



D. STAFFORD
& ASSOCIATES

Title IX Investigator and Decision Maker Training

(Aurora University-Custom Class)

Presented by:

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Aurora University Investigation and Decision-Maker Training Overview of Course Schedule

Module 1 Overview of the Laws

- Title IX
- The Clery Act
- Title VII

Module 2 AU Policies

- Overview/Review

Module 3 Sexual Harassment (AU Policies are mixed in)

- Sexual Harassment on Campus
- Quid Pro Quo
- Hostile Environment+
- The VAWA Offenses
- Consent

Module 4 Conflict of Interest and Bias, Trauma Informed, Myths

- Conflict of Interest and Bias
- Trauma Informed
- Myths and Stereotypes

Module 5 Investigations

- Investigation Stage
- Interview Basics
- Credibility
- Evidence and Relevancy
- Non-Title IX Investigations
- Reports

Module 6 Decision-Makers

- Hearing Preparation
- The Hearing
- Making a finding
- Appeals
- Informal Resolution



TITLE IX

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ISSUANCE OF CERTIFICATES FOR COMPLETION OF DSA/NACCOP CLASSES

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

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

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

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

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



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



Beth Devonshire, J.D. is an experienced student affairs professional with expertise in student conduct, Title IX, threat assessment teams, policy development, trainings for various constituencies, and the impact legislative and legal decisions have on higher education. From 2006-2018, Ms. Devonshire worked as the Associate Dean of Students at UMass Boston, the Director of Community Standards at Bridgewater State University, and the Director of Community Standards at Stonehill College. In these roles, Ms. Devonshire was charged with oversight of the student conduct systems, membership in CARE/BIT teams, serving as the Deputy Title IX Coordinator, and drafting policies and procedures related to students. Prior to her work in higher education, Beth served as a law clerk for the Justices of the Superior Court in Massachusetts and in multiple roles at the Massachusetts State House.

Ms. Devonshire has been an Associate with D. Stafford & Associates (DSA) since 2012 and she joined as a full-time consultant in August of 2018. In this role, Beth works with institutions on issues involving Title IX, Clery Act, threat assessment, and other compliance related issues; and advises on policy and procedures, conducts trainings, participates in investigations, reviews enforcement practices of campus law enforcement, and serves in interim roles. Ms. Devonshire also speaks on a variety of other topics including legislative and legal issues impacting higher education including FERPA, Clery, and Alcohol and other Drug Prevention.

Ms. Devonshire is a faculty member in New England College's Doctorate of Education Program and the Higher Education Administration program at Bridgewater State University. Additionally, Ms. Devonshire serves on the Public Policy Division for NASPA, and is also the former Massachusetts Public Policy Liaison for MA NASPA. Beth also served as the Director of the Legislative Committee for the Association for Student Conduct Administrators (ASCA) for two years.

Ms. Devonshire is a member of the Massachusetts Bar. She is a graduate of Stonehill College with a degree in English and Secondary Education and holds a J.D. from Suffolk University School of Law. She is also a trained mediator.



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Aurora University
Investigator and Decision-Maker
Training

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Agenda

- The Laws
- Aurora Policies
- Defining Sexual Harassment
- Conflict of Interest and Bias, Trauma Informed, and Myths
- Investigations
- Decision-maker

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EVERYONE
HAS
A
ROLE

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**D. STAFFORD
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**Overview of the Laws for Investigators
and Decision-Makers**

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TITLE IX

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Training for Investigators



-  Definition
-  Scope of program or activity
-  Investigation
-  Impartiality
-  Investigative Report

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Training for Decision-Makers 

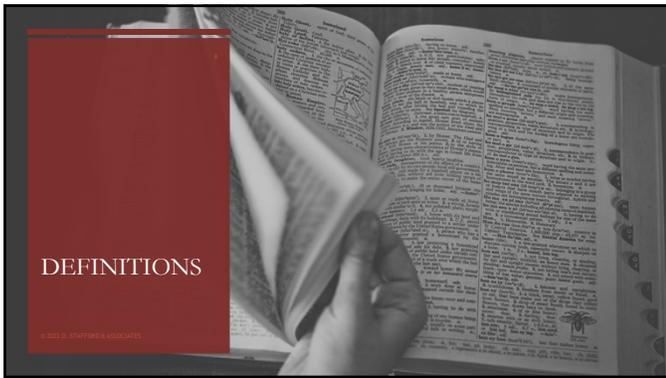
 Definition
  Scope of program or activity
  Grievance Process
  Impartiality
  Technology
  Relevancy

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DEFINITIONS

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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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Definitions: Advisor 

- Parties may have an advisor of choice
- Can be accompanied to any related meeting or proceeding by the advisor of their choice
- Can't limit the choice of advisor
- Institutions may establish equally applied restrictions regarding the extent to which the advisor may participate in the proceedings

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Definitions: Key Terms 



- Actual Knowledge
- Formal Complaint
- Supportive Measures

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Report vs. Formal Complaint





Report



Formal Complaint

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Definition of Sexual Harassment



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

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

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DEFINITIONS - CONSENT

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



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Retaliation



Cannot intimidate, threaten, coerce, or discriminate others

MAY use the same grievance procedure

First Amendment considerations

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POLICY REVIEW:
PROHIBITED
CONDUCT

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PROGRAM &
ACTIVITY

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Title IX Sexual Harassment Jurisdiction 



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



Occurred in the United States



Control over the Respondent



Effectively denies a person equal access

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Scope of Program and Activity

