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Case Study: What is Missing?

This is an acknowledgement that the University is in receipt of a signed formal complaint of the Title IX Policy. A copy of the Policy is attached to this letter.

Specifically, it is alleged that you experienced a violation of this policy on October 31, 2021, while in your room.

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Case Study: Lessons Learned

This is an acknowledgement that the University is in receipt of a signed formal complaint of the Title IX Policy. A copy of the Policy is attached to this letter.

Specifically, you identified the following violations:

- Non-consensual touching

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Case Study: Lessons Learned

Specifically, in the Formal Complaint, it is alleged:

"On Halloween night, me and Wendy were hanging out in our room getting ready for the Halloween Party at Ziggy's. We drank some shots. We then went to Rich's room to get him and walk to the party. Rich and I were hanging out. We were dancing and I drank a couple more drinks. Me and Rich left and went back to my room. I am not sure what happened when we got back as I only have flashes of things. I remember Rich putting on a condom and him having sex with me. I did not want to have sex with him. I woke up the next morning and there was vomit and a used condom in the trash by my bed. Rich was not there. I sent him a Snapchat asking what happened. He said not to worry about anything. I don't have the messages saved. We have not talked since."

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Other Pitfalls

- Dates
- Too specific
- Dating violence
- Typos
- Grammar

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Complainant/Respondent



Notice of Preliminary Report (sharing of evidence)

- All evidence directly related to the allegation(s)
- Sent prior to completion of investigative report
- Parties have at least 10 days to submit a written response for consideration by the investigator(s)

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Complainant/Respondent



Notice of Final Report and Hearing

- Fairly summarizes relevant evidence
- Sent at least 10 days prior to the hearing
- Date, time, location, participants, and purpose of hearing
- Option to request separate rooms with appropriate technology
- Explanation of cross-examination including providing an advisor if none

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Complainant/Respondent



Notice of Written Determination

- Allegations potentially constituting sexual harassment
- Procedural steps
- Findings of fact supporting the determination
- Conclusions regarding the application of policy
- Statement of and rationale for the result of each allegation
- Sanctions and/or remedies
- Appeal procedures
- Determination becomes final after appeal decision or if no appeal is filed

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Complainant/Respondent

Notice of Appeal Submission

- Notification to both parties that an appeal has been submitted
- Give both parties a reasonable, equal opportunity to submit a written statement in support of or challenging the outcome

Notice of Appeal Decision

- Result of the appeal and the rationale for the result

Notice of No Appeal Submitted

- No appeals have been filed and decision is final

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Complainant/Respondent

Notice of Informal Resolution

- Allegations
- Requirements for informal resolution including the right to withdraw from the informal resolution process prior to agreeing to the resolution
- Any consequences
- Obtain voluntary, written consent

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Complainant/Respondent

Notice of Dismissal of Formal Complaint

- No longer falls under Title IX
- Complainant withdraws from the process
- Indicate if it is referred elsewhere

Notice of Additional Allegations

- Notification of additional allegations based on new information
- Include previous information included in notice of allegation

Notice of Temporary Delay

- Explanation as to why the case is delayed (e.g., volume of witnesses)
- Anticipated timeline

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Witness

Notice of Investigation

- Identified as a witness
- Date and location of incident, parties involved
- Date, time, and location of meeting
- Policy information
- Accommodation requests

Notice of Hearing

- Date, time, and location of hearing
- Notification that they are subject to questioning by the advisors and decisionmaker(s)

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Other Possible Notices

Case updates

No contact letters

Supportive measures

Conflict of interest

Consolidation

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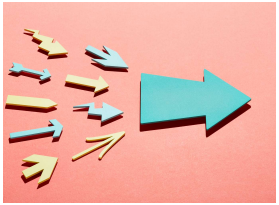
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PARTY RIGHTS

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Group Activity





- You are a party in a sexual harassment - hostile environment case. What rights do you want to have? What would it take for you to trust a process?
- Do not limit yourself to Title IX or policy requirements. Think of it through a personal lens.
- Your group will be assigned a role (Complainant or Respondent).

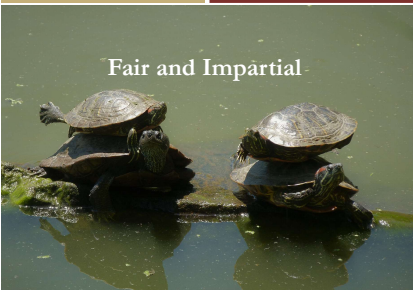
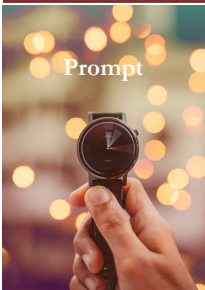
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Prompt

Fair and Impartial



Photos by Sally on Unsplash and image from Pixabay

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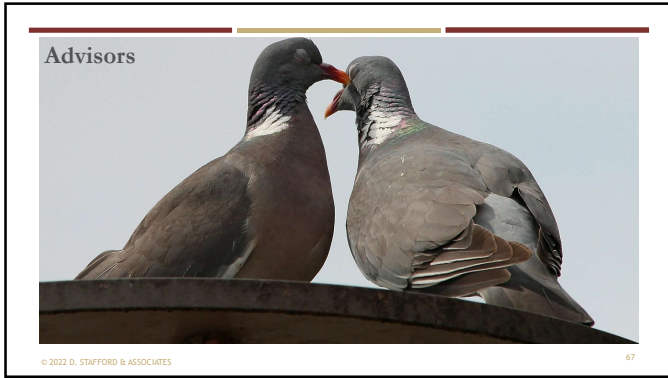


NOTICE AND RESPONSE

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Case Study: Party Rights

How and when do you communicate these rights to the complainant and respondent?

