



**D. STAFFORD**  
& ASSOCIATES

# **Sexual Misconduct (Title IX) Investigation Class**

**Presented by: DSA Title IX Team Members**

D. Stafford & Associates, LLC, 179 Rehoboth Avenue, #1121, Rehoboth Beach, DE 19971  
202-438-5929

Dolores Stafford, President & CEO  
dolores@dstaffordandassociates.com  
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Have you joined NACCOP yet? If not, go to [www.naccop.org](http://www.naccop.org) to become a member of this professional association supporting Clergy Compliance Officers.

Once an institution is a member, individual membership is \$95.00. You can sign up your entire Clergy Compliance Committee for membership!

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## Title IX/Sexual Misconduct Investigations

(Two Day Virtual Course – may be broken up over several days)

### Overview of Course Schedule

#### **Module 1 The Investigator**

- Qualities of a Great Investigator
- Conflict of Interest
- Bias

#### **Module 2 Overview of the Laws for Investigators**

- Title IX
- The Clery Act
- Title VII

#### **Module 3 Sexual Harassment**

- Sexual Harassment on Campus
- Quid Pro Quo
- Hostile Environment+
- The VAWA Offenses
- Additional Elements for Title IX Cases
- Consent

#### **Module 4 Investigative Strategy and Evidence Collection**

- Investigation Roadmap
- Developing an Investigative Strategy
- Evidence Collection

#### **Module 5 Interviewing**

- Interview Basics
- The Interview
- Stress, Trauma, and the Interview
- Sample Questions

#### **Module 6 Credibility and Relevancy**

- Credibility
- Relevancy

#### **Module 7 Report Writing**

- Review of the Regulations
- Reports



**TITLE IX**

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## **ISSUANCE OF CERTIFICATES FOR COMPLETION OF DSA/NACCOP CLASSES**

To receive a certificate for classes held by D. Stafford & Associates, LLC or the National Association of 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.





## Dolores Stafford, President & CEO



Ms. Stafford was the Chief of Police at The George Washington University in Washington, DC from 1992-2010. During her distinguished 26 year career in the law enforcement and security industry, she worked in Campus Law Enforcement for 23 years at Bucknell University, Butler University, and most recently, at the George Washington University, where she served as Chief of Police of a 176 member police department for 18 years. Chief Stafford retired from active law enforcement on May 5, 2010. She has a Bachelor's Degree in Criminal Justice from Mansfield University and has a Master's of Science Degree in Education from Bucknell University. Chief Stafford is a Certified Litigation Specialist.

As one of the nation's premier campus police chiefs, she is a much sought after speaker, consultant, educator, expert witness, and instructor on campus security, campus safety and law enforcement related issues and on compliance with the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act (The Clery Act) and the security and safety requirements of the HEOA.

Chief Stafford has won numerous accolades for her 26 years of service in the law enforcement field. She won the "Breaking the Glass Ceiling" award in 2002 in honor of her ongoing contributions to improving the law enforcement profession. In 2004, Stafford was honored by the European Association for Campus Security for her expertise and achievements in campus security. Campus Safety Magazine awarded her their 1<sup>st</sup> Annual Campus Safety Director of the Year Award for 2006. In June 2008, Chief Stafford was presented with the Distinguished Young Alumni Award by her alma mater, Mansfield University in Pennsylvania.

She has been a member of the International Association of Campus Law Enforcement Administrators (IACLEA) since 1990 and she served on the Board of Directors from 2000-2005. She served as the Chair of the IACLEA Accreditation Commission from 2005-2008 and she served as the 45<sup>th</sup> President of the International Association of Campus Law Enforcement Administrators in 2003-2004, she was the first female to hold that office.

Chief Stafford has been a keynote speaker and has conducted presentations on the Clery Act for various organizations, including IACLEA, NACUBO, American Council on Education (ACE); the Stetson Law Conference, Security on Campus Inc, and other video/teleconference training companies.

She was a member of the IACLEA Government Relations Committee from 1995 to 2010 and was the Committee Chair from 1998 to 2000. Chief Stafford has testified at several congressional



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hearings, one at the request of the U.S. House of Representatives in July of 1997 and two at the request of the U.S. Senate in March of 1998 and July of 2015. Chief Stafford was selected to represent IACLEA as the primary negotiator during the 1999 and 2009 Negotiated Rule Making processes sponsored by the Department of Education regarding the development of final rules for the implementation of the Clery Act. She is a nationally recognized expert on compliance with the Clery Act.

Chief Stafford has been a featured speaker in many other areas of security and safety for the American Council on Education (ACE); American Association of State Colleges and Universities (AASCU); National Association of Student Personnel Administrators (NASPA), the National Association of College and University Business Officers (NACUBO); University Risk Management and Insurance Association (URMIA); Stetson University College of Law; and the International Association of Campus Law Enforcement Administrators (IACLEA).

Chief Stafford led the GW Police Department as the agency became an internationally accredited law enforcement agency with the Commission of Law Enforcement Accreditation (CALEA) in March of 2006 and the agency was successfully reaccredited in March of 2009. The agency subsequently achieved accreditation with the International Association of Campus Law Enforcement Administrators in May of 2007. She was chosen to become an assessor for CALEA in March 2006 and she is currently an IACLEA assessor, and as such, she has completed numerous on site assessments for those organizations.

She has published more than a dozen articles in various professional journals and magazines. She was one of the lead authors of the International Association of Campus Law Enforcement Administrator's [Blueprint for Safer Campuses: An Overview of the Virginia Tech Tragedy and Implications for Campus Safety](#). This document, unveiled at a press conference sponsored by the Woodrow Wilson School at Princeton University on April 18, 2008, is a roadmap for campus safety and security. The Blueprint for Safer Campuses outlines the guiding principles for campus safety and security worldwide.



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



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





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**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.



