



**D. STAFFORD**  
& ASSOCIATES

# **Title IX Coordinator- Law and Policy (Tier 1)**

**Presented by DSA Associates:**

**Cathy Cocks**

**Adrienne Murray**

**Ann Todd**

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**Title IX Coordinator – Law and Policy (Tier 1)**

**Overview of Course Schedule**

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





## Adrienne Meador Murray, Vice President, Equity Compliance and Civil Rights Services



In January 2014, Adrienne Meador Murray joined D. Stafford & Associates where she currently serves as the Vice President, Equity Compliance and Civil Rights Services after having been affiliated with D. Stafford & Associates as a part-time Associate since 2012 and the National Association of Clery Compliance Officers & Professionals (NACCOP) where she currently serves as Director of Training and Compliance Activities. Murray began her career in municipal law enforcement as a civilian employee with the City of Richmond Police Department (Virginia). She graduated from the Virginia Commonwealth University Police Training Academy and began her career as a sworn police officer for the University of Richmond (UR) Police Department (Virginia). At UR, Murray progressed through the ranks from a night shift patrol officer to Operations Lieutenant (overseeing criminal investigations, crime prevention and patrol) over the span of a decade before becoming the Chief of Police at Davidson

College in North Carolina. Most recently, Murray served as Chief of Police at Trinity Washington University (in Washington, D.C.).

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

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



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

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

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



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

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

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

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

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

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

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

**Ann Todd**  
**Consultant, Equity Compliance and Civil Rights Investigations**



**Ann Todd, Esq** is a seasoned civil rights investigator in higher education for D. Stafford & Associates (DSA). Ms. Todd is a graduate of Davidson College with a degree in psychology and holds a JD from the University of Nebraska. Prior to joining DSA, she practiced law in Charlotte, NC, specializing in employment and civil rights and worked for a number of non-profit organizations. She returned to her alma mater (Davidson College) in 2008 and worked there through March of 2016 serving as the Assistant Director of Human Resources with the responsibility of managing employee relations and the learning and development function while also serving as the deputy Title IX Coordinator.

Ms. Todd joined the DSA in 2015 and currently serves as the Consultant, Equity Compliance and Civil Rights Investigations. She is the Senior Investigator for the DSA Title IX Investigation Team. She conducts external investigations on behalf of colleges and universities, specializing in investigating student allegations of sex discrimination, sexual assault, intimate partner violence, and stalking. Additionally, she brings a strong Human Resources background to investigating a range of employee misconduct—from performance issues to discrimination.

In addition to conducting investigations, Ms. Todd is a frequent speaker and consultant on Title IX investigations, conducting 20-30 courses every year on best practices for investigating sex discrimination and sex crimes on campus. She works with schools to draft policies and processes that provide equity and fairness to





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all parties involved and is adept at facilitating discussions with institutions to ensure the end product represents the values of the campus community.

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



## INVESTIGATION CLASS ACRONYMS

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

**SART:** Sexual Assault Response Team

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

**SWA:** Senior Women's Administrator (Athletics)

**TWN:** Timely Warning Notice

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

**VAWA:** Violence Against Women Act



## **TITLE IX**

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- Public inspection upon request.*

*You may not, except with our express written permission, distribute or commercially exploit the content. Nor may you transmit it or store it in any other website or other form of electronic retrieval system.*

## ISSUANCE OF CERTIFICATES FOR COMPLETION

To receive a certificate, attendees must attend the majority of the class and have paid class invoice in full. This applies to both in-person classes and virtual classes. We understand that attendees may need to miss class for a legitimate reason for longer periods of time or may need to leave the room during a class for a few minutes to take a phone call or attend to other business. If an attendee misses a significant amount of the class (depending on the length of the class) or they miss an attendance poll, they will not be issued a certificate of completion for the class.

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

The criteria for receiving a certificate is determined based on missed class time and participation in the Attendance Polls that will be launched throughout each day of class. Attendance polls are left up for approximately 5 minutes and the instructor notifies the attendees that a poll is being launched to ensure that everyone who is present can respond to the poll. If an attendee is unable to respond to the attendance poll, the attendee would need to **immediately post "I am here"** in the chat feature within the Zoom platform. That way we can give the attendee credit for being in attendance for that specific poll. Notifying us after the attendance poll has been closed will not allow us to give the attendee credit for being in class during the poll.

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



**TITLE IX COORDINATOR - LAW & POLICY**



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**AGENDA**

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

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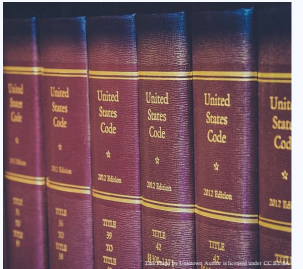
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**THE LAW**



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**FEDERAL LAW**

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



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

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

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## § 1681(a) - EXCEPTIONS

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

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## § 1681(c) - "EDUCATIONAL INSTITUTION"

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

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## REGULATORY GUIDANCE ("TITLE IX REGULATIONS")



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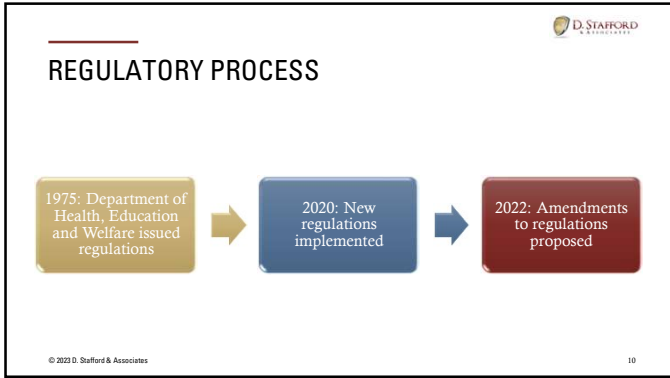
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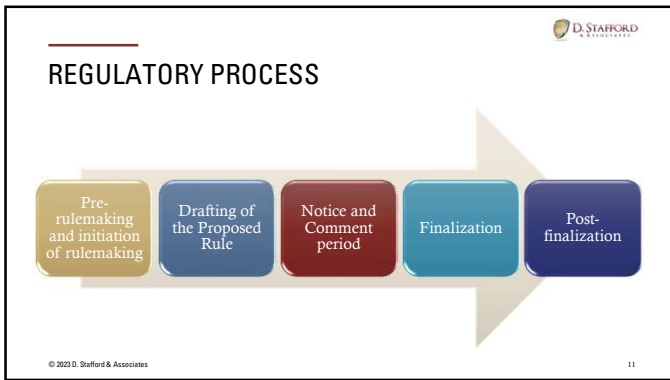
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## SUB-REGULATORY GUIDANCE

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

April 4, 2011

Dear Colleague:

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

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

<sup>1</sup> This guidance has been used in the Dear Colleague Letter to "highlight guidance issued" under the Office of Education's oversight of the Department of Education's Title IX program. Title IX, 20 U.S.C. § 1681.