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SUPPORTIVE MEASURES

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Supportive Measures



Counseling

Extensions of deadlines or other course-related adjustments

Modifications of work or class schedules

Campus escort services

Mutual restrictions on contact between the parties

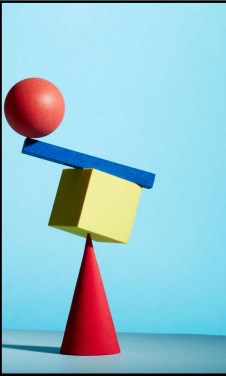
Changes in work or housing locations

Leaves of absence

Increased security and monitoring

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Case Study: Supportive Measures

The report indicates that the Complainant and Respondent live in the same residence hall and are also in one of the same classes.

- What are the potential supportive measures that are available?
- What are the potential conflicts or issues?
- How do you facilitate implementation?

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More than One Respondent





MULTIPLE
PARTY ASSAULTS



GROUP DYNAMICS

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More than One Complainant




EMPLOYEE


SERIAL RESPONDENT


GROUP VICTIMS

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One Party Against the Other Party




CROSS COMPLAINTS


INCAPACITATION


DATING/DOMESTIC
VIOLENCE

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Arising from the Same Facts or Circumstances




PATTERN OF BEHAVIOR


INTERPERSONAL
VIOLENCE


SINGLE EVENT

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Other Considerations

FORMAL COMPLAINT

INTERSECTING POLICIES

LOCATION

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Investigation Considerations

Formal Complaint

Notice to the parties

Updates to the parties

Witnesses

Advisor

Inspect and Review Evidence

Investigative Report

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Hearing Considerations

Live

Virtual

Cross-examination

Relevancy

Participation

Bias

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Case Study: Patterns

During an investigation alleging non-consensual sexual contact, a witness states that the respondent also inappropriately touched them. They provide you with additional names of people who have also been touched by the respondent.

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Case Study: Cross Claims

The complainant reports an incapacitated sexual assault—he states he was too drunk to consent but does have memories of the night. The respondent states that he was blacked out and has no memories of the night. The respondent states that they would like to file a formal complaint against the complainant.

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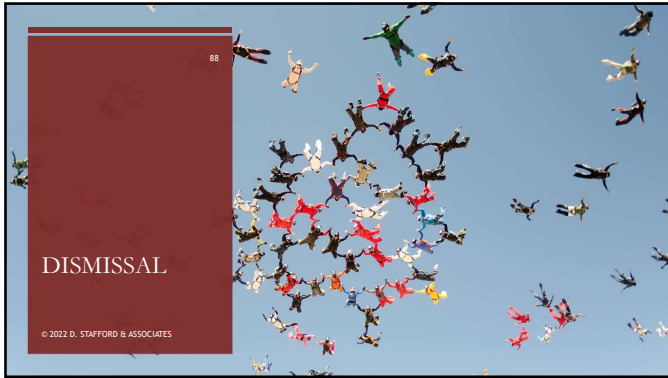
Case Study: Are They The Same?

Two students have filed formal complaints against the same respondent. One complainant alleges sexual assault. The other complainant alleges stalking and dating violence.

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Dismissal

Must

- Does not constitute sexual harassment
- Not in educational program or activity
- Not in the United States

May

- Complainant withdraws complaint
- Respondent no longer enrolled
- Prevented from gathering evidence

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Examples of Appeals Based on Dismissal

Complainant reengages in the process

Incorrect jurisdictional determinations

Dismissal due to incorrect facts

Recipient determines evidence does not meet burden of proof

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When Does Dismissal Occur?

Intake

Investigation

Hearing

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Notification of Dismissal

Written Notice

Reason(s) for Dismissal

Simultaneous to the Parties

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Appeal of Dismissal

Procedural Irregularity

New Evidence

Bias or Conflict of Interest

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Post-dismissal Steps

Supportive Measures

Separate Process

Reopen Investigation

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Case Study: Off-Campus

You are the Title IX Coordinator and receive a report involving a student who reported being sexually assaulted off-campus by multiple members of the debate team. The names of the members of the team are not included in the report.

What are your next steps?

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Case Study: Sexual Harassment?

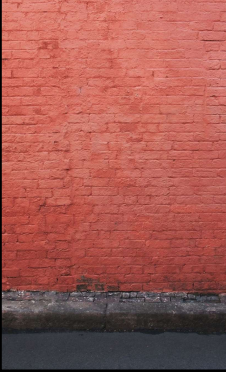
You are the Title IX Coordinator and receive a report alleging that Professor Blum is making comments of a sexual nature in class. The report contains a student's name but indicates that they do not want to file a formal complaint, they just want to "put it on your radar." This is the third report you have received about Professor Blum. You have dismissed the other two reports as they were anonymous reports.

What are your next steps?

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Case Study: Brick Wall

You are the Title IX Coordinator and receive a call from your investigators who tell you that “they have hit a brick wall” and have only been able to interview the Complainant. The Complainant does not have any memory of the night and is not sure if any sexual behaviors took place. What are your next steps?

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Informal Resolutions

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Who is Doing this?

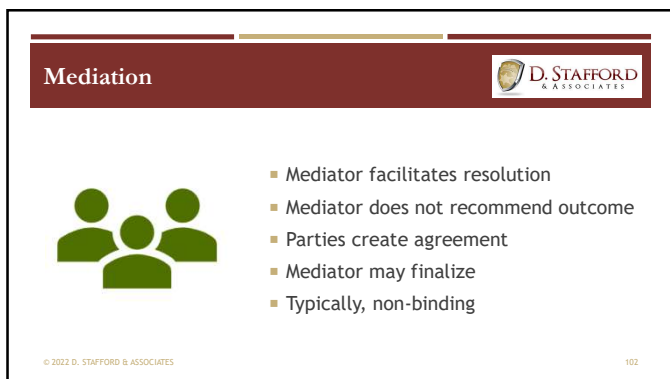
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Arbitration





- Neutral person given power to resolve dispute
- Binding or non-binding
- Collective Bargaining Agreements may provide language

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Restorative Justice





- Repair harm
- Both parties are involved in the process
- Parties work together to determine how to repair harm
- Opportunities for communication (directly and indirectly)
- Collaborative, not coercive
- Community involvement

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Restorative Justice v. Mediation



	Restorative Justice	Mediation
Focus	• Repairing harm • Making things right	• Problem-solving • Decision-making
Preparation	• Pre-conference meetings with all impacted parties	• No pre-conference meetings
Requirements	• Voluntary • Responsible party accepts responsibility for behavior	• Voluntary

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<https://www.pathways2tc.com/news/2018/10/24/the-differences-and-similarities-of-restorative-justice-and-mediation>

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Administrative Conference Agreement





- No facts in dispute
- Both parties must agree
- Acceptance of responsibility
- Sanctions

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Educational Efforts





- Permanent supportive measures
- Directive to cease behavior
- Messaging to campus community
- Events and trainings
- Referrals and collaborations

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RESTORATIVE JUSTICE

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Restorative Justice v. Restorative Practice

Umbrella terms

Multiple functions

Community building

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Where Does It Fit Into Process?