- *The term “program or activity” and the term “program” mean all of the operations of -*
 - *a college, university, or other postsecondary institution, or a public system of higher education...*
 - *any part of which is extended Federal financial assistance, except that such term does not include any operation of an entity which is controlled by a religious organization if the application of section 1681 of this title to such operation would not be consistent with the religious tenets of such organization.*

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Jurisdiction of Person 



“At the time of filing a formal complaint...the complainant must be participating in or attempting to participate in the education program or activity”



The institution must exercise control over the Respondent



All regulations apply to students and employees

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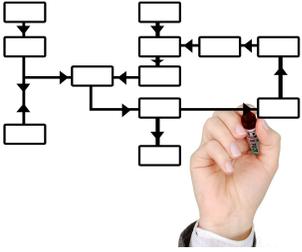
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POLICY REVIEW:
SCOPE OF
PROGRAM AND
ACTIVITY

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PROCESS

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Formal Complaint 



Signed formal complaint



Complainant or
Title IX Coordinator



Complainant **MUST** be
participating in the
education activity at the
time of filing

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Dismissal of Formal Complaints



Must Dismiss

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



May Dismiss

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

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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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Post-Notice Timeline

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    graph LR
      A[Investigation] --> B[Preliminary Report]
      B --> C[Parties may provide written response]
      C --> D[Final Investigative Report]
      D --> E[Parties may provide final written response]
      E --> F[Resolution hearing or informal resolution]
  
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Investigations and Evidence Gathering 

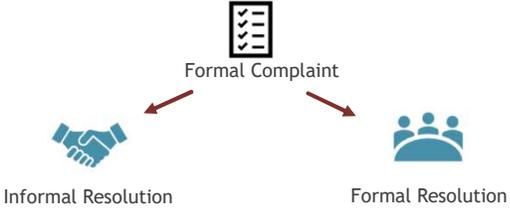


- Burden of proof on the recipient
- Equal opportunity to present witnesses and facts
- No restrictions on discussing allegations

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Resolution Options 



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    graph TD
      FC[Formal Complaint] --> IR[Informal Resolution]
      FC --> FR[Formal Resolution]
  
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Advisors 

<p>Investigation</p> <ul style="list-style-type: none"> ■ May accompany party to investigation meetings ■ Receives preliminary and investigative reports 	<p>Hearing</p> <ul style="list-style-type: none"> ■ Institutions must provide an advisor if a party does not have one at hearing ■ Conducts cross examination of witnesses and opposing party
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Hearings 



Live hearing



Cross-examination

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Written Determination 

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



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Appeals 

- Must offer both parties an appeal from a determination regarding responsibility or from a dismissal of a formal complaint.
- Basis of an appeal:
 - Procedural irregularity that **affected** the outcome of the matter
 - New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made, that **could affect** the outcome of the matter
 - The Title IX Coordinator, investigator(s), or decision-maker(s) had a conflict of interest or bias for or against complainants or respondents generally or the individual complainant or respondent that **affected** the outcome of the matter.

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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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Recordkeeping (Seven Years) 



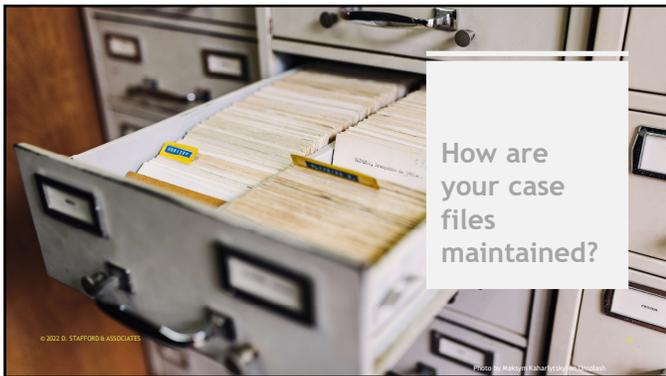
Case Materials



Training materials

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How are your case files maintained?

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Clery Training Requirements (Officials) 



- Relevant evidence and how it should be used
- Proper interview techniques
- Basic procedural rules for conducting a proceeding
- Avoiding actual/perceived conflicts
- The issues related to dating violence, domestic violence, sexual assault, and stalking
- How to conduct an investigation and hearing process that protects the safety of the victims and promotes accountability

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Overlapping Conduct Allegations 

TITLE IX
Quid Pro Quo
Hostile Environment

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

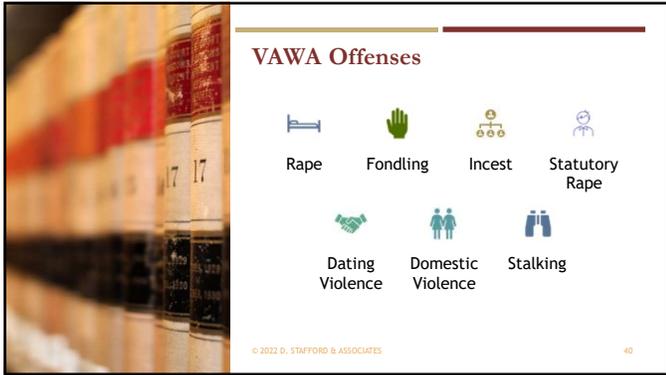
Non-VAWA
Clery Offenses
(Assault, etc.)

