



D. STAFFORD
& ASSOCIATES

Title IX Training

(Custom Class-Stonehill College)

Presented by:

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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.



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.



Stonehill College
Title IX Training
October 20-21, 2022
 Presented by Adrienne Meador Murray

1




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Course Overall Agenda

- Campus Police and Title IX Team
 - Overview of the Law
 - Intersection with Clery Act
 - Major Considerations
- Campus Police, Professional Staff from Student Affairs, and Title IX Team
 - Bias and Conflict of Interest
 - Sexual Harassment on Campus
 - Scope and Responding to Disclosures
 - Quid Pro Quo
 - Hostile Environment -
 - The VAWA Offenses
- Title IX Team (Exclusively)
 - The Hearing Process
 - Preparing for the Hearing
 - The Hearing Script
 - Role of Advisors
 - Questioning and Credibility
 - Relevancy Determinations
 - Factors in Deciding a Complaint

2

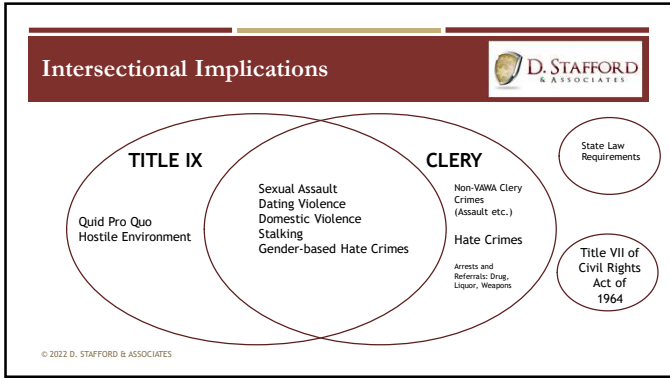


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“Sexual Misconduct”

- Fondling
- Dating Violence
- Rape
- Statutory Rape
- Domestic Violence
- Stalking
- Incest
- Sexual Harassment

3



4



5

- ### Key Requirements of the Clery Act
- Collect, Classify, and Count Crime Reports/Statistics
 - Public Disclosures
 - Publish Annual Security Report
 - Submit Crime Statistics to the Department
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6

Key Requirements (cont.)



- 📄 Provide Educational Programs and Campaigns on Dating/Domestic Violence, Sexual Assault, & Stalking
- 📄 Have Procedures for Institutional Disciplinary Action for DV/DV/SA/S
- 👮 If you have a campus police or security department: Publish Daily Crime Log
- 🏠 If you have residential facilities: Fire Log, Fire Safety Report, Missing Persons Procedures

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Clery Act--Three Part Test






1. Was the crime reported to a Campus Security Authority?
2. Is the crime a Clery Act crime?
3. Did the crime occur on or within the institution's reportable Clery geography?



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Clery Act: Employee Reporting Considerations



- Campus police department
- Those responsible for security
- individuals to whom crimes should be reported
- "officials with significant responsibility for student and campus activities"
- Local law enforcement

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9


Clery Reportable Crime Categories 

- Murder/Non-negligent Manslaughter*
- Negligent Manslaughter*
- Sex Assault*
 - Rape
 - Fondling
 - Incest
 - Statutory Rape)
- Robbery*
- Aggravated Assault*
- Burglary*
- Motor Vehicle Theft*
- Arson*

- Arrests and Disciplinary Referrals for:
 - Liquor
 - Drugs
 - Weapons
- Domestic Violence
- Dating Violence
- Stalking
- Hate Crimes for *, plus
 - Larceny-Theft
 - Simple Assault
 - Intimidation
 - Destruction/Damage/Vandalism of Property

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10


Title IX 

Title IX of the Education Amendment of 1972

"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 educational program or activity receiving federal financial assistance."