Informal Resolution

Sanction

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Infusion into Process

Current activities

Program examples

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Benefits

Harmed party/
Complainant

Responsible
party/
Respondent

Community

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Uses Outside of Higher Ed

Community

Workplace

Courts

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Restorative Conferencing/Facilitated Dialogue

- Structured and facilitated
- Harmed party/responsible party
- Parties determine steps
- Examples:
 - Apology
 - Education
 - Mentoring
 - Voluntary leave

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Restorative Circle





- Similar to Conference
- Multiple people
- Turn-taking
- Examples:
 - Groups
 - Culture

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Surrogate Participation





- Similar to conference/circle
- Complainant has a “stand-in”

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Indirect Facilitation
 (“Shuttle Diplomacy”)





- Facilitator takes lead
- Back-and-forth between parties
- Does not require face-to-face

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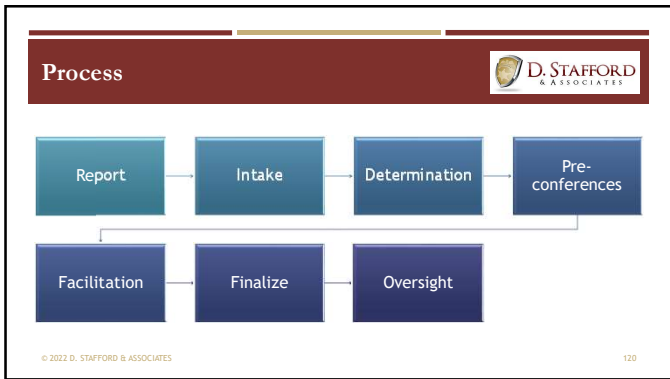
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Who is Responsible?

Student Affairs

Title IX Coordinator

Human Resources

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What is the Title IX Coordinator's Role?

Oversee

Determinations

Facilitate

Training

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Training for Facilitators

What is RJ?

Techniques

Sexual violence

Parties

Preparation

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When Is It Appropriate?

Additional complaints

Sexual harassment

Dating violence

Sexual assault

Intersecting behaviors

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Policy Considerations

Options

Goal

Voluntary

Guidelines

Timelines

Cases

Participation expectations

Binding or non-binding

Sanctions and remedies

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Policy Considerations

Records subject to subpoena

What happens if it becomes a formal resolution?

Impact of incomplete requirements

Required record keeping

Student and employee conduct files

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What If...

The parties cannot reach an agreement

The institution does not support the agreement

The complainant does not participate

The respondent did not complete necessary requirement(s)

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Case Study: Can We?

While meeting with the Complainant, she told you that she had reservations about the formal process as she did not want the Respondent to “get kicked out” and only wants him to move. Your policy does not allow for informal resolution for cases of sexual assault.

What can you do?

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Case Study: What Now?

During the informal resolution process, the Respondent admitted that she “caused the Complainant harm” but will not take responsibility for a policy violation.

- Can this be considered an agreement?
- If not, can the investigators use the information that was discovered during the informal resolution process? Why/why not?

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Case Study: Unfulfilled Requirements?

After an agreement has been signed, the Complainant contacts your office and asks if the Respondent has fulfilled all the requirements of the agreement. You check and they have not.

- How do you monitor requirements?
- What happens if they are not fulfilled?

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Investigation Stage

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What is Your Role During this Stage?



WHO SENDS NOTICE?

WHO SCHEDULES?

HOW ARE STEPS DOCUMENTED?

WHO COLLECTS INSTITUTIONAL EVIDENCE?

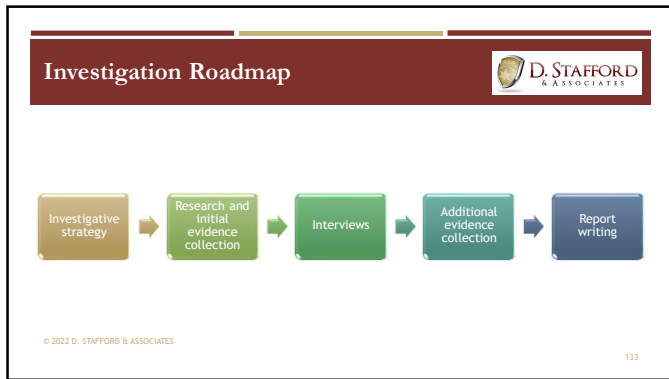
WHO SENDS EVIDENCE/REPORT?

REVIEW BEFORE DISSEMINATION

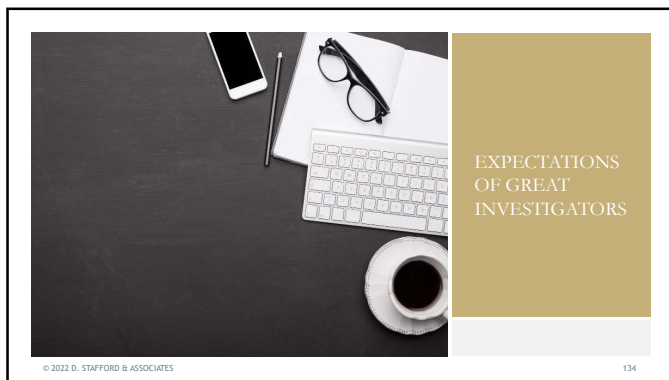
WHO DETERMINES DEADLINES?