Hate Crimes
Arrests and Referrals:
Drug, Liquor, Weapons

Title VII
Other sex-
based
behaviors

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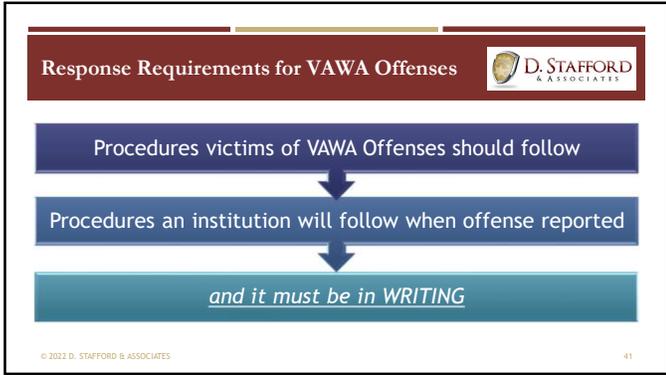


VAWA Offenses

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

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Response Requirements for VAWA Offenses

Procedures victims of VAWA Offenses should follow

↓

Procedures an institution will follow when offense reported

↓

and it must be in WRITING

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Written Explanation of Rights and Options

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

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Clery Requirements for Disciplinary Proceedings




- Anticipated timelines (“reasonably prompt”)
- Decision-making process
- Options, and how to, for filing a school complaint (with contact info)
- How institution determines which process to use
- Who makes decisions
- Include employee procedures
- Use procedures regardless of Clery geography

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Advisors




- Provides support, guidance, or advice
- Institution cannot limit the choice
- May restrict participation
- Provide timely notice of meetings
- May use a pool of people
- Can remove if disruptive
- Could allow them to serve as a proxy
- Do not have to delay for them

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Standard of Evidence




- Any standard of evidence ... must be included in policy
- Would not prohibit using different standards for different groups

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Formal Complaint Rights




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

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Formal (Live Hearing)




Clery is silent regarding live hearing

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Written Determination




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

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Recordkeeping



- Retain all records used in compiling ASR for three years from the latest publication of the report to which they apply (in effect 7 years)

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TITLE VII

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Title VII of the Civil Rights Act of 1964



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

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42 U.S.C. Section 2000e-2 Unlawful Employment Practices

- Section 703 (a) Employer practices
 - It shall be an unlawful employment practice for an employer -
 1. to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin; or
 2. to limit, segregate, or classify his employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual's race, color, religion, sex, or national origin.

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29 CFR § 1604.11 EEOC Guidelines

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

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

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Basis of Sex

- Pregnancy-related protections
- Sexual orientation/Gender identity (Bostock)

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Sexual Harassment Examples



Unwelcome sexual advances	Requests for sexual favors
Verbal or physical harassment of a sexual nature	Offensive comments based on sex

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Unwelcome Conduct



<i>"in the sense that the employee did not solicit or incite it, and in the sense that the employee regarded the conduct as undesirable or offensive." Henson v. City of Dundee, 682 F.2d at 903</i>	Totality of the circumstances
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Reasonable Person



	
More than petty slights	Conduct applications

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Retaliation



Right to be free of discrimination

“Protected activity”

Participation is protected

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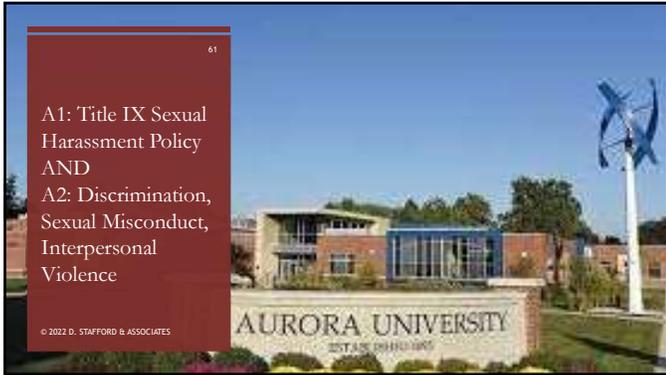


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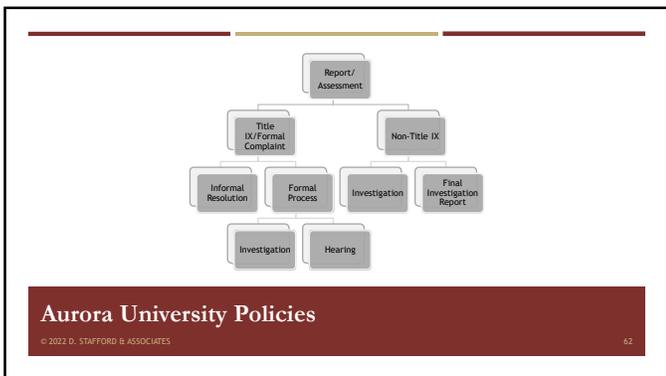


Aurora Policies

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AU Policies



Reporting	Confidential Advisors	Confidentiality	Confidentiality Requests
Amnesty	Retaliation	Disability Accommodations	Records Management

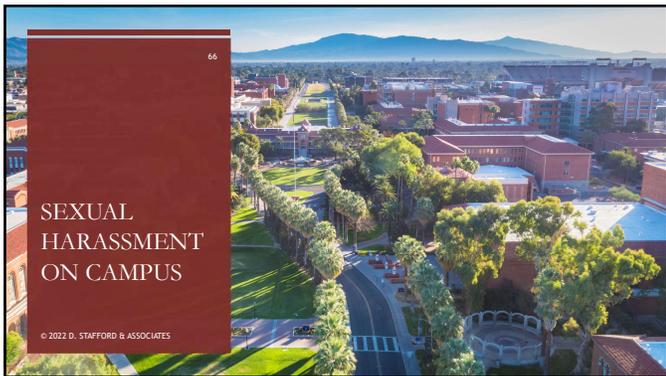
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Sexual Harassment

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SEXUAL HARASSMENT ON CAMPUS

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Elements of Sexual Harassment



- A. Is it conduct on the basis of sex?
- B. Was it unwelcome?
- C. Does it constitute Sexual Harassment?
 1. Quid Pro Quo
 2. Hostile Environment
 3. Sexual Assault, Dating Violence, Domestic Violence, or Stalking

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Sexual Harassment Under Title IX



- PRONG 1: QUID PRO QUO
- PRONG 2: HOSTILE ENVIRONMENT+
- PRONG 3: VAWA OFFENSES

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QUIDPROQUO

This for that.