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11

Title IX Regs Give Flexibility for Employee Reporting 

- Title IX Coordinator
- Officials with Authority to Institute Corrective Measures on Behalf of the Recipient
- *Other Employees as Designated by the Institution (pulls in any requirements of MA State law)

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12

**2020 Title IX Regulations
(Discrimination on the Basis of Sex)**



The goal of the Title IX Regulation is to require Title IV funded institutions to "promptly respond to individuals who are alleged to be victims of sexual harassment by offering supportive measures; follow a fair grievance process to resolve sexual harassment allegations when a complainant requests an investigation, or a Title IX Coordinator decides on the recipient's behalf that an investigation is necessary; and provide remedies to victims of sexual harassment." (Summary of the Major Provisions of This Regulatory Action, Federal Register)



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13

Major Provisions Under Federal Regulations





- Jurisdiction
- Definitions
- Responsible employees
- Duty to respond
- Report vs signed formal complaints
- Role of advisor of choice
- Supportive measures
- Separation of duties
- Live hearings
- Notice requirements

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14

Title IX Case Flowchart




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graph TD
    A[Title IX Coordinator Informed Actual Knowledge] --> B[Outreach and Supportive Measures]
    A --> C[Complainant Decision]
    C --> D[Formal Complaint Signed]
    C --> E[No Formal Complaint]
    D --> F[Informal Process]
    D --> G[Investigation-Hearing-Appeal]
    E --> H[Case closed except for supportive measures]
    E --> I[Title IX Coordinator may sign complaint]
  
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15

“Report” versus “Signed Formal Complaint” 


What is the difference between a report and a signed formal complaint?

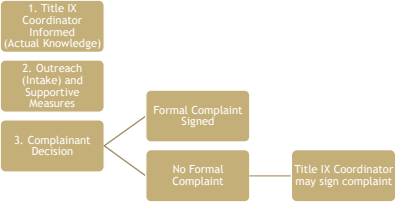


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16

Title IX Case Flowchart 



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17

Supportive Measures 



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- Change in class
- Change in housing
- Increased security
- Dual no contact directives
- Academic accommodations
- Withdrawal without penalty
- Modified activities or campus access (as long as not punitive to respondent)

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18

Written Explanation of Student or Employee's Rights-Clery Act Requirement



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

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Written Explanation of Rights and Options



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- 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

20


Written Explanation of Rights and Options




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- 3. Notification of the victim's option to**
 - Notify proper law enforcement authorities, including on-campus and local police;
 - Be assisted by campus authorities in notifying law enforcement authorities if the victim so chooses; and
 - Decline to notify such authorities
- 4. The rights of victims and the institution's responsibilities for**
 - Orders of protection;
 - "No contact" orders;
 - Restraining orders; or
 - Similar lawful orders issued by a criminal, civil, tribal, or institutional

21

Written Explanation of Rights and Options 



5. To students AND employees about existing:


- Counseling
- Health
- Mental Health
- Victim Advocacy
- Legal Assistance
- Visa and Immigration Assistance
- Student Financial Aid
- Other services available for victims


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

- Academic, Living, Transportation, Working

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Written Explanation of Rights and Options 



7. Confidentiality


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


8. Disciplinary Procedures

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

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Determining Jurisdiction to Proceed 



1. Offense Meets Definition

2. Jurisdiction of Persons

3. Jurisdiction of Program of Activity

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1. Definition of Offense-Sexual Harassment under Title IX



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).

25

2-3. Definition of Persons and Programs/Activities



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Employees must have same process




- Not just for students anymore
- Expectation that recipients handle any formal complaint that occurs through education program or activity in the United States through the Title IX compliant grievance process


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Dismissal of Formal Complaints 



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



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



Notification and appeal

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Dismissed-You Cannot Policy Shop 

- If dismissed because the complainant doesn't want to proceed, it is STILL a Title IX complaint and cannot be remanded to a different policy or procedure.
- If dismissed because it did not rise to the level of a sexual harassment as defined by Title IX, the complaint may be referred to another policy/procedure.
 - Student Conduct
 - HR-Title VII
 - Other school specific?





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Determine Emergency Removal 

 Individualized safety and risk analysis


 Immediate threat to physical harm

 Notice and opportunity to challenge

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Proceeding with “Multiples”- Consolidation of Complaints



Multiple Respondents


More than one complaint against one or more respondents

One party against another party

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31

Title IX Case Flowchart



Formal Complaint Signed

Title IX Coordinator may sign complaint


Informal Process

Investigation>Hearing>Appeal


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Informal Resolution



1. School must determine that informal resolution is the appropriate means to resolve
2. Both parties must agree
3. Cannot resolve employee on student complaints in this way (must go formal)
4. Either party can stop at any time prior to written agreement
5. Parties who have proceeded to formal process can change their minds and shift back to informal any time prior to conclusion of hearing



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Notice Requirements 

- Grievance process
- Sufficient details and sufficient time to prepare
- Identities of the parties, alleged conduct
- Date and location of incident
- Presumed not responsible
- Advisor of choice
- False statements
- Updates as needed
- Other: Accommodations, Retaliation, Police too!