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Investigations in the Regulations

Fact witnesses

Expert witnesses

Inculpatory evidence

Exculpatory evidence

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VIRTUAL INVESTIGATIONS

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Virtual Investigations: Helpful Notice Language

- Please be in a location with good Wi-Fi and have your camera on.
- For confidentiality purposes, please find a private location. Be sure no other persons, except for your advisor, are in the room (on or off camera) during the interview.
- As it can take a few minutes to log in, please begin the login process 10 minutes before the start time.
- If you are unable to secure a private location or you have Wi-Fi issues, please contact Dr. Roe's office and they will assist you in looking for an alternative space for the Zoom interview.
- You will join a waiting room - please be patient - the investigators will join you into the meeting when the previous interview has finished.
- If you have evidence to share, please send it in advance of the interview to droe@college.edu.

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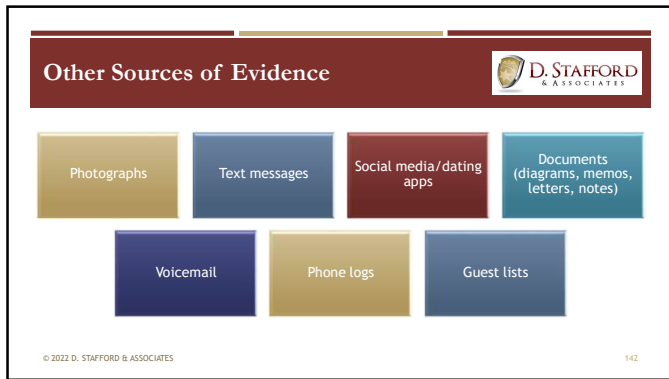
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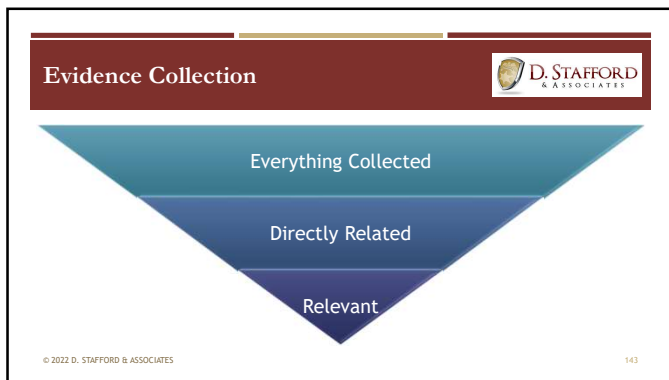
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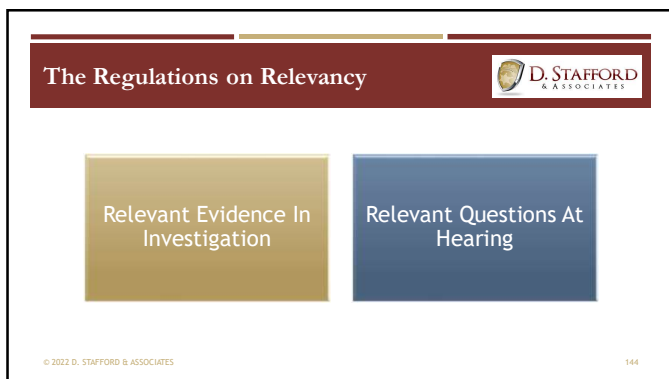
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What Does Relevancy Mean?





- Directly related to the issue and helps prove or disprove the issue
- Fact must be material to an issue in the case
- Makes something more/less true or more/less false

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Other Ways to Put It...



The evidence does not need to be conclusive

The evidence constitutes a link in the chain of proof

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

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WHAT IS NOT RELEVANT?




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Not Relevant (from the Regulations)

RELATED BUT NOT RELEVANT

Past Sexual Behavior

- Complainant's sexual predisposition/prior sex 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

ALWAYS OUT

Privileged Information

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

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REPORTS

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Major Case Documents

Pre-Investigation

Formal Complaint

Notice of Investigation

Investigation

Evidence Review

Investigative Report

Decision

Written Determination

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Evidence Review



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



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IMAGE BY JERZY GÓRECKI FROM PIXABAY
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Investigative Report



“Create an investigative report that fairly summarizes relevant evidence”

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DSA - Versions of the Report



 Preliminary Report Scope Methodology Evidence Obtained	 Final Report Scope Methodology (edited) Evidence Obtained Summary of Evidence	 Written Determination Scope Methodology (edited) Summary of Evidence (edited) Results (including rationale, sanctions, remedies)
--	---	--

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DSA Preliminary Report





- Evidence Obtained
- Scope
- Methodology

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Preliminary Report Components - Evidence

Preliminary Report

Everything Collected

Directly Related

Relevant

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Optional Components



 Scope

Alleged behavior
Alleged policy violation(s)

 Methodology

Procedural steps (Notifications, interviews,
methods used to gather evidence)

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Inspect and Review Stage

Send to party and advisor

Provide at least 10 days to review

Allow submission of written response

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

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DSA Final Investigative Report

- Scope (from Preliminary Report)
- Methodology (Edited)
- Evidence Obtained (from Preliminary Report and any additional)
- Summary of Evidence (new)

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Final Investigative Report Components - Evidence

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Inspect and Review Stage

Send to party and advisor

At least 10 days before hearing

Allow review and written response

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Case Files & Recordkeeping

Paper/Virtual

Notices

Communications

Evidence

Supportive Measures

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TITLE IX AND THE INVESTIGATOR

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A photograph of several white paper boats on a light blue surface, with one orange paper boat in the top left corner.

Case Study: One More Thing

During the course of the investigation, the investigators learn that the complainant and the respondent had been in a “on and off again” dating relationship for the past few months.

- How is the Title IX Coordinator notified? When?
- Are there additional violations as a result?
- How would this be communicated to the parties?