QUID PRO QUO

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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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POLICY REVIEW: Quid Pro Quo

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Quid Pro Quo

A-1

- Title IX Sexual Harassment is conduct on the basis of sex that constitutes:
- An employee of the University conditioning the provision of an aid, benefit, or service of the University on an individual's participation in unwelcome sexual contact ("Quid Pro Quo Sexual Harassment")

A-2

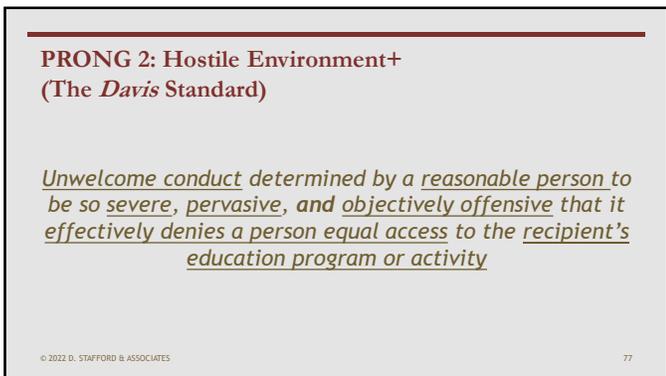
- Sexual Harassment:** Sexual harassment is unwelcome communication or conduct of a sexual nature, including unwelcome sexual advances, requests for sexual favors, or verbal, nonverbal or physical conduct of a sexual nature where such conduct is sufficiently serious (i.e., severe, pervasive, or persistent) as to deny or limit a person's ability to participate in or benefit from the University's programs, services, opportunities, or activities.

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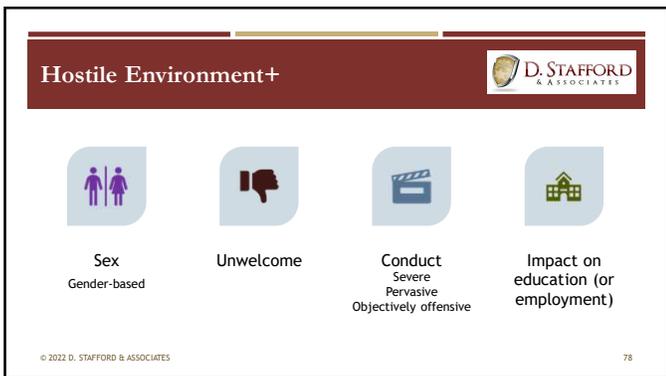
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Hostile Environment+



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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POLICY REVIEW: Hostile Environment

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Hostile Environment



A-1

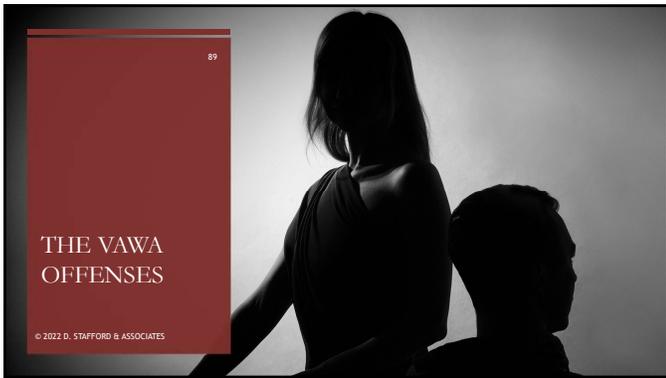
- “Title IX Sexual Harassment” is conduct on the basis of sex that constitutes:
- Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person access to the University’s Education Programs and Activities.

A-2

- **Sexual Harassment:** Sexual harassment is unwelcome communication or conduct of a sexual nature, including unwelcome sexual advances, requests for sexual favors, or verbal, nonverbal or physical conduct of a sexual nature where such conduct is sufficiently serious (i.e., severe, pervasive, or persistent) as to deny or limit a person’s ability to participate in or benefit from the University’s programs, services, opportunities, or activities.

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THE VAWA OFFENSES

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PRONG 3: The VAWA Offenses

- Sexual Assault
- Dating Violence
- Domestic Violence
- Stalking

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Sexual Assault



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Rape - Clery



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

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Rape - FBI NIBRS



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

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

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

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

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Sex Offenses - NIBRS



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

- A. *Fondling* - The touching of the private body parts of another person for the purpose of sexual gratification, without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental incapacity.
- B. *Incest* - Sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.
- C. *Statutory Rape* - Sexual intercourse with a person who is under the statutory age of consent.

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POLICY REVIEW: Sexual Assault

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Sexual Assault



- A-1
 - “Sexual Assault” includes the sex offenses of Rape, Sodomy, Sexual Assault with an Object, Fondling, Incest, and Statutory Rape.
- A-2
 - **Sexual Assault:** Sexual assault is a particular type of sexual harassment that involves actual or attempted sexual contact with another person without that person’s consent . . .
 - Non-Consensual Penetration
 - Non-Consensual Sexual Contact
 - Incest
 - Statutory Rape

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Sexual Exploitation



A-1

- Silent, but could constitute hostile environment

A-2

- **Sexual Exploitation:** Sexual exploitation occurs when a person takes non-consensual or abusive sexual advantage of another individual(s) for the person's own advantage or personal benefit, or to benefit or advantage anyone other than the one being exploited, and that behavior does not otherwise constitute one of the other sexual misconduct offenses in this Policy.