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34


Investigations and Evidence Gathering 



- Burden of proof
- Witnesses and facts
- "Gag orders"
- Advisor
- Notice
- Inspect evidence
- Investigative report

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35


Evidentiary Standard 

<p>Clear and Convincing</p> <ul style="list-style-type: none"> Substantially more likely than not to have occurred High probability that a particular fact is true Higher than preponderance, but not as high as "beyond a reasonable doubt" 	<p>Preponderance of the Evidence</p> <ul style="list-style-type: none"> More likely than not 50% and a feather
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36

Hearings 



Live hearing



Cross-examination

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Live Hearing 

- Required element for all post-secondary grievance procedures
- “Single investigator” prohibited (for now)
- In person or virtual
- Must be recorded or transcribed, with recording or transcript available to parties for inspection and review

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Cross-Examination 


Advisor

Relevancy


Participation

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Decision-Maker's Written Determination 

- Decision-maker(s) must issue written determination that
 - Identifies allegations
 - Describes procedural steps
 - Includes findings of fact
 - Includes conclusions applying facts to code of conduct
 - Includes rationale for conclusion regarding each allegation
 - Describes appeal procedures



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40

Appeals 

MUST have

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


Additional grounds permitted


Appeal decision-maker must have had no other role

Must be done in a reasonably prompt time frame

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41

Trauma 




- How do we respond in a trauma informed way to reports of DVDVSAS?
 - What is trauma?
 - How does trauma impact victim recollection?
 - How do we respond in a trauma-informed way to victims of DVDVSAS?


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Other Considerations...



- Privacy versus Confidentiality;
- “Anonymous” reports;
- Retaliation;
- Delays;
- Disability and accommodations;
- Training; and
- State law implications




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**Concurrent Investigations:
Common Questions**



- When a student reports to campus police AND Title IX, what are some common considerations?
 - Police as REs
 - Title IX Coordinators as CSAs
 - Information sharing Police towards Title IX-ok; Title IX to Police-prohibited
 - Police as “expert witnesses” in Title IX live hearing
 - Pausing Title IX for Police
 - Withdrawal / Noncooperation-Title IX/Police
 - Ensuring VAWA Written Explanation of Rights and Options
 - TWN/EN Considerations




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44

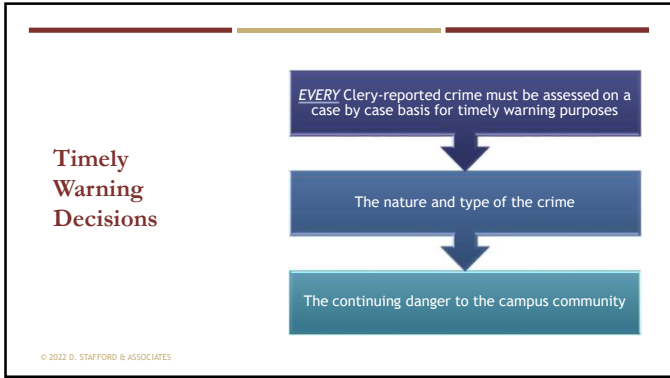
Timely Warning/Emergency Notification



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

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45



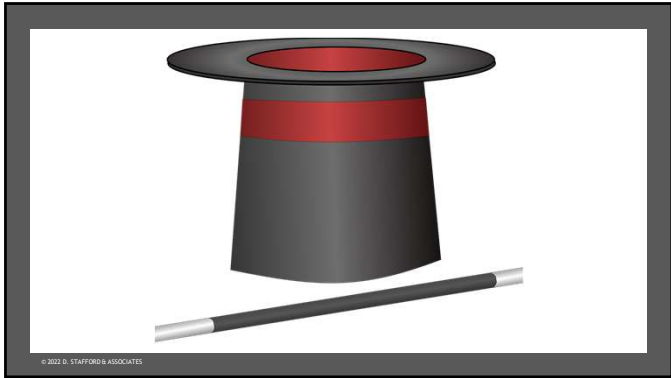
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47