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A photograph of a red alarm clock with a white face and black numbers, set against a solid red background.

Case Study: You're Late!

The investigator contacts you to let you know that they need “a little more time” to conduct the interviews as they have had a family emergency and will be out for the next “few days.”

- What are your next steps?

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A photograph showing a person wearing blue gloves using a scalpel to cut green grass in a white tray. In the foreground, there are two petri dishes containing green grass. A small red box with white text is overlaid on the left side of the image.

NON-TITLE IX INVESTIGATIONS

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Other Types of Investigations

VAWA offenses not under Title IX

Other conduct based on identity

Sexual misconduct not under Title IX

Intersecting policies

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Possible Differences

Jurisdiction

Definitions

Policy

Adjudication Process

Report

Timeline

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Likely Similarities

INTERVIEWS

EVIDENCE COLLECTION

ADVISORS

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Bias/Conflict
of Interest
Check In

Title IX Coordinator

Investigator

Notice Documents

Investigation Process

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Formal Resolutions

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TITLE IX
HEARINGS
(SEXUAL
HARASSMENT)



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Your Role




Structure



Hearing preparation



The hearing

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Live Hearing




In-person



Virtual

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Record of Hearing




Audio



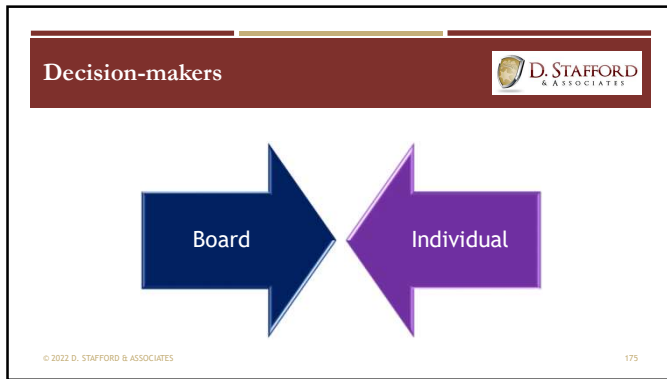
Video



Transcript

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The Chair

- Board Chair
 - Manages the agenda
 - Determines relevancy of questions
 - Coordinates decision
- Procedural Chair
 - Logistics
 - Has no role in decisions, including relevancy

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Chair-related Tasks

Recording Introductions Order of Questioning Witness Management Enforcing Rules of Decorum

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Decision-maker(s) Task

Review Report

Ask Questions

Determine Relevancy

Assess Credibility

Make the Finding

Produce the Written Determination

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HEARING PREPARATION

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Live Hearings – Institution Specific

Pre-hearing Meeting

Rules of Decorum

Hearing Script

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Pre-hearing Tasks

Attendance Confirmation

Scheduling

Action Items

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Preparing the Parties

- Hearing format
- Vetting of questions for relevancy
- Irrelevant questions (rape shield/privilege)
- Impact of attendance
- Impact of participation
- Role of advisor
- Appointed advisor
- Confirmation of witnesses

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Decision-maker Pre-work

Review report

Review allegations

Review policy

Draft relevant questions

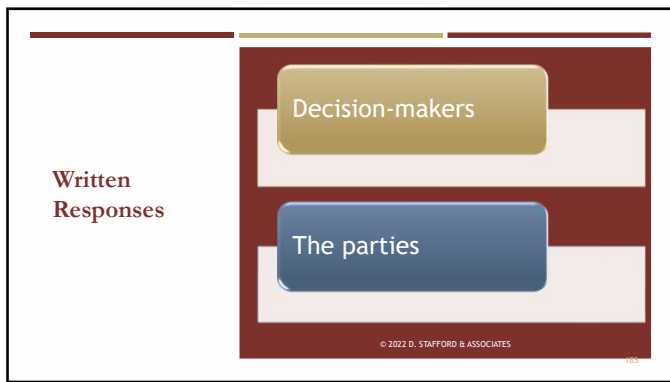
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Roles in the Hearing



- Complainant and Respondent
 - Subject to cross-examination
 - Can be questioned by the board
 - Do you allow for a verbal statement?
- Witnesses
 - Subject to cross-examination
 - Can be questioned by the board

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Other Possible Personnel in Attendance



General Counsel

- Advise on process?

Stenographer

- Only needed if not recording

Accommodation

- Interpreter or mandated support person

2nd Advisor

- Is a support person allowed? Union rep?

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Mandatory Components





Complainant Cross-Examination



Respondent Cross-Examination



Witness Cross-Examination

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Optional Components



Introductions


Reading Allegation


Review of Rights and Rules


Opening/Closing Statements


Decision-maker Questions

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Impartial Hearings



Consistent application


Ask clarifying questions


Avoid bias

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Questioning by the Advisors


Question

• By Advisor

Relevancy Determination

• By Decision-maker

Answer

• By party or witness

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Order of Questioning/Statements

Fairness

Equality

Logic

Common Sense

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Relevancy and Admissibility Determinations

Past sexual history

Privileged information

Repetitive question

New information

Not probative of material fact

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Reason for Relevancy Determination

Not a lengthy or complicated explanation

Logic and common sense

Shows neutrality

May trigger appeal ("procedural irregularity")

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“New Evidence” at the Hearing




Allow



Disallow



Stop Hearing

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Party Issues


REQUEST FOR INFORMAL

DISRUPTIVE

INAPPROPRIATE QUESTION

NOT PARTICIPATING

NO SHOW

EMOTIONAL ...