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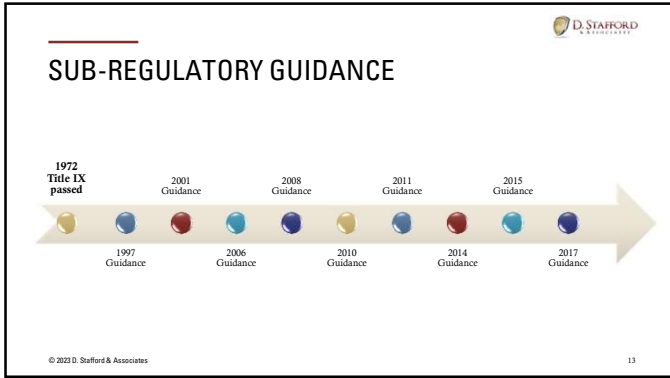
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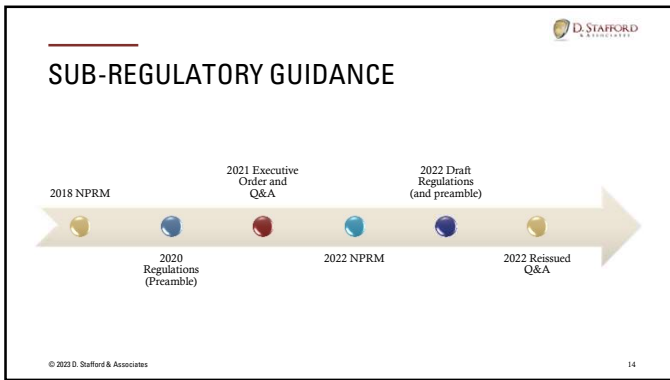
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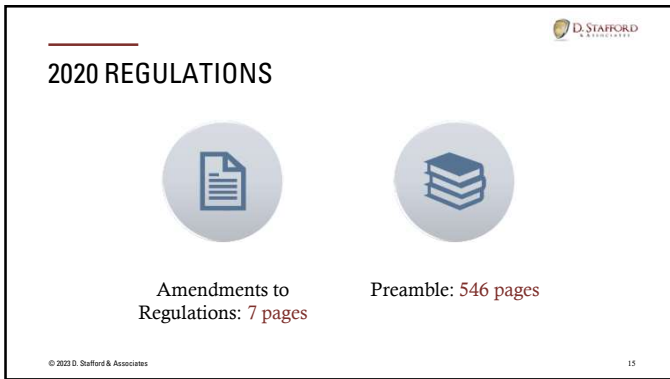
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 **FEDERAL REGISTER**  
The Daily Journal of the United States Government 

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 Rule

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

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

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BRIEFING ROOM

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

JANUARY 20, 2021 • PRESIDENTIAL ACTIONS

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**CASE LAW**



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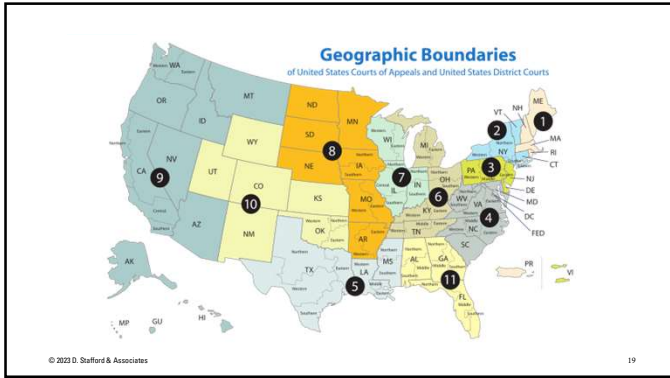
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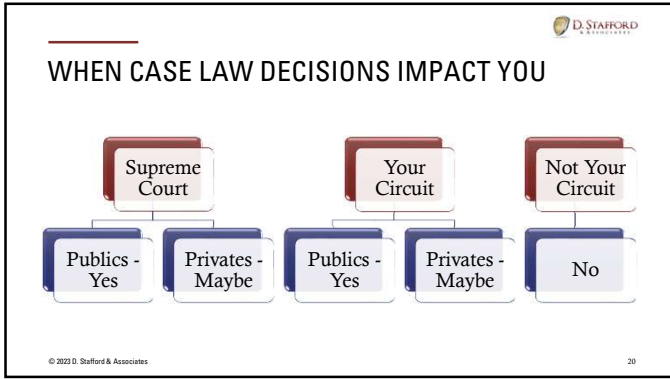
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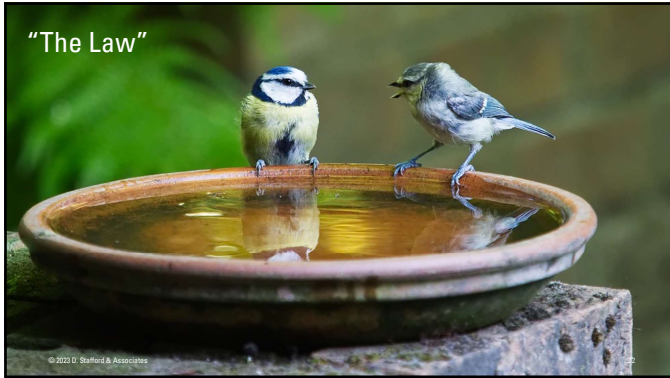
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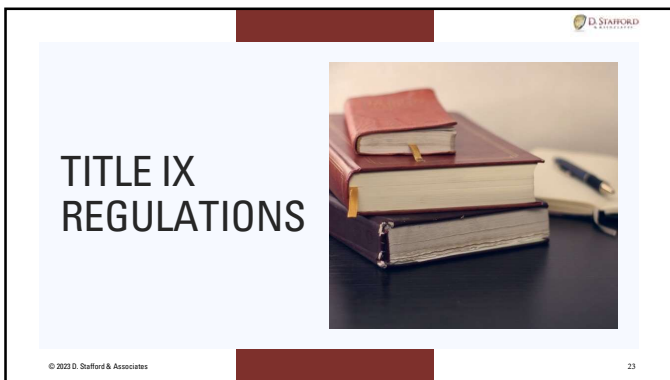
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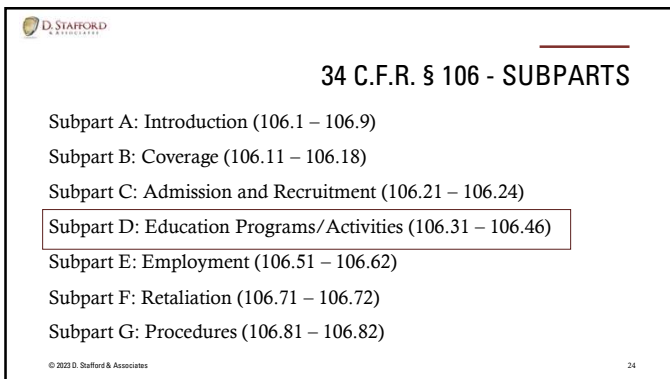
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## TITLE IX REGULATIONS OVERVIEW

Applies to Higher Education and K-12

Covers wide range of sex discrimination

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## SUBPART A: INTRODUCTION



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## SUBPART A: A FEW FYIS...