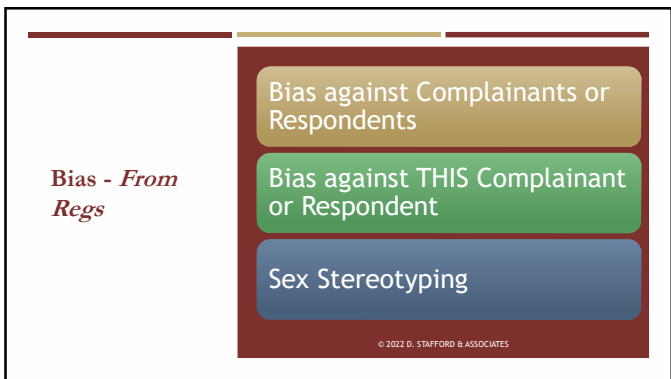
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49




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51


Bias 

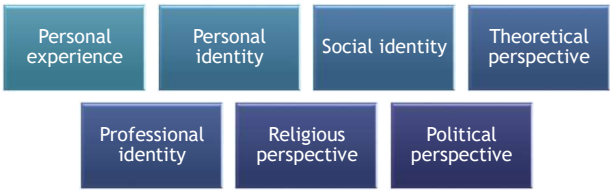


Parties Race Gender Gender identity Sexual orientation Nationality

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52

Bias 




Personal experience Personal identity Social identity Theoretical perspective
Professional identity Religious perspective Political perspective

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53

REPRESENTATION MATTERS



Title IX Coordinator Deputy Investigator Investigator Board Chair Board Member Board Member

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Conflicts of Interest





Roles on campus



Past employment



Volunteering



Interactions with parties

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How to address





Training



Acknowledgements



Party-identified Conflict



Decision-maker-identified Conflict

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56

SI.14 Sexual and Gender-Based Misconduct and Interpersonal Violence
 Effective Date: January 25, 2022
 Review Date: January 25, 2022

Stonhill College (the "College") is committed to maintaining a respectful, professional, and nondiscriminatory academic, living, and working environment that emphasizes the dignity and worth of all students, faculty, staff, and visitors. This includes having an environment free from sexual and gender-based harassment, sexual assault, interpersonal violence, dating violence, stalking, sexual exploitation, complicity, and retaliation. The College prohibits such conduct and will take prompt and equitable action to eliminate it, prevent its recurrence, and remedy its effects. Students or employees found responsible for violating this Policy will face sanctions, up to and including dismissal from the College. The Office of the Dean of Students and the Office of Human Resources jointly maintain and publish online a list of the range of possible sanctions for violations of this Policy that apply to students and employees.

The Office of the Associate Vice President for Student Affairs/Dean of Students and the Office of Human Resources shall jointly promulgate procedures (the Procedures) to further the College's commitment to oppose sexual and gender-based misconduct and interpersonal violence.

The Procedures shall include processes and guidelines that address the following:

Acts that are prohibited by this Policy and the Procedures are also prohibited by law and can therefore also be addressed by Campus Police or off campus law enforcement. The Procedures will address the options and resources available to any individual who may wish to initiate a criminal action through off campus law enforcement.

The Procedures shall comply with Title IX of the Higher Education Amendment of 1972 ("Title IX"), including its implementing regulations at 34 CFR 106, and the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act ("Clery Act") as amended by the Reauthorization of the Violence Against Women Act of 2013 ("VAWA"), which are collectively referred to as "the Laws."

Safety and Wellness Resources

On Campus

Campus Police
 Boston Campus Dispatch, C.I.C. Campus Police 508-552-5555/5555x4400

Health Services
 Health Services
 Physical Health Services and Occupational Health

Off Campus

Justice Police Department
 45 Columbia Street 508-255-2500 (or 508-255-2500 ext. 4444)

Norfolk Healthcare Network Hospital Emergency Department
 440 Centre Street 508-943-1000 24/7
 124-124 Norfolk Medical Center (Norfolk Community Services Center)


Marion Hospital Emergency Department
 88 Washington Street, Taunton 508-849-3900 24/7
 124-124 Norfolk Medical Center (Norfolk Community Services Center)