## 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 Portability and Accountability Act of 1996 —governs privacy of medical records.
- MOU:** Memorandum of Understanding—an official agreement developed between agencies.
- NIBRS:** National Incident-Based Reporting System. 1 of 2 crime reporting systems developed by the FBI, but not the system that you are required to use for Clery Reporting—the only portion of this system that is used for Clery Act purposes are the 4 forcible and 2 non-forcible sex offense definitions.
- OCR:** Office for Civil Rights—the unit of the Department of Education that oversees Title IX Compliance.
- RE:** Responsible Employee as defined by Title IX (OCR)
- PD:** Police Department
- PS:** Public Safety
- PNG:** Persona-non-Grata—process used by some campuses not keep students from entering certain areas of the campus or the entire campus (administrative process) versus legal bar notice or trespass warning.

**SANE:** Sexual Assault Nurse Examiner

**SART:** Sexual Assault Response Team

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

**TWN:** Timely Warning Notice

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



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## **D. Stafford & Associates Online Sexual Assault Investigations Recertification (SAIR) Training Program**

The Clery Act, as amended by the 2013 Reauthorization of the Violence Against Women Act, requires that investigators (criminal, civil rights/Title IX/conduct) and hearing board members receive annual training on the issues related to sexual assault, domestic violence, dating violence, and stalking. They are required to receive annual training about how to conduct an investigation and hearing process that protects the safety of the victim and promotes accountability.

Attendees of the D. Stafford and Associates training programs, "Investigation of Sex Crimes for Campus Police and Public Safety Agencies" and "Title IX Coordinator/Investigator Class" are eligible to participate in the Online Sexual Assault Investigations Recertification training classes at a nominal cost, which will fulfill the annual training requirement under the Violence Against Women Act requirements of the Clery Act. DSA will produce a minimum of one required class per year (each class has at least two modules) for attendees to maintain their certification and each class will have featured quizzes to measure and assess learning.

The online training is delivered via a Learning Management System that can be accessed anytime. Attendees receive a certificate following the completion of the required on line class.

(NOTE: The on line training class is reserved for and limited to individuals who have graduated from the D. Stafford & Associates Investigation of Sex Crimes for Campus Police and Public Safety Agencies Class or the Title IX Coordinator/Investigator Class. DSA staff will verify that the person has graduated from one of these two classes prior to providing the registrant with a login and password to the system). The SAIR Recertification Program is available to graduates of the courses listed above at an annual cost of \$89.00/person.

If you already attended or plan to attend our DSA Investigation of Dating Violence, Domestic Violence, and Stalking for Campus Police, Public Safety and Civil Rights (Conduct/Title IX) Investigators Class and you sign up for the Online Sexual Assault Investigations Recertification Training Program and Online Domestic/Dating Violence and Stalking Investigations Recertification Training Program, the cost for both On Line Recertification Programs is reduced to an annual cost of \$158.00/person. Otherwise, the individual cost of both Recertification Programs is \$89.00. You can take advantage of the savings for both any time after you attend the DSA Investigation of Dating Violence, Domestic Violence, and Stalking for Campus Police, Public Safety and Civil Rights (Conduct/Title IX) Investigators Class.

That said, check out the DSA Investigation of Dating Violence, Domestic Violence, and Stalking for Campus Police, Public Safety and Civil Rights (Conduct/Title IX) Investigators Class—it is the “sister class” to the Sexual Assault Investigation Class

**To Review Additional Information or to sign up for the Recertification Program,**  
<http://www.dstaffordandassociates.com/training>



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## **D. Stafford & Associates Online Domestic/Dating Violence and Stalking Investigations Recertification Training Program**

The Clery Act, as amended by the 2013 Reauthorization of the Violence Against Women Act, requires that investigators (criminal, civil rights/Title IX/conduct) and hearing board members receive annual training on the issues related to sexual assault, domestic violence, dating violence, and stalking. They are required to receive annual training about how to conduct an investigation and hearing process that protects the safety of the victim and promotes accountability.

Attendees of the D. Stafford and Associates training program, "Investigation of Dating Violence, Domestic Violence, and Stalking for Campus Police, Public Safety and Civil Rights (Conduct/Title IX) Investigators" are eligible to participate in the Online Domestic/Dating Violence and Stalking Investigations Recertification Training Program at a nominal cost, which will fulfill the annual training requirement under the Clery Act. DSA will produce a minimum of one required class per year (each class has at least two modules) for attendees to maintain their certification and each class will have featured quizzes to measure and assess learning.

The online training is delivered via a Learning Management System that can be accessed anytime. Attendees receive a certificate following the completion of the required on line class.

(NOTE: The on line training class is reserved for and limited to individuals who have graduated from the D. Stafford & Associates Investigation of Dating Violence, Domestic Violence, and Stalking for Campus Police, Public Safety and Civil Rights (Conduct/Title IX) Investigators Class. DSA staff will verify that the person has graduated from this class prior to providing the registrant with a login and password to the system).

The DVDVS Recertification Program is available to graduates of the courses listed above at an annual cost of \$89.00/person. If a registrant is also a registrant of the Online Sexual Assault Investigations Recertification Training Program, the cost is reduced to an annual cost of \$69.00/person.

NOTE: If you already attended or plan to attend either the DSA Investigation of Sex Crimes for Campus Police and Public Safety Agencies Class or the Title IX Coordinator/Investigator Class and you sign up for the Online Sexual Assault Investigations Recertification Training Program and Online Domestic/Dating Violence and Stalking Investigations Recertification Training Program, the cost for both On Line Recertification Programs is reduced to an annual cost of \$158.00/person. Otherwise, the individual cost of both Recertification Programs is \$89.00. You can take advantage of the savings for both any time after you attend either the DSA Investigation of Sex Crimes for Campus Police and Public Safety Agencies Class AND the Title IX Coordinator/Investigator Class.

That said, if you have not signed up yet for the DSA Investigation of Sex Crimes for Campus Police and Public Safety Agencies Class—it is the "sister class" to the DSA Investigation of Dating Violence, Domestic Violence, and Stalking for Campus Police, Public Safety and Civil Rights (Conduct/Title IX) Investigators Class —so check out the website for one of the three classes currently scheduled in 2015.