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Situational Issues




Safety



Disability



Length



Phrasing

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Decision-maker Issues (Appeal Grounds)





Procedural Error



New Evidence



Bias/Conflict

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OTHER FORMAL RESOLUTION MODELS (TITLE IX DISCRIMINATION, NON-TITLE IX)



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Alternative Processes





Administrative Conference



Administrative Hearing

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Elements of the Policy Violations

Sex Act

Relationship

Consent

Act of Violence

Conduct

Impact

Location

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Fact Considerations



Weight



Credibility

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Weight/Relevance

Character

Prior bad acts

Pre/post behavior

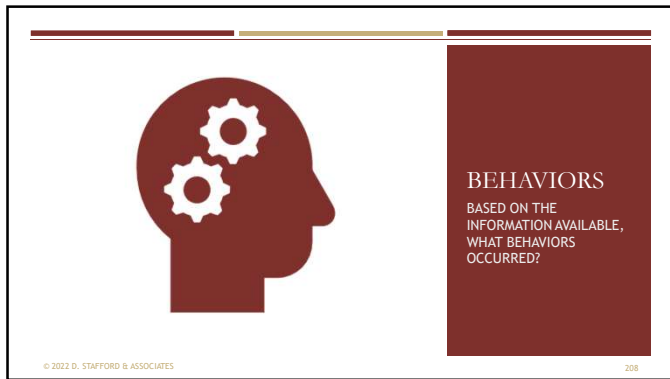
Hearsay

Opinion

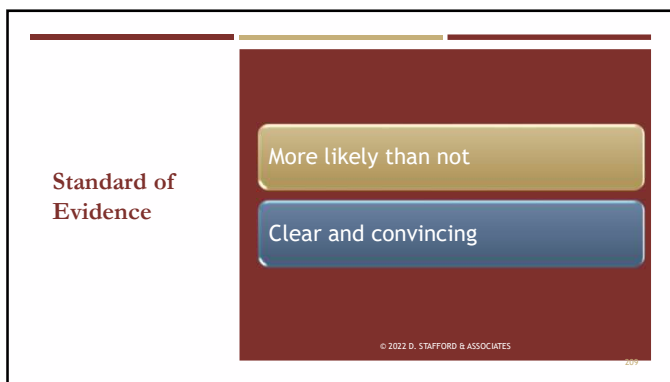
New evidence

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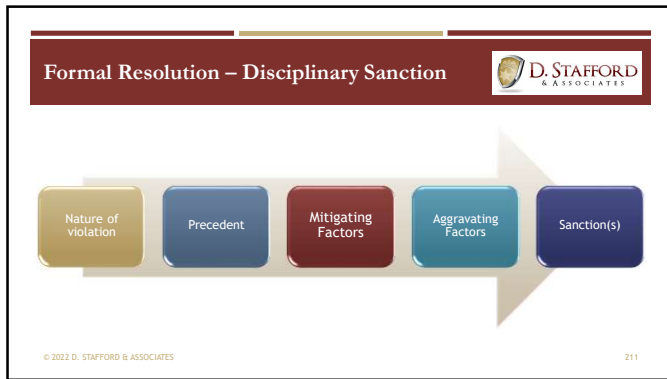
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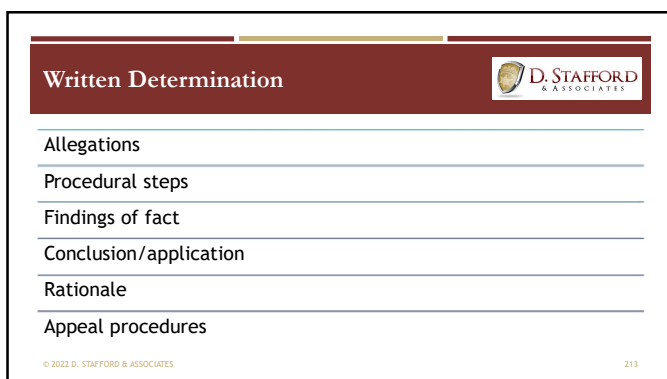
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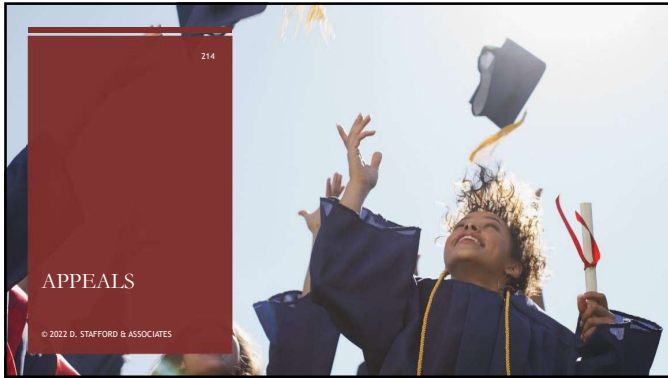
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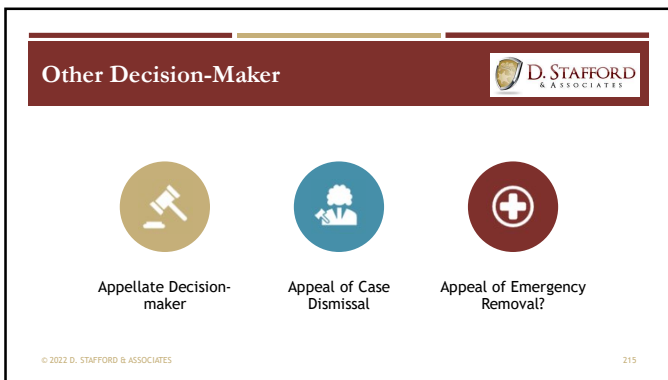
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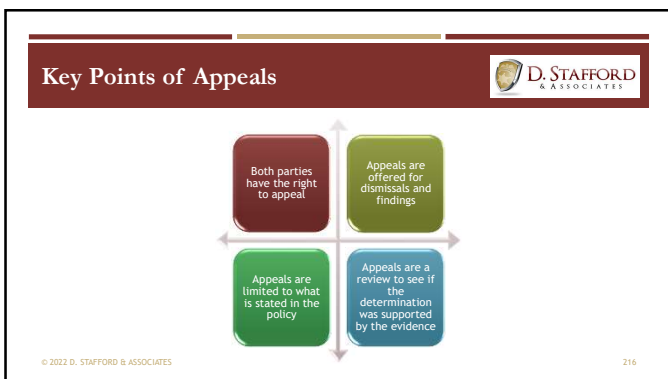
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Role of Appellate Decision-Maker




Follow the Appellate Basis



Not A Substitute of Judgement



Respect the Credibility of Previous Decision-maker

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Who is the Appeals Officer?