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Intimate Partner Violence



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Dating Violence (Title IX) - 34 U.S.C. 12291(a)(10)



The term "dating violence" means violence committed by a person -

(A) who is or has been in a social relationship of a romantic or intimate nature with the victim; and

(B) where the existence of such a relationship shall be determined based on a consideration of the following factors:

- (i) The length of the relationship.
- (ii) The type of relationship.
- (iii) The frequency of interaction between the persons involved in the relationship.

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Dating Violence – Clery Act



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 (Title IX) - 34 U.S.C. 12291(a)(8)



The term “domestic violence” includes felony or misdemeanor crimes of violence committed by a current or former spouse or intimate partner of the victim, by a person with whom the victim shares a child in common, 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 receiving grant monies, or by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the jurisdiction.

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Domestic Violence – Clery Act



A felony or misdemeanor crime of violence committed by

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

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What is a “Crime of Violence?”

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

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**POLICY REVIEW:
Intimate Partner
Violence**

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Intimate Partner Violence 

<ul style="list-style-type: none"> ▪ A-1 ▪ Domestic Violence ▪ Dating Violence 	<ul style="list-style-type: none"> ▪ A-2 ▪ IPV ▪ Domestic Violence ▪ Dating Violence ▪ Stalking
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Stalking



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Stalking (Title IX) - 34 U.S.C. 12291(a)(30)

The term "stalking" means engaging in a course of conduct directed at a specific person that would cause a reasonable person to -

- (A) fear for his or her safety or the safety of others; or*
- (B) suffer substantial emotional distress.*

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Additional Clery Act Definitions

(ii) For the purposes of this definition -

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

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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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POLICY REVIEW: Stalking

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Stalking


A-1

- “Stalking” is engaging in a course of conduct directed at a specific person that would cause a reasonable person to:
 - Fear for their safety or the safety of others; or
 - Suffer substantial emotional distress.

A-2

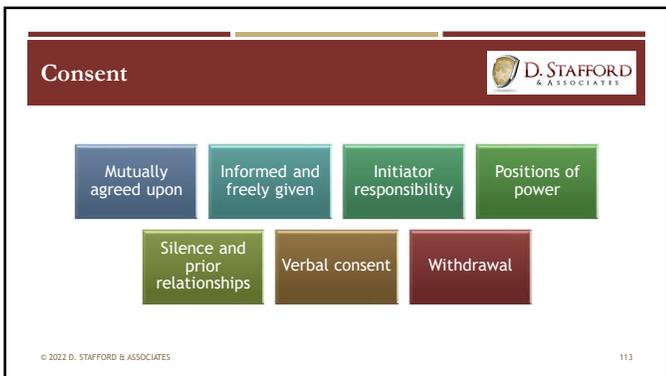
- **Stalking:** Stalking means engaging in a course of conduct directed at a specific person that would cause a reasonable person to fear for her, his, or others’ safety, or to suffer substantial emotional distress.

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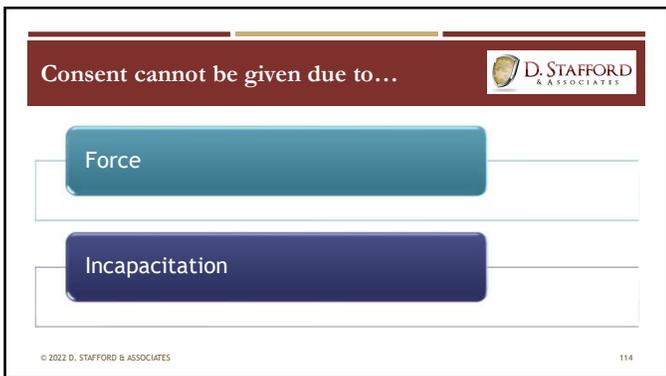
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Force





Physical



Coercion



Intimidation



Threat

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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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Two-Step Determination



Was the complainant incapacitated?

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

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**POLICY REVIEW:
Consent**

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Consent and Incapacitation



A-1

- **“Consent”** refers to words or actions that a reasonable person in the perspective of the Respondent would understand as agreement to engage in the sexual conduct at issue. A person who is Incapacitated is not capable of giving Consent.
- **“Incapacitation”** Incapacitation is a state where one cannot make a rational, reasonable decision to engage in sexual activity because they lack the ability to understand the fact, nature, or extent of the act (e.g., to understand the “who, what, when, where, why or how” of their sexual interaction), and/or are physically helpless.
- Understanding Consent

A-2

- Consent
 - List of Examples
- **“Incapacitation”** Incapacitation is a state where one cannot make a rational, reasonable decision to engage in sexual activity because they lack the ability to understand the fact, nature, or extent of the act (e.g., to understand the “who, what, when, where, why or how” of their sexual interaction), and/or are physically helpless. . . .

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Alcohol and Other Drugs



Alcohol and Other
Drugs



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Levels of Alcohol/Drug 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

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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

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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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Context Clues

- Smell
- Slurred speech
- Bloodshot eyes
- Cannot stand
- Cannot walk
- In and out of consciousness
- Blackout
- Vomiting
- Behavior

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Blackouts

Fragmentary Blackout

- Also known as “grayout” or “brownout”
- Gaps in memory with some level of recollection

En Bloc Blackout

- No recollection of events

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How do you talk to the parties about alcohol/drug use?