**To Review Additional Information or to sign up for the Recertification Program,**  
<http://www.dstaffordandassociates.com/training>



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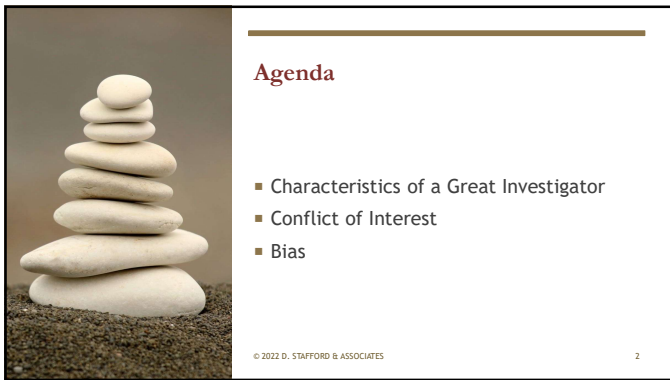
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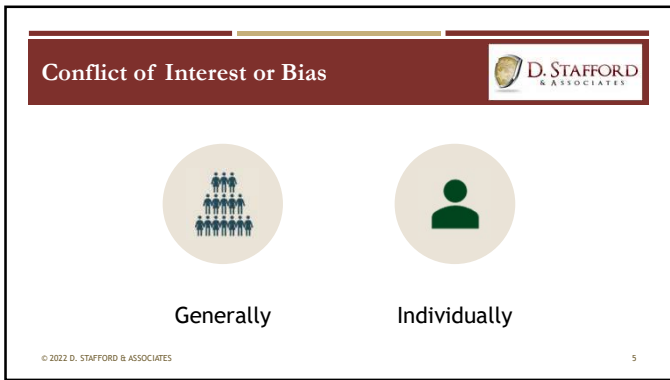
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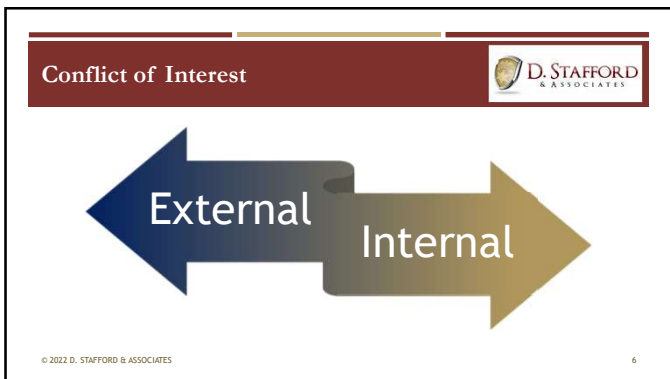
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## Bias

- Being in favor of or against a particular person or thing in an unfair way
- Influences a person's judgment from being balanced
- Bias often comes from stereotypes or incomplete information

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## Bias



Personal experience

Personal identity

Social identity

Theoretical perspective

Professional identity

Religious perspective

Political perspective

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Confirmation Bias	Confirmed preconceived opinion	Types of Bias
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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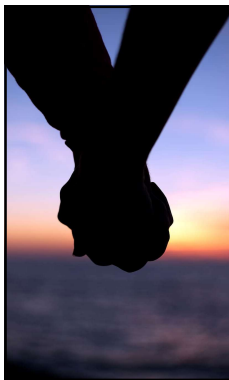
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**Case Study: Assigning Personnel**

You have been assigned a dating violence case involving two individuals with the same gender and sexual identities. Your co-investigator belongs to a conservative church that has actively supported anti-LGBTQ political candidates and policies.

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**Case Study: The Interview**

An investigator was recently interviewed by the student newspaper regarding their role with Title IX. They self-disclosed that they were a survivor of sexual assault which is why they do this work. Shortly after the article is released, the investigator is assigned to a sexual assault case. The respondent, upon notification of who the investigator will be, has requested a new investigator based on a conflict of interest/bias.

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### Case Study: The Fan

A recent student sexual harassment case resulted in a finding of “not responsible.” The complainant has submitted an appeal claiming investigator bias. The appeal states that the investigator was biased against her because the investigator favored the respondent, a football player. The complainant referenced being interviewed in the investigator’s office which had school football paraphernalia displayed. The investigator, who is in Public Safety, frequently travels with the football team as part of their job.

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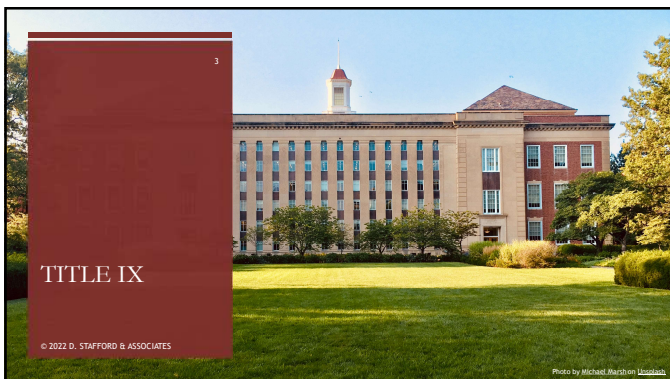
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**Training for Investigators** 

  
 Definition

  
 Scope of program  
or activity

  
 Investigation

  
 Impartiality

  
 Investigative  
Report

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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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**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
- Effective 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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**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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      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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**Advisors** 

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

 <b>Live hearing</b>	 <b>Cross-examination</b>
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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 off 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><b>Clear and Convincing</b></p> <ul style="list-style-type: none"> <li>Substantially more likely than not to have occurred</li> <li>High probability that a particular fact is true</li> <li>Higher than preponderance, but not as high as “beyond a reasonable doubt”</li> </ul>	<p><b>Preponderance of the Evidence</b></p> <ul style="list-style-type: none"> <li>More likely than not</li> <li>50% and a feather</li> </ul>
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**Recordkeeping (Seven Years)** 