- Separate role
- Trained
- Conflict of interest or bias

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Appeal of Result


Either party may appeal

Both parties are notified that an appeal was submitted; parties may submit written statement

Review for sufficient grounds

Not met - Appeal is denied

Met - Appeal is granted

Follow what is stated in your process

Both parties are notified of decision

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Basis of Appeal

Procedural irregularity that affected outcome

New evidence that could affect the outcome

Conflict of interest or bias that affected the outcome

Additional Grounds are permitted (must be in policy)

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Examples of Appeals Based on Findings

- Erroneous relevancy determinations regarding evidence
- The hearing was not recorded or transcribed
- Advisors were not permitted to ask relevant questions
- The board members were biased against a party
- The written determination relied on statements from parties who did not participate
- The decision was erroneous and the board members were negligent in making their determination

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Stating the Appropriate Ground

Does it state an appropriate ground?

Who makes this determination?

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Meeting the Grounds

What information is provided?

Did it or could it "affect the outcome?"

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Appeal Determinations

Does the appeal state appropriate grounds?

Does the information in the appeal meet grounds?

What is the institution's response?

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Response to the Appeal

Denied

- No further process

Granted

- Procedural irregularity - what is the process to remedy error?
- New Evidence - does the case return to decision-maker?
- Conflict of interest or bias - what is the process to remedy error?

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Written Determination Requirements





The result



Rationale



Simultaneous notification

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Articulating the Decision



State what the appeal asserted

Explain your analysis and rationale

Describe the action to be taken

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Case Study: No Show

At the start of the hearing, you get a call from the Decision-makers that the Complainant's advisor did not show up for the hearing.

What do you do?

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Case Study: STOP right there

You are attending the hearing to assist in its facilitation - breakout rooms, calling witnesses, etc. During the hearing, the Decision-makers are not making relevancy determinations for the Respondent but are for the Complainant.

What do you do?

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Organizational Integrity and Training

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Agenda

- Organizational Integrity
- Training of Title IX Personnel

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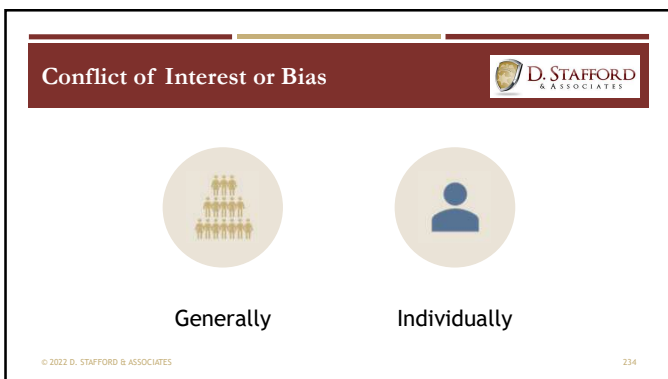
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Procedural Challenges

During Investigation/Hearing

Basis of Appeal

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Training

Prejudgment of facts

Conflict of Interest

Bias

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Avoiding Prejudgment of Facts

Open mind

Listen

Objective

Neutral

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Conflict of Interest



External

Internal

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Conflicts of Interest




Roles on campus


Past employment


Volunteering


Social media presence

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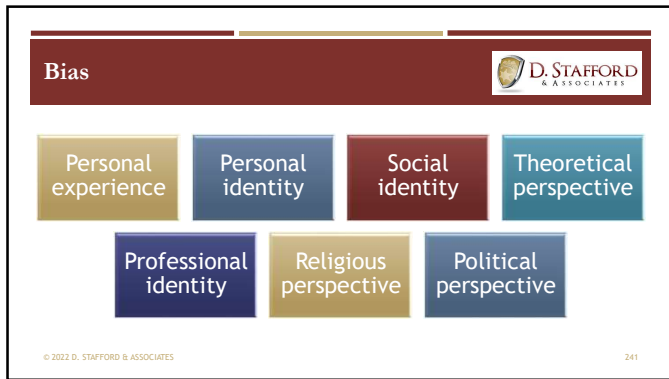
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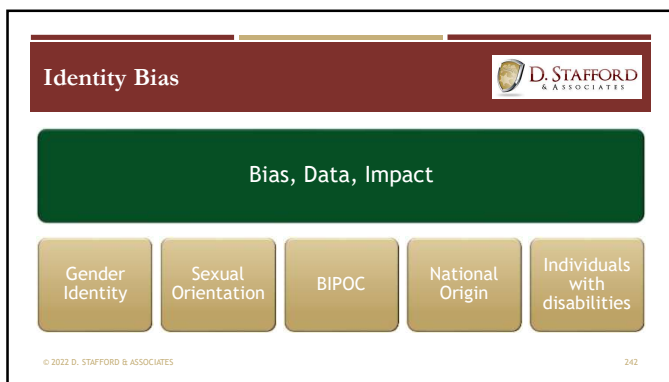


WHAT IS BIAS?