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**Conflict of Interest and Bias,
Trauma Informed, and Myths**

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WHAT ARE THE CHARACTERISTICS OF A GREAT INVESTIGATOR AND DECISION-MAKER?

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CONFLICT OF INTEREST AND BIAS



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Conflict of Interest or Bias



Generally



Individually

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Bias



Personal experience Personal identity Social identity Theoretical perspective

Professional identity Religious perspective Political perspective

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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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Avoiding Prejudgment of Facts





Open mind



Listen



Objective



Neutral

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TRAUMA INFORMED



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Trauma Informed



Trauma informed" means an understanding of the complexities of sexual violence, domestic violence, dating violence, or stalking through training centered on the neurobiological impact of trauma, the influence of societal myths and stereotypes surrounding sexual violence, domestic violence, dating violence, or stalking, and understanding the behavior of perpetrators.

Source: P.A. 99-426, eff. 8-21-15

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Trauma Informed

Neutral Process Apply to all parties Check biases

Seek clarification Gender-neutral approach

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Comparison





Stress



Trauma

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Impact of Trauma



During the
Traumatic
Event

Immediately
Following
the Event

Long-Term
Response

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**DURING THE
TRAUMATIC
EVENT:
NEUROBIOLOGY**



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The Limbic System and Stress

Hippocampus

Prefrontal Cortex

Amygdala

Hormones

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The Body's Response to Fear

Heart Lungs Muscles Brain

Eyes Stomach Skin Nerves

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Degraded Prefrontal Cortex

Alcohol

Age

Prolonged stress exposure

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Response



Reflex



Habit

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Memory



Encoding Storage Retrieval

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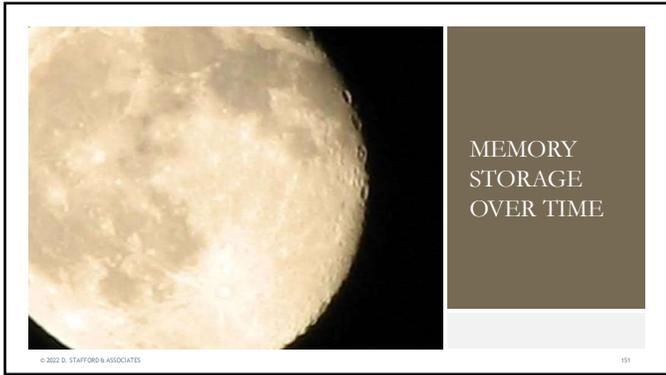
Memory



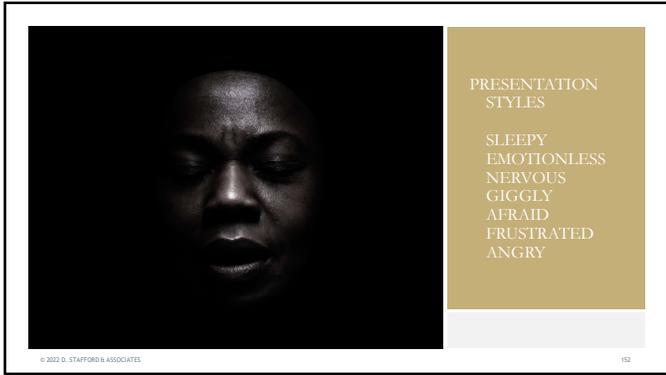
Central Details Peripheral Details Time and Context Flashbulb memories

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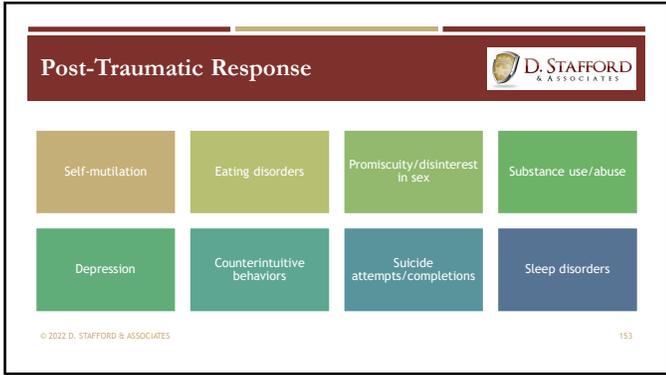
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Re-traumatization in the Title IX Process 

-  Safety and well-being
-  Maintain privacy and confidentiality
-  Kept up to date
-  Empathy and respect

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WHAT ARE SOME OF MYTHS AND STEROTYPES SURROUNDING SEXUAL VIOLENCE?

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Complainants and Respondents 

Bias, Data, Stereotypes, Impact

- Gender Identity
- Sexual Orientation
- BIPOC
- National Origin
- Individuals with disabilities

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Behaviors



Sexual violence Domestic violence Dating violence

Stalking Complainants Respondents

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Sexual Violence



Consent Relationships Presentation

Clothing Occurance

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Intimate Partner Violence



Private matter Isn't a big deal Doesn't happen here

It is easy to leave Rare

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Stalking



Only celebrities

Ignore it

Not dangerous

Only exes

Too expensive

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Investigations

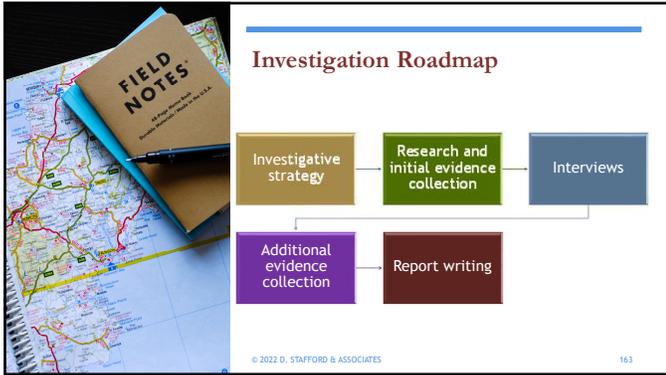
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INVESTIGATION STAGE

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Interview Preparation 

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

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The DSA Interview Outline

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

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Witness Interviews





Follow same interview structure



Confidentiality/
Privacy



How do they "know"?