Case Materials



Training materials

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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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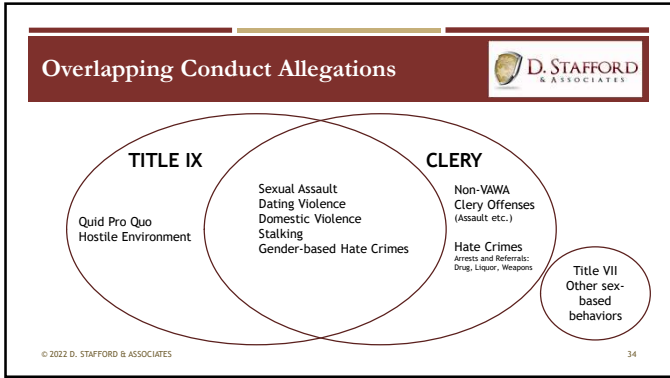
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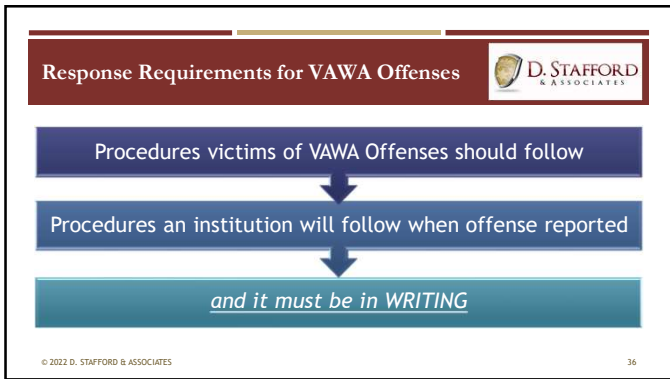
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**Written Explanation of Rights and Options**



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 sanction)
- 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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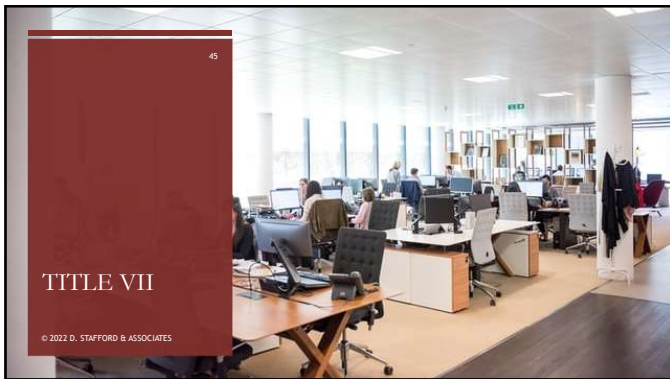
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**TITLE VII**

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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**



- "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*
- 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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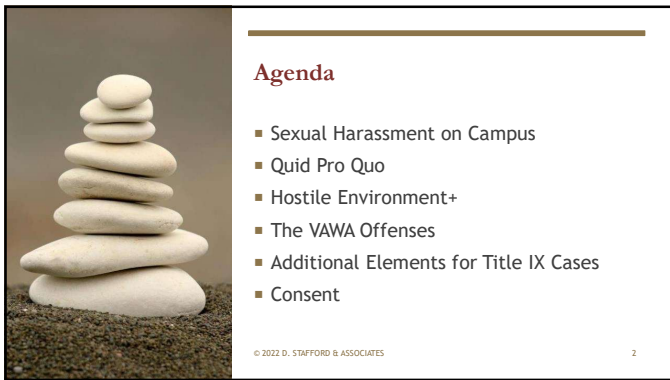
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**Elements of Sexual Harassment**



- 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**

QUID PRO QUO

This for that.

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**PRONG 1: Quid Pro Quo**

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

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**PRONG 1: Quid Pro Quo** 




Sex or gender-based



Employee



CONDITIONING aid, benefit, or service



UNWELCOME conduct (or threat of conduct)

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**PRONG 1: Quid Pro Quo** 

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

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**Quid Pro Quo:  
Respondents**

- Supervisors, Coaches, Faculty  
(Title IX)
- Volunteers/Non-employees  
(Non-Title IX)
- Students  
(Non-Title IX)

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**POLICY  
REVIEW:  
Quid Pro Quo**

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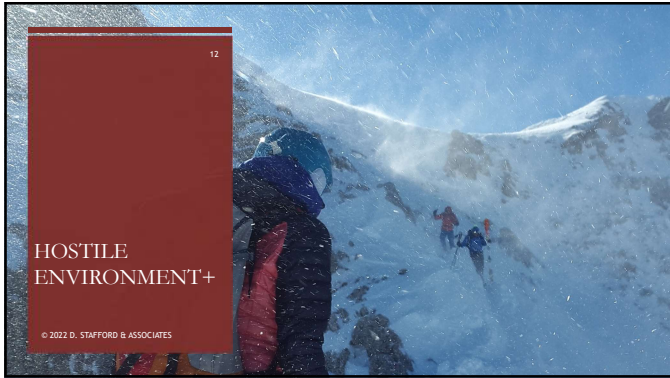
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**HOSTILE  
ENVIRONMENT+**

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**PRONG 2: Hostile Environment+**  
(The *Davis* Standard)

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

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**PRONG 2: The *Davis* Standard**



*Davis v. Monroe County Board of Education*, 526 U.S. 629 (1999).

Holding that “funding recipients are properly held liable in damages only where they are deliberately indifferent to sexual harassment, of which they have actual knowledge, that is so severe, pervasive, and objectively offensive that it can be said to deprive the victims of access to the educational opportunities or benefits provided by the school.”

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**Hostile Environment+**



Sex  
Gender-based



Unwelcome



Conduct  
Severe  
Pervasive  
Objectively offensive



Impact on  
education (or  
employment)

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**Hostile Environment+** 

**ON THE BASIS OF SEX**

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

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**Hostile Environment+** 

**UNWELCOME**

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

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**Hostile Environment+** 

**SEVERE**

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

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**Hostile Environment+**



**PERVASIVE**

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

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**Hostile Environment+**



**OBJECTIVELY OFFENSIVE/REASONABLE PERSON**

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

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**Hostile Environment+**



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

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

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**Hostile Environment+**



**EFFECTIVELY DENIES**

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

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**Sexual Harassment+: Definition Considerations**

- Definition vs. Interpretation
- First Amendment issues
- "Below the line" unwelcome conduct
- No intent requirement

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**POLICY REVIEW: Hostile Environment**