 § 106.2 Definitions

 § 106.3 Remedial Action

 § 106.3 Affirmative Action

 § 106.6 Preservation of rights

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### § 106.8(a) - DESIGNATION OF COORDINATOR

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

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

<p><b>Who</b></p> <ul style="list-style-type: none"> <li>• Applicants - admission</li> <li>• Applicants - employment</li> <li>• Students</li> <li>• Employees</li> <li>• Unions, etc.</li> </ul>	<p><b>What</b></p> <ul style="list-style-type: none"> <li>• Does not discriminate</li> <li>• Required by Title IX</li> <li>• Includes admission &amp; employment</li> <li>• Inquiries to Title IX or OCR</li> <li>• Grievance procedures &amp; process</li> <li>• How to file report of discrimination</li> <li>• How to file report or complaint or harassment</li> <li>• How the school will respond</li> </ul>
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### § 106.8(b)(2) – PUBLICATIONS

**What**

- Contact information
- Policy

**Where**

- Website
- Handbook and/or Catalogs

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### § 106.8(c) - ADOPTION OF GRIEVANCE PROCEDURES

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

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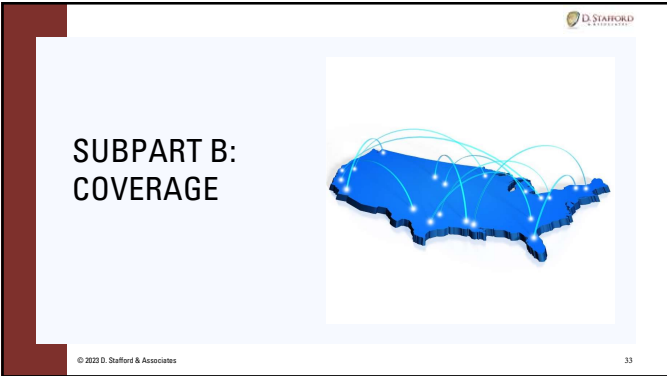
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**§ 106.12 - EDUCATIONAL INSTITUTIONS CONTROLLED BY RELIGIOUS ORGANIZATIONS**

- May submit in writing seeking assurance of the exemption
- Must identify the provision and explain how it conflicts with a specific tenet
- Not required to seek assurance
- May raise its exemption at any time

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**§ 106.15 ADMISSIONS (EXCEPTIONS AND COVERAGE)**

Applies to

- Vocational education
- Professional education
- Graduate higher education
- Public undergraduate education

Does not apply to

- Public schools with traditionally one sex

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**SUBPART C: ADMISSION & RECRUITMENT**



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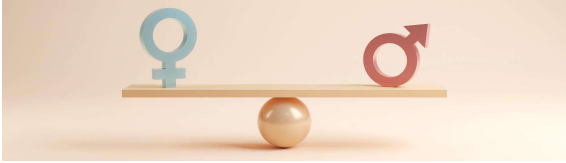
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## DISCRIMINATION AND ADMISSIONS

Subpart B (Exceptions): **Private institutions CAN discriminate in admissions**  
 Subpart C (Admissions): **Everyone else cannot discriminate in admissions**  
 Subpart D (Programs or Activities) : **Once they are in, discrimination is prohibited**



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## § 106.21 ADMISSION & § 106.23 RECRUITMENT

Limits or proportions	Ranking separately	Testing
Pregnancy	Parenting or marital status	Recruitment from single-sex high schools
Can ask gender but...		



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## SUBPART D: EDUCATIONAL PROGRAMS OR ACTIVITIES



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## § 106.31 EDUCATIONAL PROGRAMS OR ACTIVITIES



Aid, Benefit, or Service  
Requirement or Condition  
Right or privilege  
Advantage or opportunity



Academic  
Extracurricular  
Research  
Discipline  
Treatment  
Externships

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## § 106.37 FINANCIAL ASSISTANCE



§ 106.37(a) – Can't discriminate in financial assistance



§ 106.37 (b) Exceptions to rule that can't have single-sex scholarships



§ 106.37 (c) – Athletic scholarships allocated proportionally based on participation numbers

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## § 106.31(B)(4) EQUITY IN DISCIPLINE

Rules of Behavior

Sanctions

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## § 106.32 - HOUSING

*A recipient shall not, on the basis of sex, apply different rules or regulations, impose different fees or requirements, or offer different services or benefits related to housing, except as provided in this section (including housing provided only to married students).*

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## § 106.33 - COMPARABLE FACILITIES

*A recipient may provide separate toilet, locker room, and shower facilities on the basis of sex, but such facilities provided for students of one sex shall be comparable to such facilities provided for students of the other sex.*

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## § 106.40 MARITAL OR PARENTAL STATUS

Reminder: Can't discriminate in admissions on basis of pregnancy...  
§ 106.21(c)

No rules concerning actual or potential parental, family, or marital status on the basis of sex  
§ 106.40(a)

No discrimination on the basis of pregnancy, childbirth, false pregnancy, termination or recovery  
§ 106.40(b)

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## INSTITUTIONAL RESPONSIBILITIES

<p><b>Must Allow or Provide</b></p> <ul style="list-style-type: none"> <li>• Continued participation in programs/activities</li> <li>• Reasonable adjustments</li> <li>• Excuse absences</li> <li>• Leave of absence</li> <li>• Return status</li> <li>• Temporary medical condition</li> <li>• Protects against harassment</li> <li>• Policies and procedures</li> <li>• Breastfeeding</li> </ul>	<p><b>Cannot . . .</b></p> <ul style="list-style-type: none"> <li>• Require doctor's note <b>ONLY</b> for pregnancy</li> <li>• List pregnancy as an infraction</li> <li>• Exclude from programs/activities</li> <li>• Remove financial aid</li> </ul>
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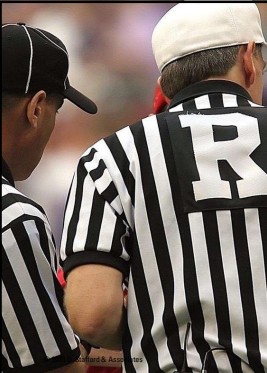
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### § 106.41(a) - ATHLETICS

*No person shall, on the basis of sex, be excluded from participation in, be denied the benefits of, be treated differently from another person or otherwise be discriminated against in any interscholastic, intercollegiate, club or intramural athletics offered by a recipient, and no recipient shall provide any such athletics separately on such basis.*

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## ATHLETICS



Applies to intercollegiate, club, & intramural



Separate Teams are permitted

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### § 106.41(c) - EQUAL OPPORTUNITY

- Equipment and supplies
- Scheduling
- Travel and per diem
- Tutors
- Assignment and compensation
- Locker room and other facilities
- Medical and training services
- Housing and dining services
- Publicity
- Support services

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### WAIT FOR IT...ALSO IN SUBPART D (COMING SOON!)