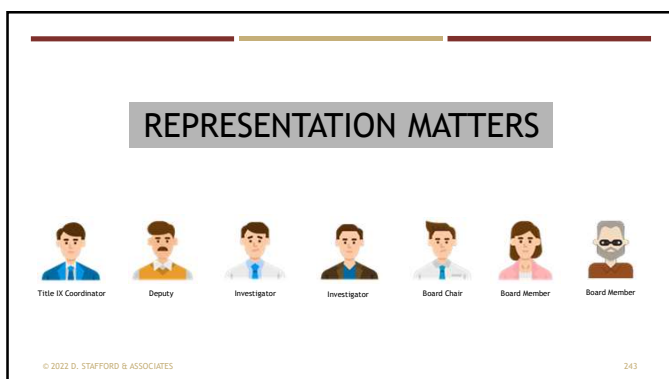
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Types of Bias

Confirmation Bias

Confirmed preconceived opinion

Availability Bias

Most important to the memory immediately recalled

Hindsight Bias

See things as more predictable than they were

Foresight Bias

Ability to predict future events

Identity Bias

More likely to believe one group over another

Personal Experience Bias

Believe similar experience (or disbelieve the dissimilar)

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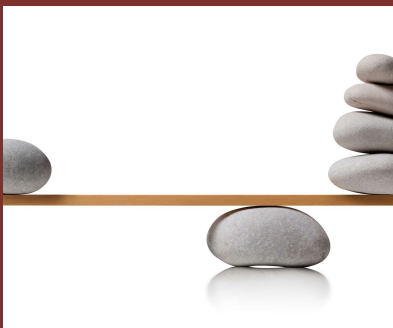
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HOW DO YOU SCREEN FOR BIAS?



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ORGANIZATIONAL INTEGRITY



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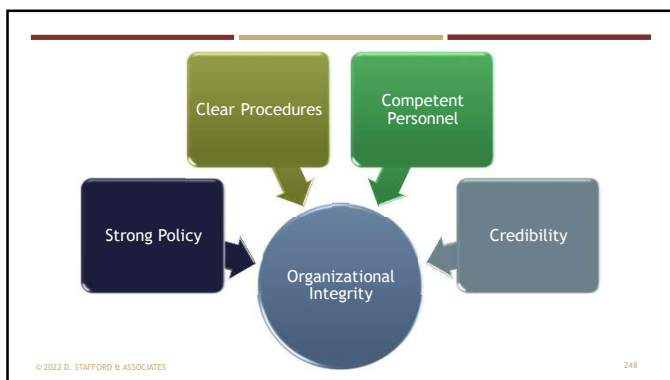
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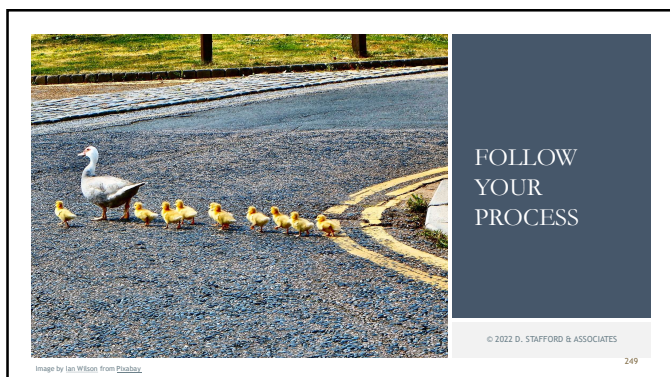
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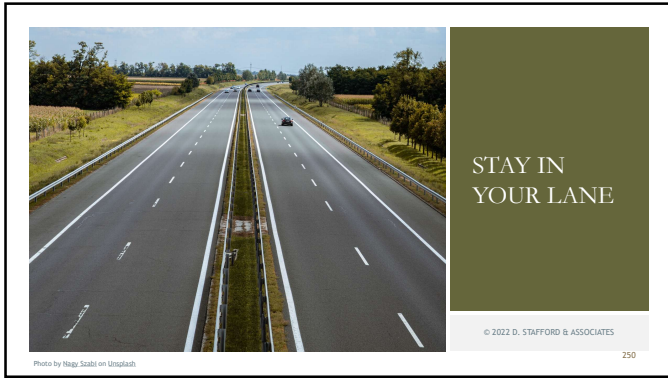
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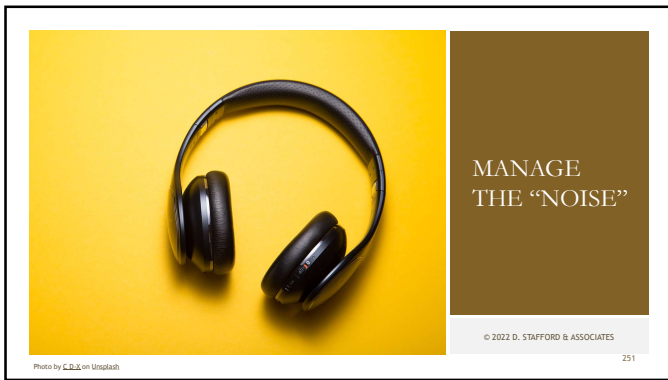
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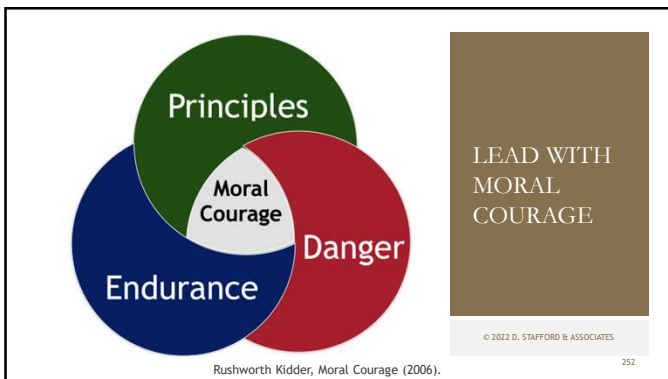
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Final Note

1

Run a fair, thorough, and impartial process

2

Let your morale compass guide you

3

Do what your policy says you will do

4

Do what the regulations tell you to do

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TRAINING OF
TITLE IX
PERSONNEL

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Adjudicator Training - Clery Act

Annual

Clery offenses

Investigation and hearing process

Safety and accountability

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Title IX Personnel Training

Title IX Coordinators

Investigators

Decision-makers

Informal Resolution Facilitators

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Training for All Title IX Personnel

Definition of sexual harassment

Scope of education program/activity

Conduct grievance process

Serve impartially

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Additional Training - Investigators

Relevance

Investigative Report

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Additional Training - Decision-makers





Technology



Relevancy

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Advisors





NO REQUIREMENT



SHOULD YOU

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Training Materials





Can't rely on sex stereotypes



Address implicit and unconscious bias

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