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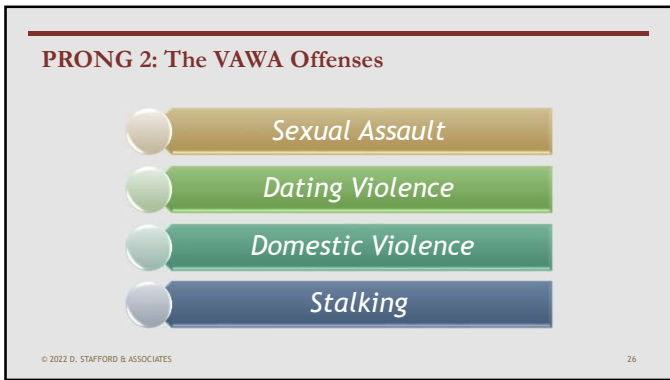
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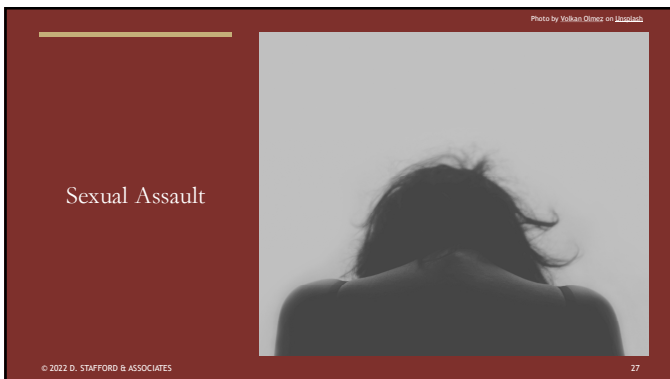
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**Rape - Clery** 

*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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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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**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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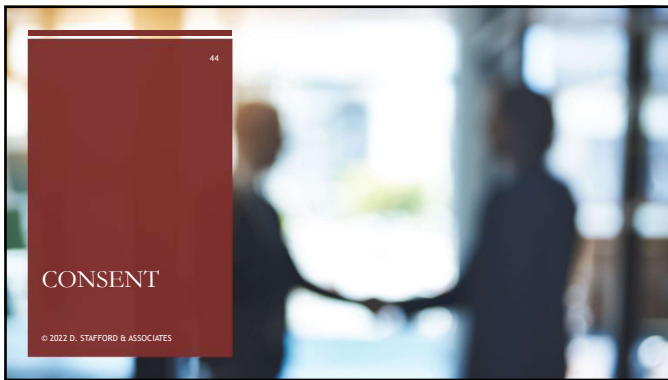
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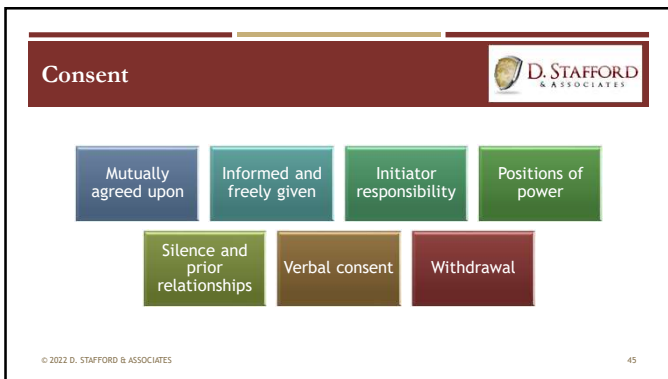
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Consent cannot be given due to...

Force

Incapacitation

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Force

Physical Coercion Intimidation Threat

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Two-Step Determination

Was the complainant incapacitated?

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

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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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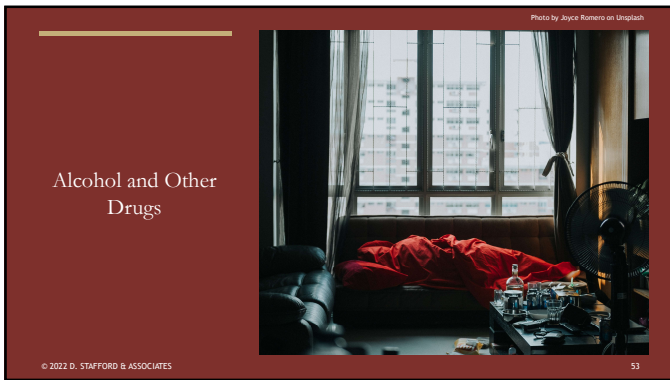
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### Impairment

- 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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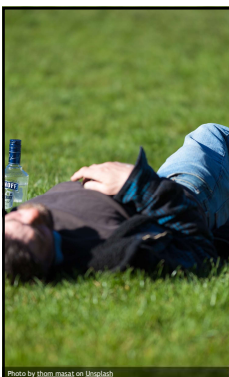
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### Incapacitation

- 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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# Investigative Strategy and Evidence Collection

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## Agenda

- Investigation Roadmap
- Developing an Investigative Strategy
- Evidence Collection
- Case Study

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## Investigation Roadmap

```
graph LR; A[Investigative strategy] --> B[Research and initial evidence collection]; B --> C[Interviews]; C --> D[Report writing]; D --> E[Additional evidence collection]; E --> A;
```

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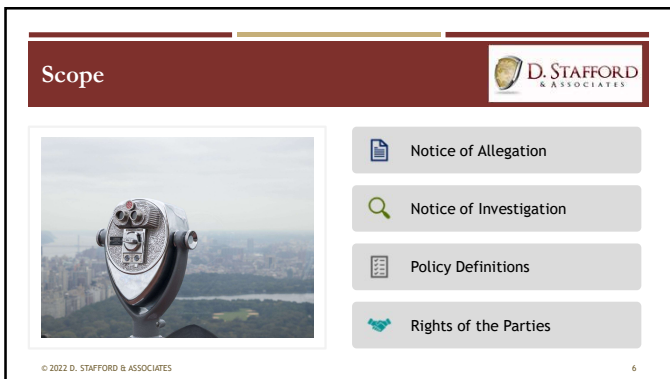
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**Methodology**

- File Management
- Liaisons
- Logistics
- Internal Communications

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**Preparation**

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

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What challenges could you face?  
What can we do to prepare?