§106.30 DEFINITIONS  
(FOR THIS SUBPART)



§106.44 RESPONSE TO  
SEXUAL HARASSMENT



§106.45 GRIEVANCE  
PROCESS

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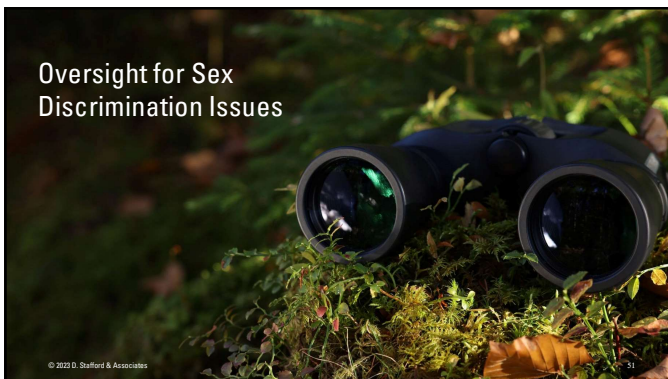
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### Oversight for Sex Discrimination Issues



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## SUBPART E: EMPLOYMENT



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### KEY TAKEAWAY

*Title IX common rule applies its prohibition against sex-based discrimination to the full range of activities related to the recruitment, evaluation, classification, payment, assignment, retention or treatment of employees. The Title IX common rule addresses various areas including the treatment of pregnancy as a temporary disability, pre-employment inquiries regarding marital or parental status, imposition of employment criteria or testing devices having a disproportionate impact, recruitment, and compensation and benefits.*

The Department of Justice, Title IX Legal Manual

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### EMPLOYMENT

§ 106.7 Effect of employment opportunities	§ 106.51 Employment	§ 106.52 Employment criteria	§ 106.53 Recruitment	§ 106.54 Compensation
§ 106.55 Job classification and structure	§ 106.56 Fringe benefits	§ 106.57 Marital or parental status	§ 106.58 Effect of other laws	§ 106.59 Advertising
§ 106.60 Pre-employment inquiries		§ 106.61 Sex as a bona-fide occupational qualification		

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## SUBPART F: RETALIATION



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### § 106.71 RETALIATION

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

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### § 106.71 RETALIATION

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

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## § 106.71 - RETALIATION

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

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### TITLE IX GRIEVANCE PROCEDURES

GRIEVANCE

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## BEFORE WE BEGIN...

**Sex Discrimination**  
§ 106.8(c)

- “grievance procedures that provide for the **prompt** and **equitable** resolution of student and employee complaints.”
- Any person may report sex discrimination to the Title IX Coordinator
- Must publish grievance procedures to address sex discrimination
- No requirement other than “prompt” and “equitable”

**Sexual Harassment**  
§ 106.44 and § 106.45

**Other Behaviors**  
Conduct codes

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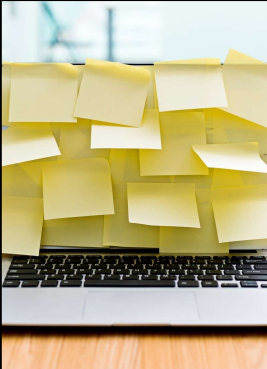
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## MORE REMINDERS

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

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## PEOPLE DEFINITIONS



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**§ 106.30(a) - DEFINITIONS**

**Complainant**

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

**Respondent**

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

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**TITLE IX PERSONNEL**

Title IX Coordinator    Investigator    Decision-maker    Informal Resolution Facilitator

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**DUTIES OF THE TITLE IX COORDINATOR**

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

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 § 106.45(b)(1)(iii) - TRAINING

**All Title IX Personnel**

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

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 § 106.45(b)(1)(iii) - TRAINING

**Decision-makers**

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

**Investigators**

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

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 **ADVISOR OF CHOICE**

				
May be but is not required to be an attorney	May accompany to any meeting or proceeding	Institution may restrict participation (except at hearing)	Receives the draft and final reports	Conducts cross-examination at hearing

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## SEXUAL HARASSMENT DEFINITIONS



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### § 106.30(a) - SEXUAL HARASSMENT

<p><i>Sexual harassment means conduct on the basis of sex that satisfies one or more of the following:</i></p>	<ol style="list-style-type: none"> <li>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;</li> <li>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;</li> <li>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).</li> </ol>
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## PRONG 1: QUID PRO QUO

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

(§ 106.30(a))

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**QUID PRO QUO (FROM THE PREAMBLE)**

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

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

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

(§ 106.30(a))

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**§ 106.30(a) - HOSTILE ENVIRONMENT+**

Referred to in preamble as “The Davis Standard”

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

First Amendment protections

Must show the “effectively denies” to reach the bar

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**PRONG 3:  
THE VAWA  
OFFENSES**

*“Sexual assault” as defined in 20 U.S.C. 1092(f)(6)(A)(v), “dating violence” as defined in 34 U.S.C. 12291(a)(10), “domestic violence” as defined in 34 U.S.C. 12291(a)(8), or “stalking” as defined in 34 U.S.C. 12291(a)(30)*

(§ 106.30(a))



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**THE VAWA OFFENSES**



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

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**§ 106.30(a) - THE VAWA OFFENSES**



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

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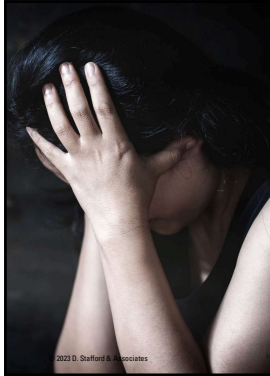
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## SEXUAL ASSAULT

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

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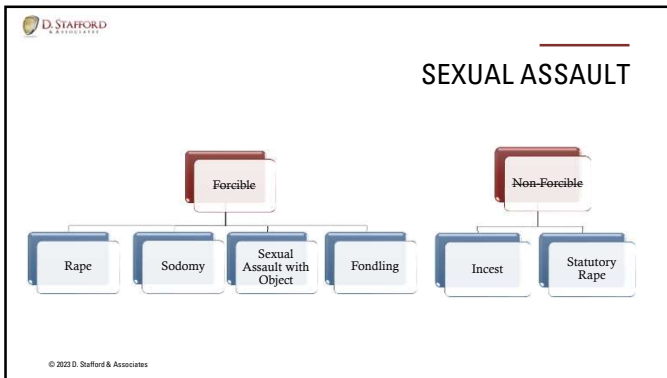
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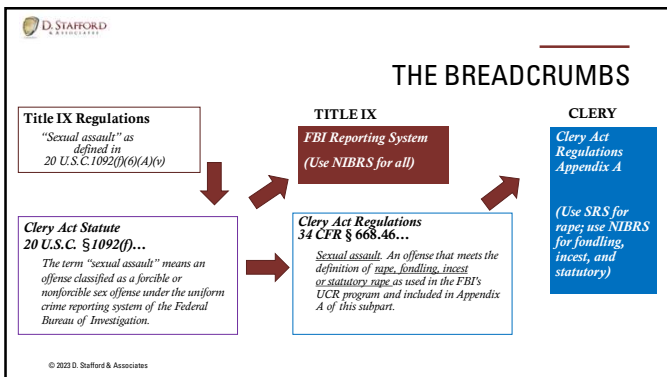
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## OPTION 1: SEXUAL ASSAULT - RAPE (FROM SRS)