After hours care should be directed to Significant Healthcare Referral Hospital

Policy and Procedural Considerations

57

Title IX Personnel – Title IX Coordinator




- Accepts reports, determines jurisdiction, and if Title IX, offers supportive measures to Complainant and explains process, including the option to file a Formal Complaint
- Accepts or signs Formal Complaints
- Coordinates each investigation and offers supportive measures to the Respondent
- Drafts all Title IX related notice documents
- Assigns Investigators for each investigation, if applicable
- Assigns the advisor of the institution's choice for the live hearing if a party does not have one
- Oversees the live hearing procedures, but does not make any decisions regarding the outcome of the allegations

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58

Title IX Personnel – Decision-maker




- Emergency Removal/Administrative Leave decision maker, hearing bodies, and appeal officers (both for emergency removal and administrative) are all considered "decision-makers"
- Decision-makers can only serve one role within a case
- Emergency Removal/Administrative Leave
 - Makes the determination if a removal or leave is necessary
- Hearing
 - Reviews the investigation report and evidence
 - Manages the hearing (Asks questions of the parties and manages cross-examination by the advisors, including determining relevancy of questions)
 - Issues notice of findings including allegations, procedural steps, findings of fact, conclusion/application, rationale for each allegation (determination, sanctions, remedies), appeal procedures
- Appeal
 - Hears the appeal of a removal or leave (it cannot be the same person who initiated the removal/leave)
 - Hears the appeal of the hearing (it should not be the same person who heard the removal/leave appeal)

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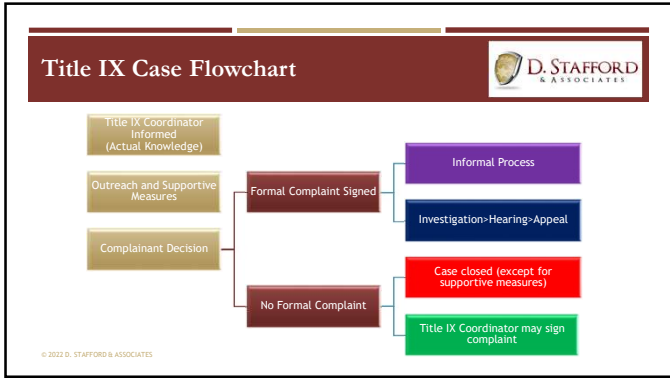
Title IX Personnel – Investigators and Advisors



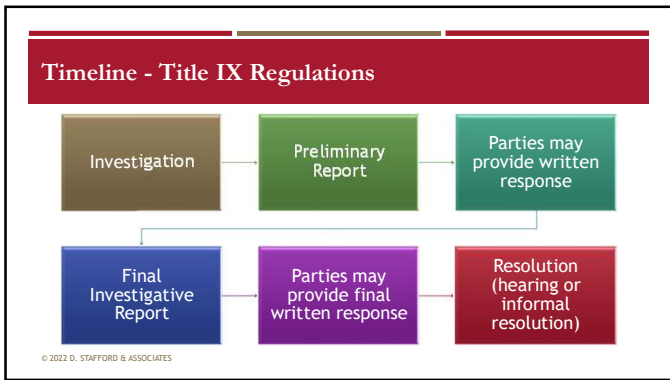
- **Investigators**
 - Interviews both parties and witnesses
 - Gathers evidence
 - Write the preliminary and final investigative reports
- **Advisors**
 - Chosen by the party; can have throughout the process but not required until live hearing
 - Receives evidence and investigation report
 - Conduct cross-examination at the hearing
 - If a party does not have an advisor at the live hearing, the institution must provide one (of the institution's choice)

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61



62

Definition of Sexual Harassment

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

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

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Definitions: Parties/Witnesses



Complainant

Respondent

Witnesses

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Definitions: Title IX Personnel



Title IX Coordinator

Investigator


Decision-Maker

Informal Resolution Facilitator


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Sexual Harassment-Jurisdiction




Our student and/or employee (must be participating in the institution's educational program)