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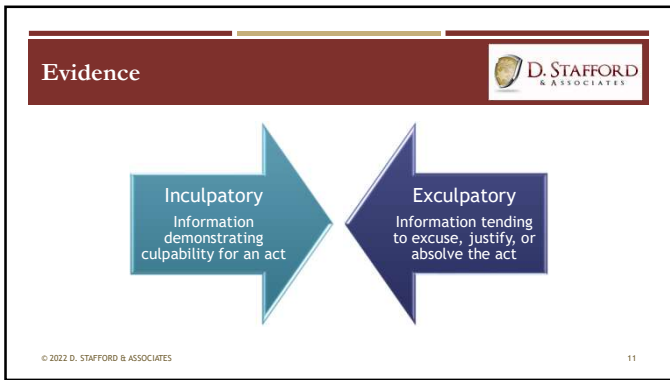
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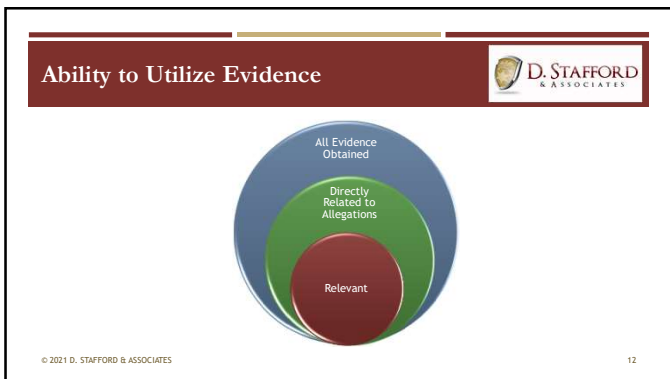
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**Types of Evidence** 



Real evidence



Demonstrative



Documentary



Testimonial

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**Providers of Evidence** 




Parties



Witnesses



Institution



Investigators

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**Initial Evidence Collection** 

Complaint

Other "statements"

Evidence from campus sources

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**Research** 

 Websites
  Organizations
  Calendars
  Schedules
  Party "directory information"

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**Other Sources of Evidence** 

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

Voicemail    Phone logs    Guest lists

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**Floorplans** 



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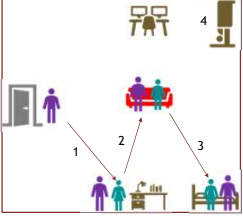
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**Diagrams**



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

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



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**Investigation Timeline**

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**Case Study: The Dance**

You have been assigned, on November 21<sup>st</sup>, to a case. The complaint states, "I went to a dance in the Student Union on October 31<sup>st</sup>. I was pretty drunk because my friends and I had pre-gamed (played beer pong) at KF's room in South Hall. I don't remember if BP was there. At the dance, BP and I talked and danced. A group of us, including BP, left the dance around 1am and walked to the North Campus dining hall to get something to eat. I don't remember much else after that except that my suitemate TJ walked me back to my room because I was having trouble walking because I was drunk. At some point, I woke up to find BP penetrating me. I was so scared that I couldn't say anything. When BP finished, BP got up and left my room. I think he lives in West Hall.

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

**Map out your investigative strategy including the initial evidence you want to collect.**

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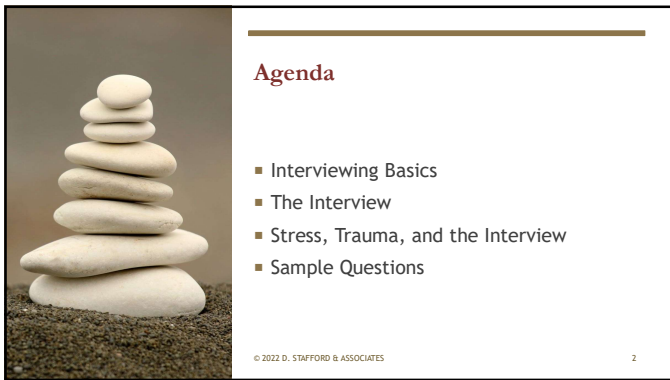
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**What are Interviews?** 



**Testimonial Evidence**



**Conversation**



**Structured**

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**Interview Golden Rules** 

Be prepared

Create a comfortable environment

Be flexible

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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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Flexibility

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~~Plan A~~  
~~Plan B~~  
Plan C

*I pledge to...*

- Be open-minded
- Consider different theories of a case
- Roll with the surprises
- Adapt to the room

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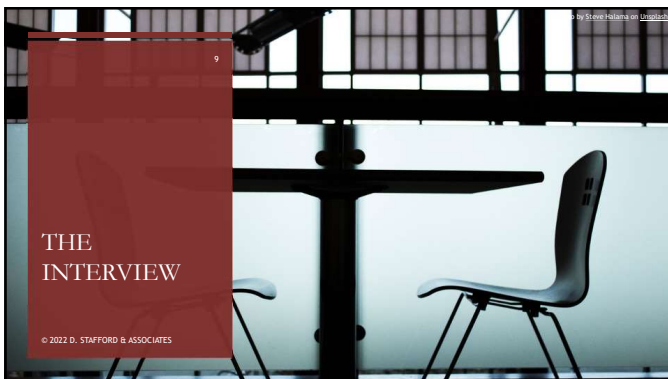
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### The DSA Interview Outline

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

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### PRELIMINARIES: You do the talking



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### BACKGROUND: Build the Rapport



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**NARRATIVE:**  
**The Big Question**



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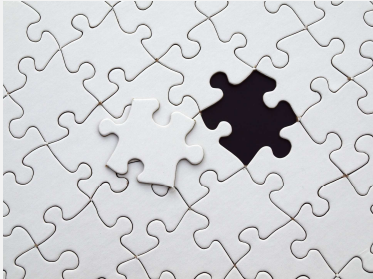
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**CLARIFICATION:**  
**Filling in the holes**



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**CASE QUESTIONS:**  
**The Pre-Drafted  
Must Asks**



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**CLOSING:  
Loose Ends**



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**EVALUATION:  
How Did It Go?**



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**Interviewing  
Bad Habits**

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

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**Witness Interviews** 



Follow same interview structure



Confidentiality/  
Privacy



How do they "know"?