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

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## OPTION 2: SEXUAL ASSAULT-RAPE (FROM NIBRS)

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

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

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

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

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## SEXUAL ASSAULT - FONDLING

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

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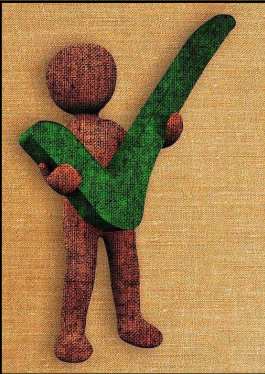
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## § 106.30(a) - CONSENT

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

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## SEXUAL ASSAULT DEFINITION CONSIDERATIONS

Includes attempts

Can broaden based on "consent" definition

Can specify which body parts are "private" and whether touching is over or under clothes

"Severity" of rape vs. fondling

Naming the offense in the policy

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## SEXUAL ASSAULT - INCEST & STATUTORY RAPE

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

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

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## INCEST AND STATUTORY RAPE CONSIDERATIONS

State law definitions

Complainant as a non-student

Conduct codes

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## INTIMATE PARTNER VIOLENCE

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

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## THE BREADCRUMBS

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

↓

TITLE IX

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

→

CLERY

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

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

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

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## DATING VIOLENCE - CLERY REGULATION ADDITIONS

*(ii) For the purposes of this definition -*

**(A)** Dating violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse.

**(B)** Dating violence does not include acts covered under the definition of domestic violence.

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

*The term “domestic violence” includes felony or misdemeanor crimes of violence committed by*

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

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## INTIMATE PARTNER VIOLENCE CONSIDERATIONS

Consistency in assigning violations

Severity, pervasiveness, and offensiveness not elements

Denial of equal access is not an element

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## STALKING

*“stalking” as defined in 34 U.S.C. 12291(a)(30)*

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

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

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

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## STALKING - CLERY REGULATION ADDITIONS

(ii) For the purposes of this definition -

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

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

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

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## TITLE IX JURISDICTION - PERSON



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



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

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## "ATTEMPTING TO PARTICIPATE"

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

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

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

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

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## TITLE IX JURISDICTION – CONTEXT OF EDUCATIONAL PROGRAMS OR ACTIVITIES

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

Or

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

And

Occurred in the United States

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## OFF-CAMPUS JURISDICTION



**Hotel**  
On field trip



**Home**  
While tutoring



**Bus**  
For athletic travel



**Virtual**  
During class



**Business**  
At internship

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# RECEIVING REPORTS



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## § 106.44(a) - GENERAL RESPONSE TO SEXUAL HARASSMENT

Prompt

Not Deliberately  
Indifferent

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

Equitable

Offer s upportive measures to complainant

Follow grievance process before imposing sanctions

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## § 106.30(a) - ACTUAL KNOWLEDGE

Title IX Coordinator

Official with Authority

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**NO ACTUAL KNOWLEDGE § 106.30(a)**

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**WHO MAY REPORT (FROM THE Q&A)**

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

- Complainant
- Friend
- Parent
- Witness

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**RESPONSE TO A REPORT**

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## § 106.30(a) - SUPPORTIVE MEASURES

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

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## SUPPORTIVE MEASURES

Non-disciplinary and non-punitive	Individualized	Offered as appropriate	Reasonably available
Without fee or charge	Complainant or the respondent	Before or after the filing of a formal complaint or where no formal complaint has been filed	Must keep confidential

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## SUPPORTIVE MEASURE EXAMPLES § 106.30(a)

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

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## WHAT COULD "UNREASONABLY BURDEN"?

Change in  
class schedule

Housing  
adjustment

Sports team  
membership

Student  
government  
position

Extracurricular  
activity  
participation

Suspension

Expulsion

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## LEAVE OPTIONS



Emergency removal



Administrative leave

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## § 106.44(c) - EMERGENCY REMOVAL



Immediate  
threat to  
physical health  
or safety



Must arise  
from the  
allegations



Provide notice  
and  
opportunity to  
challenge

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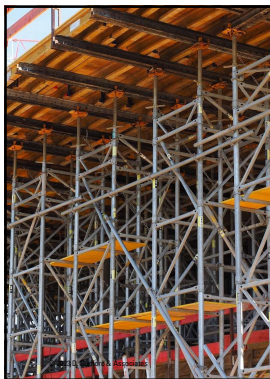
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### SUPPORTIVE MEASURES FROM GUIDANCE

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

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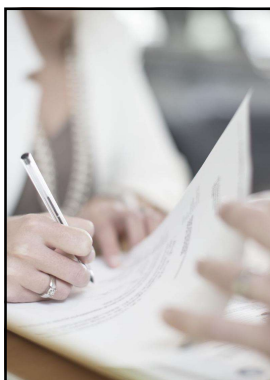
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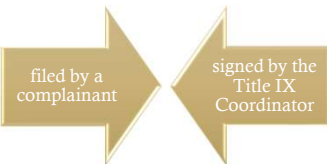
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### § 106.30(a) - FORMAL COMPLAINT



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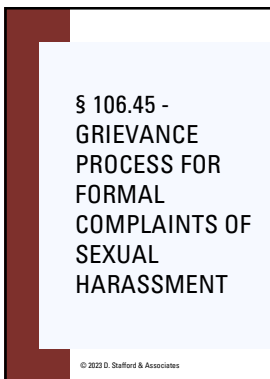
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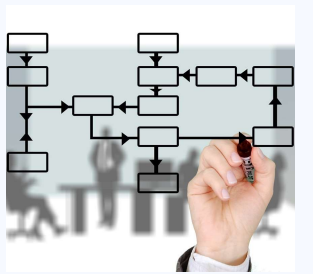
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### § 106.45 - GRIEVANCE PROCESS FOR FORMAL COMPLAINTS OF SEXUAL HARASSMENT



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

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

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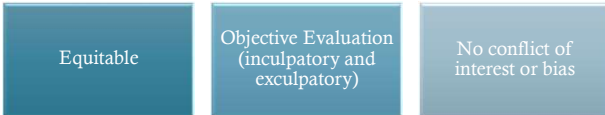
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### § 106.45 (b)(1)(i-iii) - GRIEVANCE PROCESS



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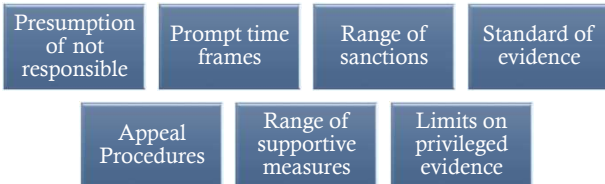
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### § 106.45 (b)(1)(iv-x) - GRIEVANCE PROCESS