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



Substantial control over the Respondent



In the United States

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Formal Complaint



Signed formal complaint



Complainant
or
Title IX Coordinator

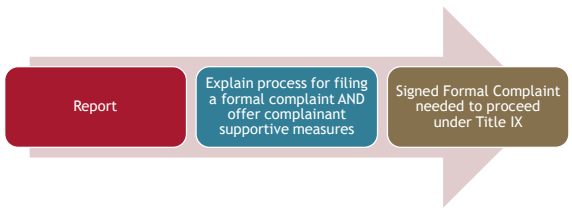


Complainant **MUST** be participating at the time of filing

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Required by Title IX



```

graph LR
    A[Report] --> B[Explain process for filing a formal complaint AND offer complainant supportive measures]
    B --> C[Signed Formal Complaint needed to proceed under Title IX]
    
```

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Notice Requirements

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

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Investigations and Evidence Gathering



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

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Advisors

Investigation

- May accompany party to investigation meetings
- Receives preliminary and investigative reports
- Who fills this role?

Hearing

- Institutions must provide an advisor if a party does not have one at hearing
- Conducts cross examination of witnesses and opposing party
- Who fills this role?

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Hearings



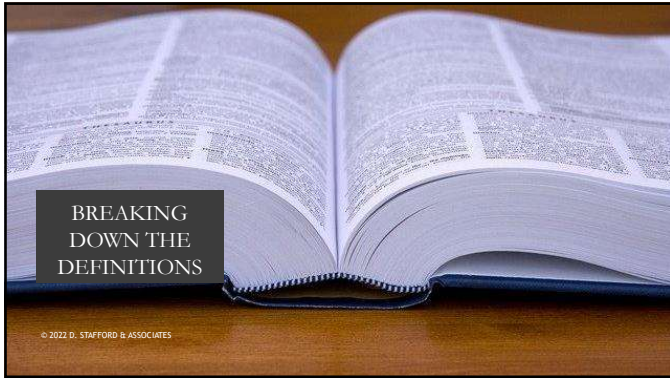
Live hearing




Cross-examination



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Understanding the Elements 

 Elements Actions Conditions	 Additional info Clarifiers Exceptions
---	--


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Roles in the Process

Investigator

- Evidence for each element
- Evidence of any exceptions



Decision-maker

- Weigh the evidence provided
- "Reasonable person" standard

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The "Elements"

What specific evidence would indicate the behavior?

What evidence have we been presented with?

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QUID PRO QUO

QUID PRO QUO

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This for that.

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PRONG 1: Quid Pro Quo

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


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PRONG 1: Quid Pro Quo 




Sex or gender-based



Employee




CONDITIONING
aid, benefit, or
service



UNWELCOME
conduct (or
threat of
conduct)

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PRONG 1: Quid Pro Quo 

- **What was the aid, benefit, or service?**
 - **Education:** admission, grades, awards, housing, access, membership, resources, support
 - **Employment:** hiring/firing, salary, benefits, promotions, location, privileges
 - **Other:** participation, movement, personnel/education records, reputation, access, status
- **How was it conditioned/communicated?**
 - Implied, stated, written


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Quid Pro Quo: Respondents



Supervisors, Coaches, Faculty
(Title IX)



Volunteers/Non-employees
(Non-Title IX)



Students
(Non-Title IX)

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PRONG 1: Quid Pro Quo



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

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**PRONG 2: Hostile Environment+
(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

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Hostile Environment+ 



Sex
Gender-based



Unwelcome




Conduct
Severe
Pervasive
Objectively offensive



Impact on education (or employment)

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Hostile Environment+ 

ON THE BASIS OF SEX

- Physical touching
- Comments of a gender or sexual nature
- Motivated by complainant's gender or sexuality
- Sex stereotyping
- Pregnancy, childbirth, related medical conditions
- Gender-based harassment
- Gender Identity, Gender Expression, Sexual Orientation

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Hostile Environment+ 

UNWELCOME

- Unpack "consent" definition
- Behaviors that by their nature are "unwelcome"
- What was communicated between parties?
- Coercion, threats, intimidation
- Who initiated?
- Did the complainant participate?