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



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**Respondent - Potential Responses** 

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

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STRESS,  
TRAUMA, AND  
THE  
INTERVIEW

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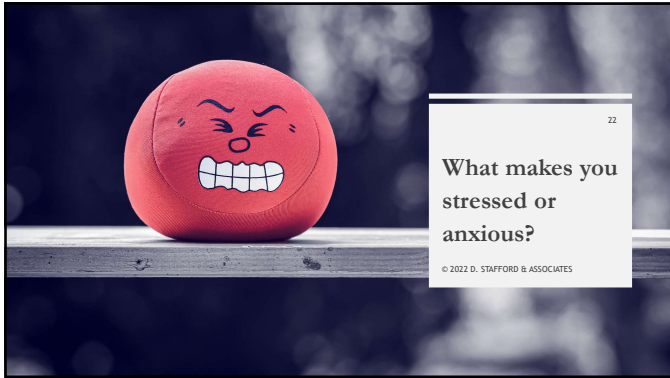
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**Avoiding Re-traumatization** 

-  Be aware of safety and well-being
-  Maintain privacy and confidentiality
-  Keep the parties up to date
-  Treat ethically and with dignity

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**Question Format** 

-  Tone
-  Phrasing
-  Open-ended
-  Safe
-  Judgment-free

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**Interview Techniques**



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

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**Impartial Investigations**



- Consistent application
- Ask clarifying questions
- Avoid bias

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**SAMPLE QUESTIONS**



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Recreate the Scene

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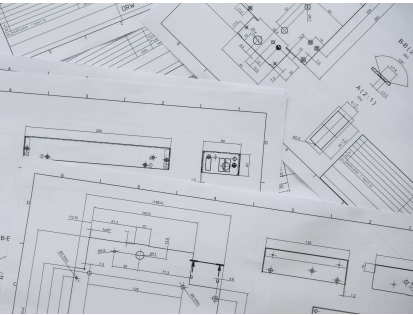
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Physical Space

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SENSORY

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**Harassment Allegation Questions**





WHO, WHAT,  
WHEN, WHERE,  
AND HOW



RESPONSE



IMPACT



WITNESSES



EVIDENCE

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**Elements of the Policy Violations**

- Sex Act
- Relationship
- Consent
- Act of Violence
- Conduct
- Impact
- Location

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**Consent**



Consent cues

Force,  
Coercion,  
Intimidation,  
Threats

Incapacitation

Policy definition

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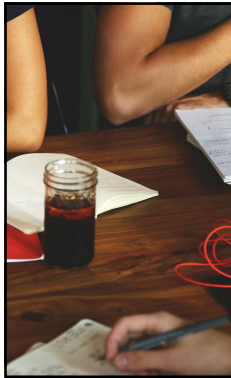
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### Interview Practice

You will be divided into groups of three. Identify an interviewer, interviewee, and an observer.

**Interviewee** - Think of a recent event in your life (anything even something as mundane as food shopping) and be prepared to be interviewed about it. All you will tell the interviewer before you start is a general statement about what the event is - e.g., "I went food shopping last week."

**Interviewer** - You have ten minutes to conduct an interview about the event.

**Observer** - Pay attention to the interview technique, language, responses, etc.

After the ten minutes, I will tell you to switch until each person has been interviewed.

We will report out with your observations.

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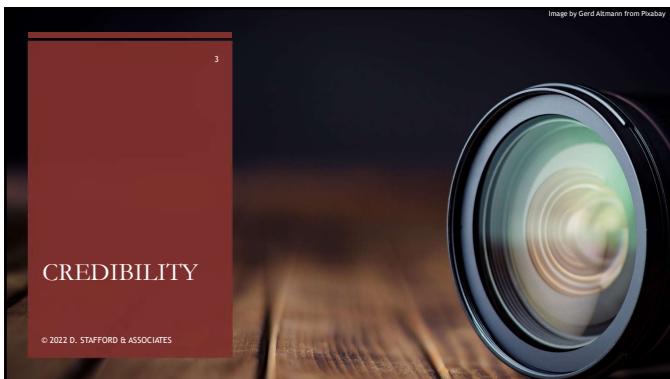
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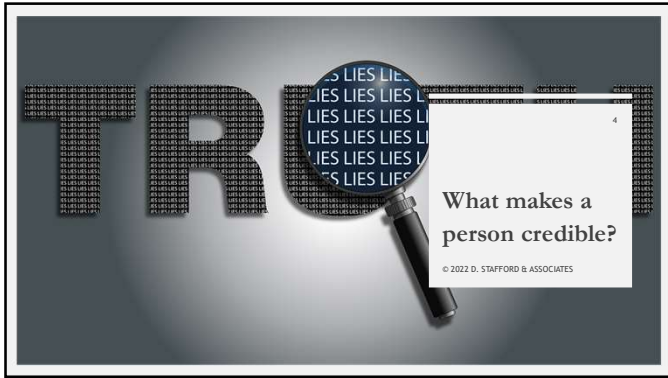
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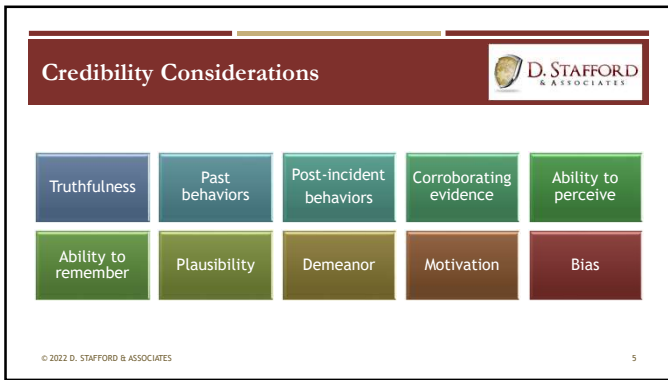
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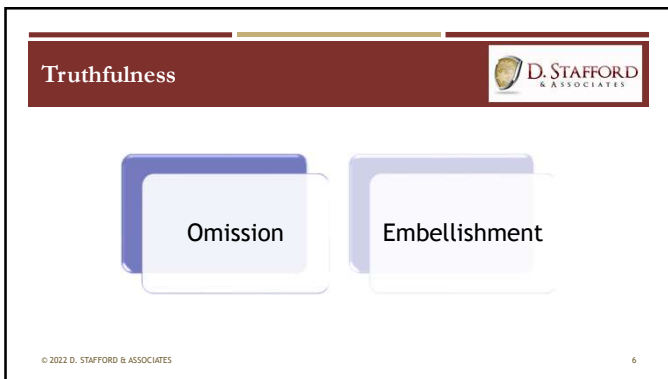
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**Truthfulness** 