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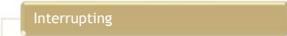
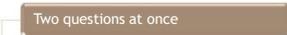
Respondent - Potential Responses



-  Complainant consented and is now lying (Regret? Guilt?).
-  Complainant consented but does not remember due to intoxication.
-  The sexual misconduct did not occur (Complainant was mistaken).
-  The sexual misconduct occurred but a different assailant.

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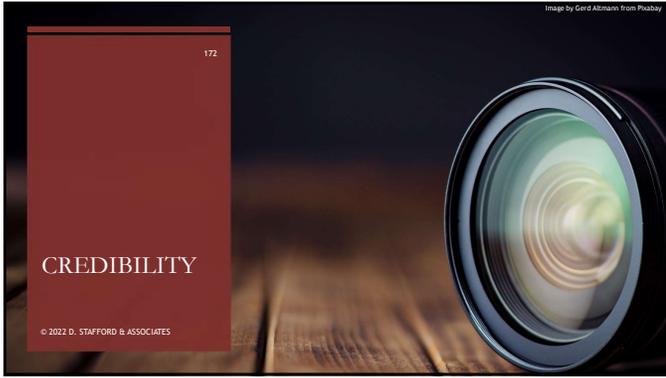
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-  Interrupting
-  Two questions at once
-  Not listening for the answer
-  Avoiding the hard questions
-  Lost focus on elements

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Interviewing Bad Habits

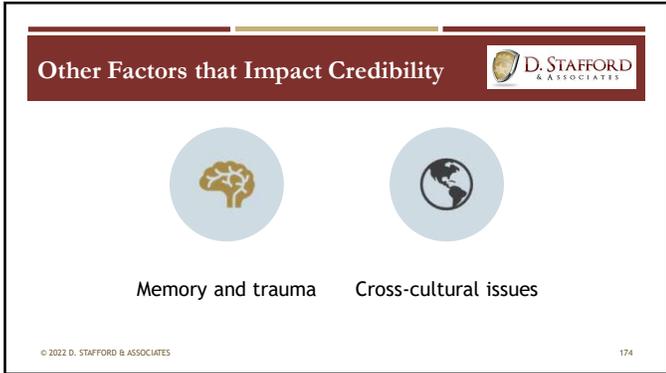
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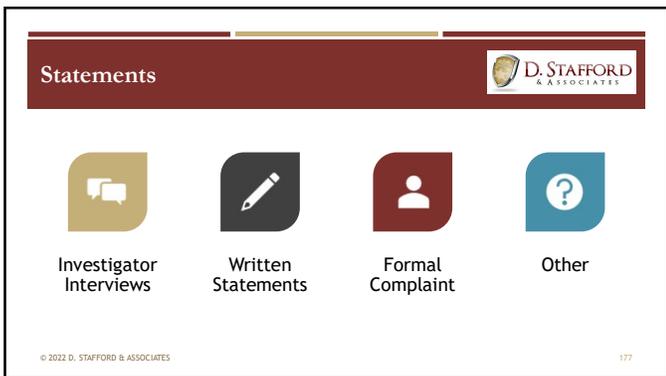
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Other Sources of Evidence

Photographs Text messages Social media/dating apps Documents (diagrams, memos, letters, notes)

Voicemail Phone logs Guest lists

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Evidence Collection

Everything Collected

Directly Related

Relevant

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The Regulations on Relevancy

Relevant Evidence In Investigation Relevant Questions At Hearing

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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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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

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ALWAYS OUT
Privileged Information

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

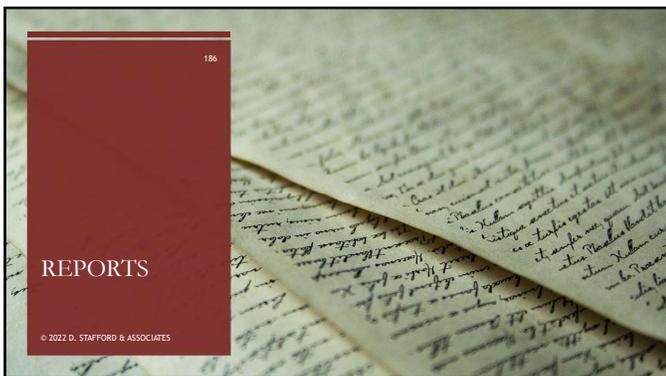
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The Investigative Report 

- Case Identifiers (Cover Page)
- Allegations & Policy (Scope)
- Investigative Steps (Methodology)
- Summary of Relevant Evidence
- Interviews etc. (Evidence Obtained)

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Report Writing Goals 

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

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Versions of the Report 

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

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Preparation 

Pre-hearing Meeting Hearing Guidelines Written Responses

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Pre-hearing Tasks 

 Attendance Confirmation  Scheduling  Action Items

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Decision-maker Pre-work 

 Review report  Review allegations  Review policy  Draft relevant questions

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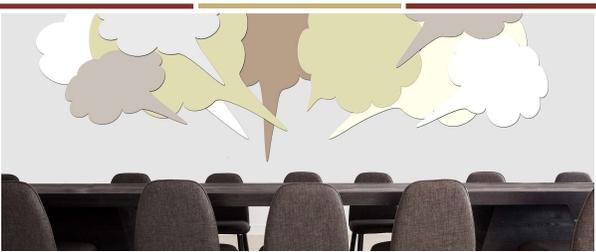
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Role of the Decision-maker 