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

Grievance process    Sufficient details and sufficient time to prepare    Identities of the parties, alleged conduct    Date and location of incident

Presumed not responsible    Advisor of choice    False statements

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

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

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

**Must Dismiss**

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

**May Dismiss**

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

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

Multiple respondents

More than one complainant against one or more respondent

One party against other party

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**§ 106.45(b)(9) - INFORMAL RESOLUTION**

Notice

Voluntary

Not allowed for Employee/student

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**§ 106.45(b)(5) - INVESTIGATION OF A FORMAL COMPLAINT**

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**D. STAFFORD & ASSOCIATES**

**§ 106.45(b)(5)(i-iii) - INVESTIGATION**

- Burden of proof is on the institution
- Equal opportunity to present witnesses and facts
- No restriction on discussing allegations

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**D. STAFFORD & ASSOCIATES**

**§ 106.45(b)(5)(iv-vii) - INVESTIGATION**

- Advisor of choice
- Notice of meetings
- Right to inspect evidence and respond
- Receive investigative report and may respond

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**§ 106.45(b)(6) - HEARINGS**



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 § 106.45(b)(6)(i) - HEARINGS



Live hearing



Cross-examination

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 § 106.45(b)(6)(i) - CROSS-EXAMINATION BY ADVISOR OF CHOICE

- *Directly, orally, and in real time by the party's advisor of choice*
- *If a party does not have an advisor, 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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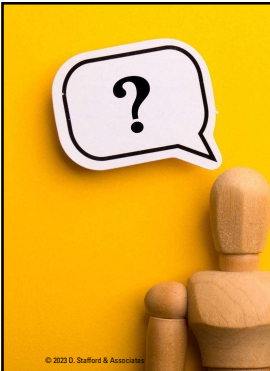
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§ 106.45(b)(6)(i) - RELEVANCY DETERMINATION

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

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

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

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

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



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



Audio



Video



Transcript

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



Made by the decision-maker



Decision-maker can have no other role



Applying the standard of evidence

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

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

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## SANCTIONS AND REMEDIES



**Sanctions:**  
Disciplinary/punitive



**Remedies:**  
Restore or preserve access

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§ 106.45(b)(8) - APPEALS



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§ 106.45(b)(8) - APPEALS

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

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§ 106.45(b)(8)(iii) - APPEALS

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

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 § 106.45(b)(10) - RECORDKEEPING

 Case Materials

 Training materials

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"Title IX Grievance Procedures"



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VAWA PROCEDURAL REQUIREMENTS



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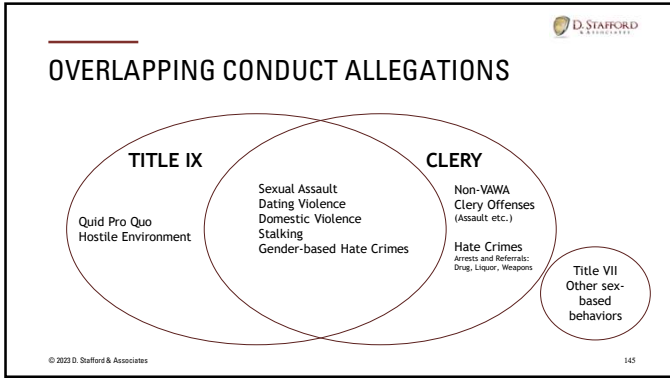
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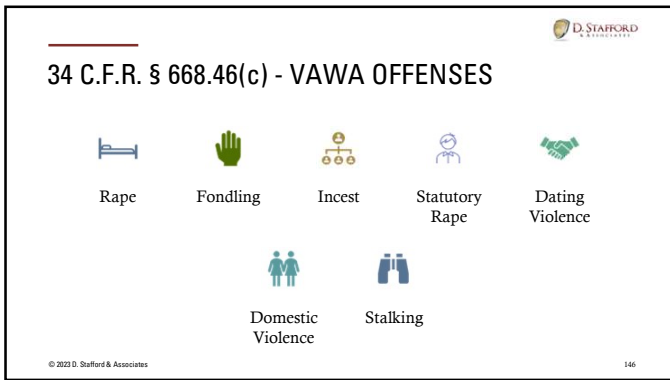
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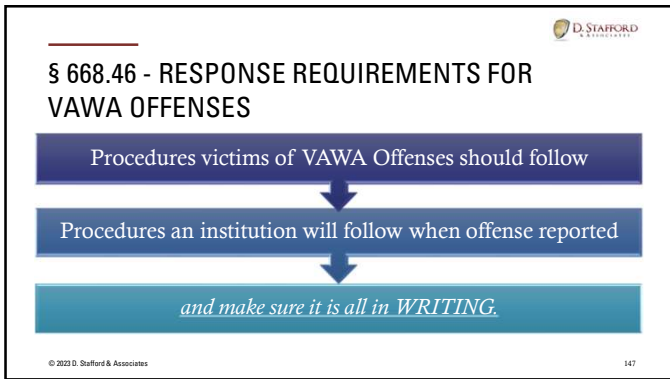
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### § 668.46(b)(11)vii) - WRITTEN EXPLANATION OF STUDENT OR EMPLOYEE'S RIGHTS

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

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

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

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

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

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

**5. To students AND employees about existing**

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

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

- Academic, living, transportation, working

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

**7. Confidentiality**

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

**8. Disciplinary Procedures**

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

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**RESPONSE TO "ACTUAL KNOWLEDGE"**

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

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

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### § 668.46(k)(2)(iii-iv)- ADVISORS

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

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### INFORMAL RESOLUTIONS

<p><b>Title IX</b></p> <ul style="list-style-type: none"> <li>• Can offer, but may not require</li> <li>• Not allowed for "employee on student" sexual harassment</li> <li>• Party may withdraw up to a point</li> </ul>	<p><b>Clery Act</b></p> <ul style="list-style-type: none"> <li>• Written information about procedures the institution will follow for VAWA offenses (does not differentiate between formal vs informal)</li> </ul>
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## FORMAL COMPLAINT RIGHTS

<p><b>Title IX</b></p> <ul style="list-style-type: none"> <li>• Treat equitably with goal to restore/preserve access to education; due process for respondent</li> <li>• Reasonably prompt time-frames</li> </ul>	<p><b>Clery Act</b></p> <ul style="list-style-type: none"> <li>• Prompt, fair and impartial investigation and resolution             <ul style="list-style-type: none"> <li>• Anticipated timeframes</li> <li>• List <u>all</u> possible sanctions for each offense (employees and students)</li> <li>• Consistent with policy and transparent</li> <li>• Not required to list all protective measures</li> </ul> </li> </ul>
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## WRITTEN DETERMINATION