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Hostile Environment+



SEVERE

- Characteristics of complainant and respondent
- Witnesses, public nature
- Direct vs. second-hand
- Degrading, crude
- Threats
- Physical actions, touching

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Hostile Environment+



PERVASIVE

- Number of incidents (dates, times)
- Number of witnesses, recipients, participants
- Different types of behaviors

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Hostile Environment+



OBJECTIVELY OFFENSIVE/REASONABLE PERSON

- *“Turns on both subjectivity (i.e., whether the conduct is unwelcome, according to the complainant) and objectivity (i.e., ‘objectively offensive’)”*
- *“Whether, standing in the shoes of the complainant, the conduct would be offensive”*
- The investigator conducts the subjective analysis while the decision-maker conducts the objective analysis

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Hostile Environment+



EFFECTIVELY DENIES ... EQUAL ACCESS ... EDUCATION PROGRAM

- *“Does not require that a complainant has already suffered loss of education before being able to report”*
- Harassment *“so undermines and detracts from the victim’s educational experience”* that it effectively denies...
- Does not require certain manifestations of trauma
- Can’t turn away a complainant who is *“high-functioning,” “not showing particular symptoms,”* or *“not traumatized enough”*
- No requirement for *“tangible adverse action or psychological harm”*

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Hostile Environment+




EFFECTIVELY DENIES


- Skipping class to avoid a harasser
- A decline in a student’s grade point average
- Difficulty concentrating in class
- Dropped out of school
- Failed a class
- Had a panic attack
- Reached a “breaking point”


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Sexual Harassment+: Definition Considerations

 Definition vs. Interpretation

 First Amendment issues

 “Below the line” unwelcome conduct

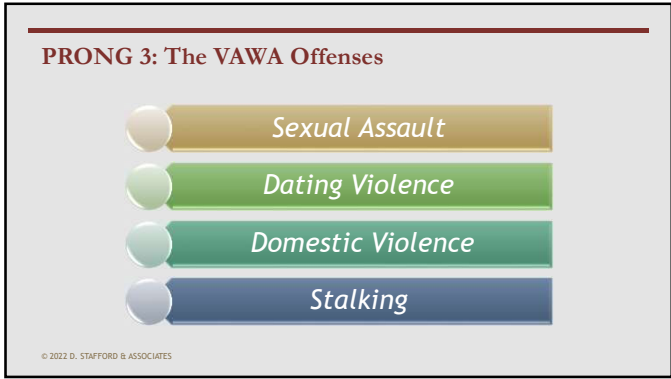
 No intent requirement

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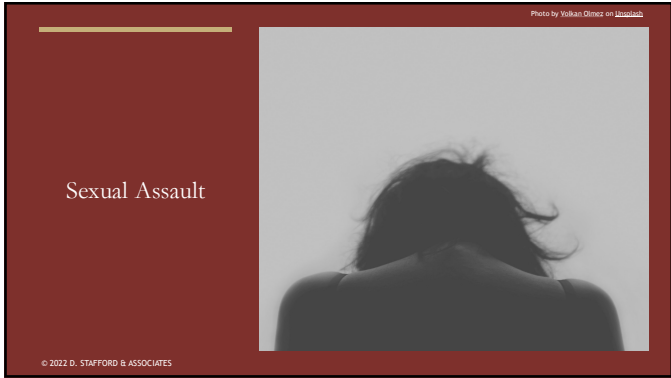
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94



95



96

Definition -
RAPE

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

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Definition -
FONDLING

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

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Definition -
INCEST

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

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**Definition -
STATUTORY
RAPE**

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

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CONSENT

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Consent

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

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Consent cannot be given due to...

Force

Incapacitation

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Force

Physical Coercion Intimidation Threat

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Physical Force

Holding down Forced to touch Level of violence


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Intimidation



Physical



Verbal

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Threats



Physical harm

Reputational harm

Veiled threats

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Incapacitation

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.

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Incapacitation Causes 


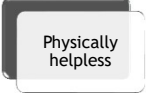
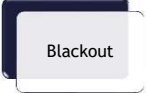
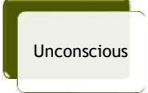
   

Alcohol Drugs Disability Other

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Incapacitation Results 


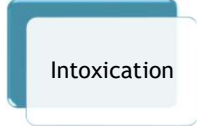
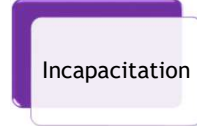
   

Lack understanding Physically helpless Blackout Unconscious

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Levels of Consumption 

Impairment Intoxication Incapacitation

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Impairment

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

Question: Is it a violation of policy if two IMPAIRED people have sexual intercourse?