-  Relevancy Determinations
-  Credibility Assessment
-  Make Finding
-  Written Determination

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Hearing Guidelines

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Participants 



Decision-maker(s)



Respondent and Advisor



Complainant and Advisor



Witness(es)

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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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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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Decision-maker Questions 



Statement of Accuracy



Credibility



Clarity

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Questioning by the Advisors 

Question	Relevancy Determination	Answer
• By Advisor	• By Decision-maker	• By party or witness

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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

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- 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

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- 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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Decision-maker Issues (Appeal Grounds) 

		
Procedural Error	New Evidence	Bias/Conflict

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Advisor Issues 

Disruptive	Refusal to cross	Inappropriate cross	Relationship with party	Relationship with case
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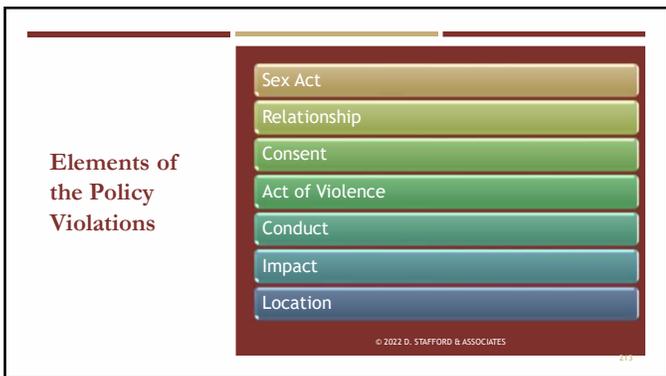
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Consent



Consent cues Force, Coercion, Intimidation, Threats Incapacitation Policy definition

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Incapacitation: Two-Step Determination



Was the Complainant incapacitated?

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

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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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Credibility 

- Perception
- Memory
- Deception
- Motivation
- Bias
- Plausibility

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Ability to Remember 

-  Passage of time
-  Alcohol
-  Blackout
-  Peripheral details
-  History of memory

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Assessing Credibility *from the Regs* 



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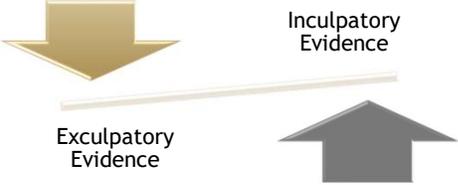


BEHAVIORS
 BASED ON THE INFORMATION AVAILABLE,
 WHAT BEHAVIORS OCCURRED?

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Decision-maker Bias *from the Regs* 



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Standard of Evidence

More likely than not

Clear and convincing

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Disciplinary Sanctions and Remedies

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 **Sanctions**

 **Remedies**

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Disciplinary Sanction

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Nature of violation

Precedent

Mitigating Factors

Aggravating Factors

Sanction(s)

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Disciplinary Sanctions 

- Status** • Expulsion, separation, probation
- Prevention** • Protective measures, restrictions, separation
- Educational** • Action plans

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Formal Resolution – Remedies 

-  Make permanent supportive measures
-  One-sided no contact orders
-  Restrictions from locations
-  Restrictions from activities

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Written Determination 

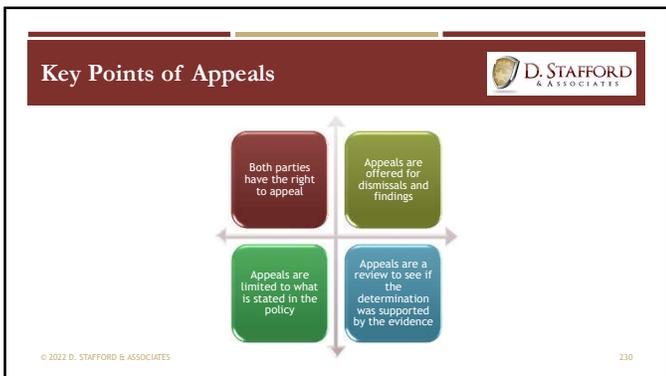
- Allegations
- Procedural steps
- Findings of fact
- Conclusion/application
- Rationale
- Appeal procedures

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Basis of Appeal 



Procedural irregularity that affected outcome



New evidence that could affect the outcome



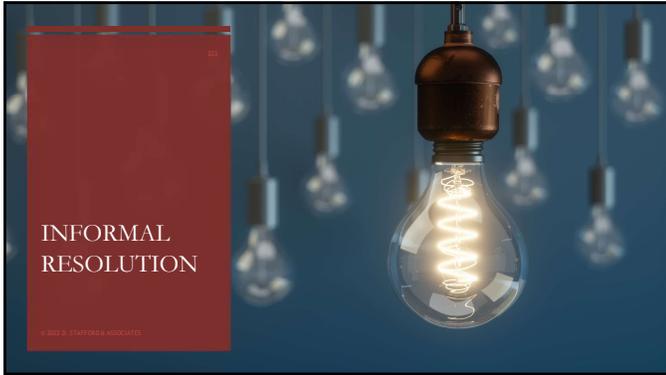
Conflict of interest or bias that affected the outcome



Additional Grounds are permitted (must be in policy)

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INFORMAL RESOLUTION

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Informal Resolution at AU 



ALLOWED PRIOR TO COMPLETION OF APPEAL



VOLUNTARY



NOTICE IS PROVIDED TO THE PARTIES



REDUCED TO WRITING

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