<p><b>Title IX</b></p> <ul style="list-style-type: none"> <li>• Identification of the allegations</li> <li>• Procedural steps taken from receipt through determination</li> <li>• Findings of fact supporting the determination</li> <li>• Conclusions regarding the application of code of conduct to the facts</li> <li>• Result (responsibility, rationale, sanctions, remedies for each allegation)</li> <li>• Appeals procedures</li> <li>• When results become final (post appeal)</li> </ul>	<p><b>Clery Act</b></p> <ul style="list-style-type: none"> <li>• Result (include any sanctions and rationale for results and sanction)</li> <li>• Appeals procedures</li> <li>• Any change to the result</li> <li>• When such results become final</li> </ul>
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## § 668.46(k)(2)(iii-iv) - BIAS FREE AND TRAINING FOR "OFFICIALS"

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

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## APPEALS

### Title IX

- Must offer both parties an appeal
- Based on specific grounds

### Clery Act

- Not required (but must provide notice if allowed along with appeal procedures)
- Simultaneous written decision describing result, sanction, any changes to the result, when it becomes final

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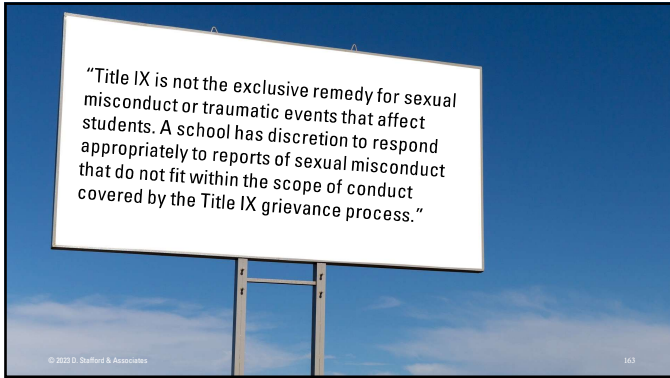
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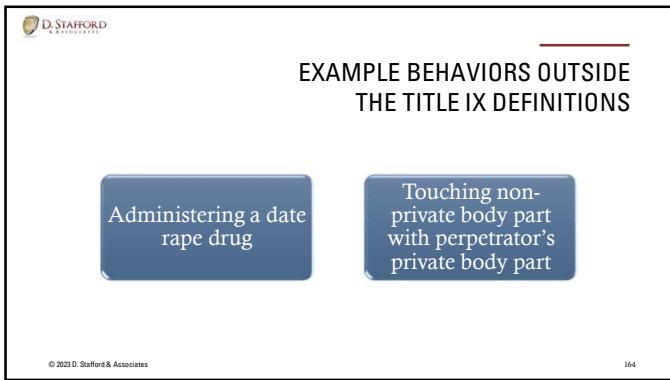
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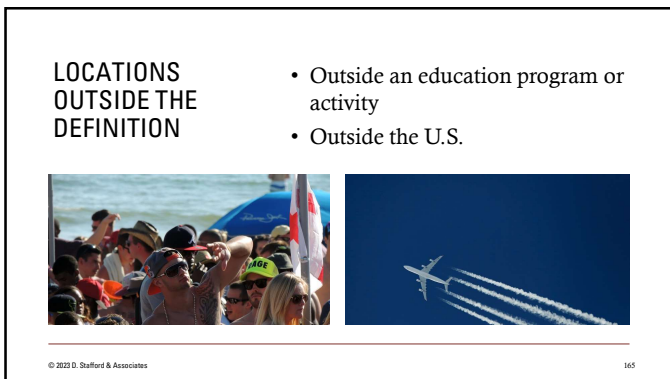
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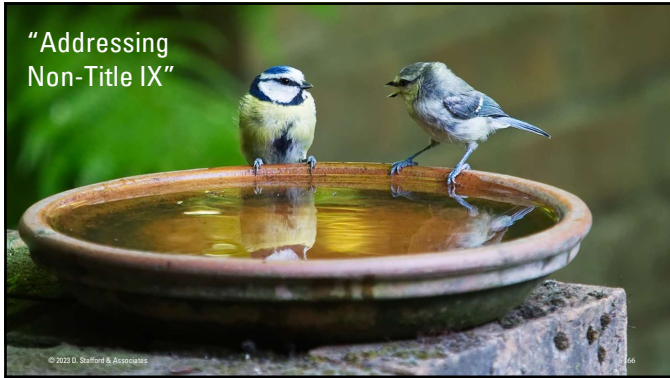
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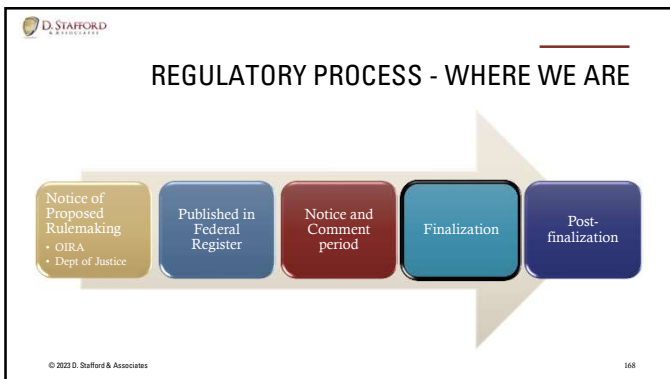
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**THE PROPOSED REGULATIONS**

- Just a draft
- Current rules **STILL IN EFFECT**
- Not about athletics and gender identity (coming later)

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**SCOPE OF TITLE IX - SEX DISCRIMINATION**

<p><b>Sex-based Harassment</b></p> <ul style="list-style-type: none"> <li>• Sexual Assault</li> <li>• Dating/Domestic Violence</li> <li>• Stalking</li> <li>• Hostile Environment</li> <li>• Quid Pro Quo</li> <li>• Harassment based on sex discrimination (see above)</li> </ul>	<p><b>Sex Discrimination</b></p> <ul style="list-style-type: none"> <li>• Gender, sexual orientation, &amp; identity</li> <li>• Pregnancy &amp; related conditions</li> <li>• Parental, family, or marital status</li> <li>• Applies to           <ul style="list-style-type: none"> <li>• Admission</li> <li>• Employment</li> <li>• Educational programs</li> <li>• Athletics</li> </ul> </li> </ul>
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**PROHIBITIONS**

**Sex Discrimination**

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

**Sex-based harassment**

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

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**D. STAFFORD & ASSOCIATES**

## SEX-BASED HARASSMENT

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

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**D. STAFFORD & ASSOCIATES**

## REPORTERS

2001 Guidance

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

↓

2020 Regulations

**Officials with Authority** to institute corrective measures

↓

2022 Proposed Regulations

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

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**D. STAFFORD & ASSOCIATES**

## REPORTING REQUIREMENTS (POST-SECONDARY)

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

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 **CONFIDENTIAL EMPLOYEES DEFINED**



Privileged (in role)



Designated (when providing services)



Human-subjects research on sex discrimination

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 **NOTIFICATION REQUIREMENT**

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

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 **LOCATION JURISDICTION CHANGES**


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



Outside the US?



Off campus?