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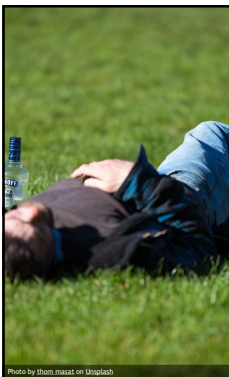
Intoxication

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

Question: Is it a violation of policy if two INTOXICATED people have sexual intercourse?

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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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Two-Step Determination

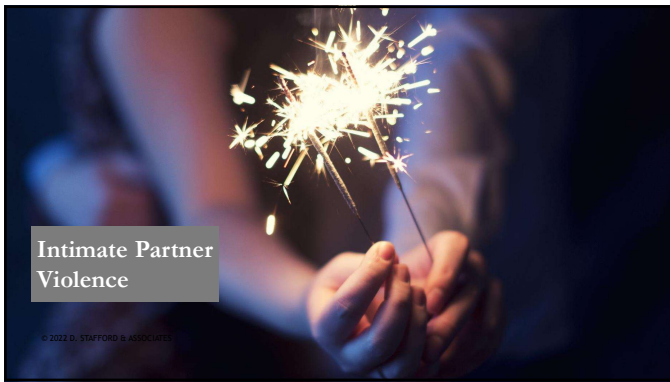


Was the complainant incapacitated?

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

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Intimate Partner Violence

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Dating Violence

- Violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim.
 - The existence of such a relationship shall be based on the reporting party's statement and with consideration of the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship.
 - For the purposes of this definition -
 - Dating violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse.
 - Dating violence does not include acts covered under the definition of domestic violence.

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Domestic Violence

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

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Important Considerations



Unique



Cycle of violence



Power and control

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Interview Considerations



Lack of cooperation

Fear/Intimidation

Cross-claims

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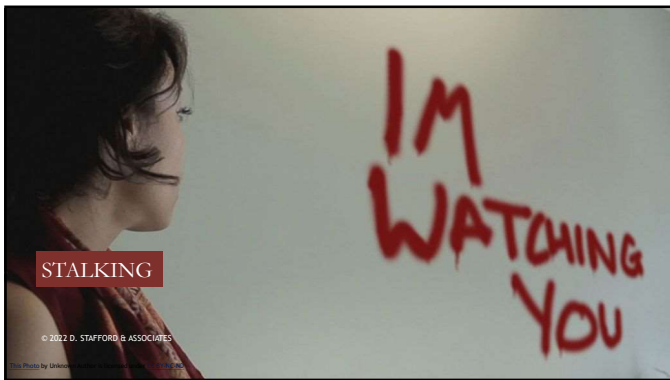
120

Primary Aggressor 


Past behaviors?	Self Defense?	Who is afraid?	Body language of each?
Witnesses?	What does the scene look like?	Excited utterances?	What are the extent of the injuries?

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PRONG 3: Stalking 

Stalking is defined as engaging in a <u>course of conduct</u> directed at a <u>specific person</u> that would cause a reasonable person to -	• <u>Fear</u> for the person's safety or the safety of others; or	• Suffer <u>substantial emotional distress</u>
--	---	--

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Course of Conduct

“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.”

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Breaking Down the Definition



Acts of stalking behavior

Directed at a specific person

Two or more acts

Fear or emotional distress

Reasonable person

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SUBSTANTIAL EMOTIONAL DISTRESS

- Difficulty eating or sleeping
- Anxiety or nervousness
- Nightmares
- Drug or alcohol use
- Headaches/illness
- School/work impacted
- Irritability, anger, shock, or confusion
- Fear response/hypervigilance
- Changing routines
- Depression

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STALKING - SPECIAL CONSIDERATIONS

Stalking

and Intimate Partner Violence

Stalking

and disability considerations

Stalking

under Title IX

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LIVE HEARINGS

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Live Hearings

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

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Advisors





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

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Cross Examination





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

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Relevancy



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

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Relevancy 

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

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Participation 



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

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Formal Resolution – Making a Finding 

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

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Determination Regarding Responsibility 

Allegations

Procedural steps

Findings of fact

Conclusion/application

Rationale

Appeal procedures

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Recordkeeping (Seven Years) 

Case Materials Training materials

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OUR HEARING SCRIPT



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139