Still includes student orgs

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### ADDITIONAL TIDBITS

- Can have temporary supportive measures that “burden” a respondent (with some parameters)
- While different treatment is permissible, cannot cause more than “de minimis harm”
- Permissive dismissal (not mandatory dismissal)
- Complaint can be written or oral (and not formal)
- Informal is option without “formal” complaint

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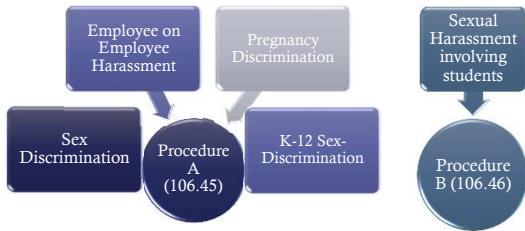
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### TWO GRIEVANCES PROCEDURES



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### COMPARING NOTICE

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

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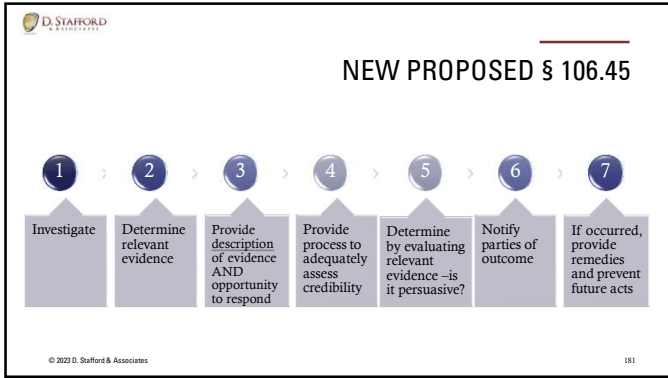
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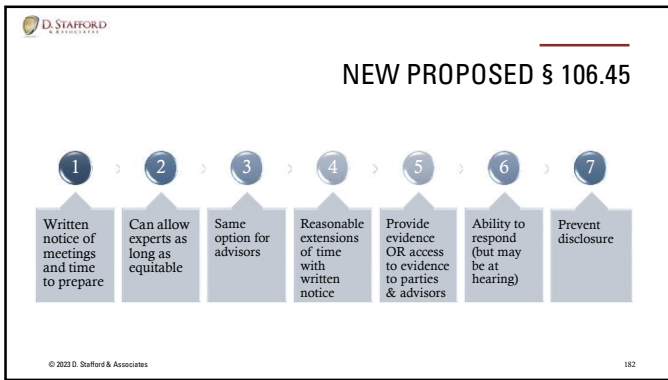
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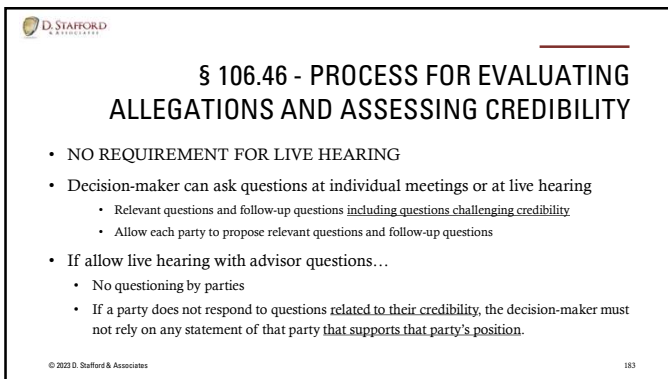
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## APPEALS (§ 106.46 ONLY)

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

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

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

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## PREGNANCY AND PARENTAL STATUS

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

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## PREGNANCY CONTINUED...

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

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**REMINDERS!**

It's a DRAFT

Nothing changes NOW

But...how do you address Sex DISCRIMINATION?

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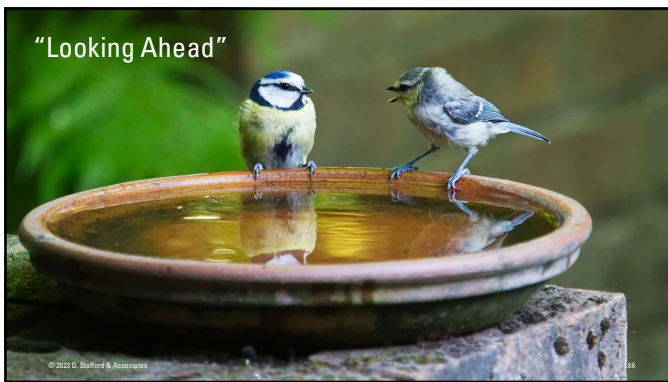
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**OTHER D. STAFFORD TRAINING OPPORTUNITIES**

<p><b>Title IX Coordinator Track</b></p> <ul style="list-style-type: none"> <li><input checked="" type="checkbox"/> Tier 1: Law and Policy</li> <li><input type="checkbox"/> Tier 2: Sex Discrimination Response</li> <li><input type="checkbox"/> Tier 3: Safety &amp; Risk Analyses for Sex-Based Harassment Emergency Removals</li> </ul>	<p><b>Investigator Track</b></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Tier 1: Sex-Based Harassment Investigations</li> <li><input type="checkbox"/> Tier 2: Dating/Domestic Violence and Stalking (DVDVS) Investigations</li> <li><input type="checkbox"/> Tier 3: Case Study and Simulation (Interviewing)</li> <li><input type="checkbox"/> Tier 4: Statement Analysis</li> <li><input type="checkbox"/> Tier 5: Report Writing</li> <li><input type="checkbox"/> Tier 6: Technology &amp; Investigations</li> <li><input type="checkbox"/> Tier 7: Violence Against Men</li> </ul>	<p><b>Related Offerings</b></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Institutional trainings</li> <li><input type="checkbox"/> Threat Assessment Teams</li> <li><input type="checkbox"/> Clery Compliance</li> <li><input type="checkbox"/> Procedural Justice</li> <li><input type="checkbox"/> Appellate Officer (<a href="http://www.naccop.org">www.naccop.org</a>)</li> <li><input type="checkbox"/> Constructing Resolution Processes (<a href="http://www.naccop.org">www.naccop.org</a>)</li> <li><input type="checkbox"/> Title IX Webinars (<a href="http://www.naccop.org">www.naccop.org</a>)</li> </ul>
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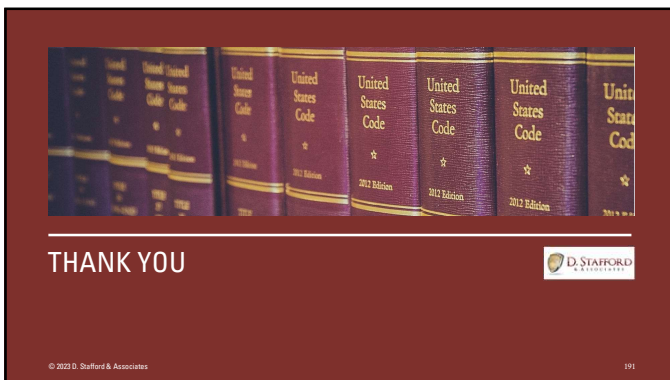
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