Repeat v.  
Reconstruct



Get them to  
talk



Consistency



Details

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**Past and Post Behaviors** 



Past behaviors



Post incident

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**Corroborating Evidence** 




Physical




Contemporaneous  
documentation




Personal  
documents



Admissions



Eyewitness



Outcry

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**Ability to Perceive**



Distance Knowledge Credentials Competence

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**Ability to Remember**



Passage of time Alcohol Blackout Peripheral details History of memory

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**Plausibility**



Believability Perspective

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**Demeanor**







Baseline




Discomfort




Emotions




Shame



Anger



Defensive



Fear

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**Motivation**



To lie

Pressure

Past relationships

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**Why are people bad at detecting deception?**

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**Bias** 



Personal preference



Impartiality



Internal Biases

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- 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
- Gender Bias**  
 • More likely to believe one gender over another
- Race**  
 • More likely to believe one race over another

Bias

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**Other Factors that Impact Credibility** 



Memory and trauma



Cross-cultural issues

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**When is Evidence Relevant?**

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Makes a fact more or less probable than it would be without the evidence + The fact is of consequence in determining the action = Relevance

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**Key Relevancy Points**

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The evidence does not need to be conclusive

Is sufficient if it constitutes a link in the chain

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

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## Relevancy Exceptions



*“Questions and evidence about the complainant’s sexual predisposition or prior sexual behavior are not relevant, unless such questions and evidence about the complainant’s prior sexual behavior are offered to prove that someone other than the respondent committed the conduct alleged by the complainant, 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.”*

- 2020 Title IX Regulations

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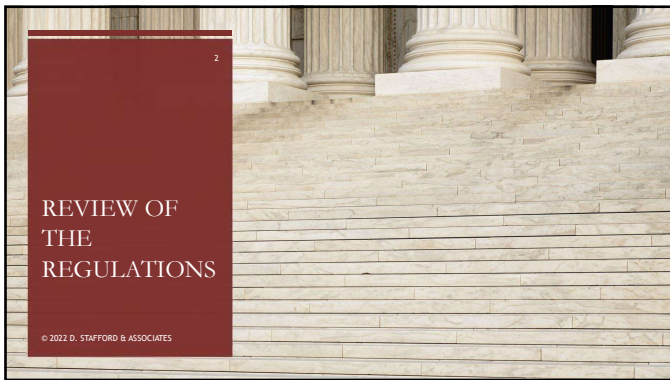
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**Gather Evidence/  
Present Evidence**

*“burden of gathering evidence sufficient to reach a determination regarding responsibility rest on the recipient”*

*“equal opportunity for the parties to present witnesses, including fact and expert witnesses, and other inculpatory and exculpatory evidence”*

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**Party Evidence**





Witness List



Evidence Submission



Expert Testimony

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**The Regs on Evidence**



- Any evidence obtained
  - directly related to the allegations
    - including the evidence upon which the recipient does not intend to rely in reaching a determination regarding responsibility and
    - inculpatory or exculpatory evidence whether obtained from a party or other source
- So that a party can meaningfully respond

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**Written Determination**



(A) Allegations potentially constituting sexual harassment

(B) Description of the procedural steps taken from the receipt of the formal complaint through the determination:

- notifications to the parties
- interviews with parties and witnesses
- site visits
- methods used to gather other evidence
- hearings held

(C) Findings of fact supporting the determination

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**Written Determination**



(D) Conclusions regarding the application of the recipient's code of conduct to the facts

(E) A statement of, and rationale for, the result as to each allegation

- determination regarding responsibility,
- disciplinary sanctions on the respondent,
- remedies to the complainant

(F) The recipient's procedures and permissible bases for the complainant and respondent to appeal

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**Evidence Collection**




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## Everything BUT...



- Complainant's sexual predisposition or prior sexual behavior unless...
  - offered to prove that someone other than the respondent committed the conduct alleged or
  - complainant's prior sexual behavior with respect to the respondent and are offered to prove consent
- Physician, psychiatrist, psychologist in connection with the provision of treatment to the party
  - unless voluntary, written consent

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## "Directly Related": in the comments



- "interpreted using their plain and ordinary meaning"*
- We note that *"directly related"* in § 106.45(b)(5)(vi) aligns with requirements in FERPA, 20 U.S.C. 1232g(a)(4)(A)(i). (*"information directly related to a student"*)
- "directly related" may sometimes encompass a broader universe of evidence than evidence that is "relevant"*

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## "Relevant" in the Comments



- The parties should have the opportunity to argue that evidence directly related to the allegations is in fact relevant.*
- The investigator would then consider the parties' viewpoints ... and on that basis decide whether to summarize that evidence in the investigative report.*
- A party who believes the investigator reached the wrong conclusion about the relevance of the evidence may argue again to the decision-maker (i.e., as part of the party's response to the investigative report, and/or at a live hearing) about whether the evidence is actually relevant.*

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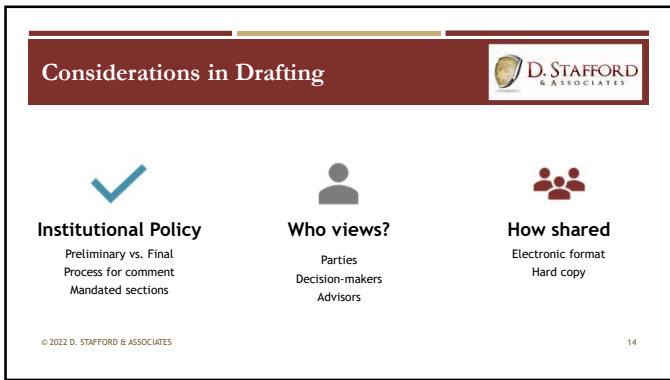
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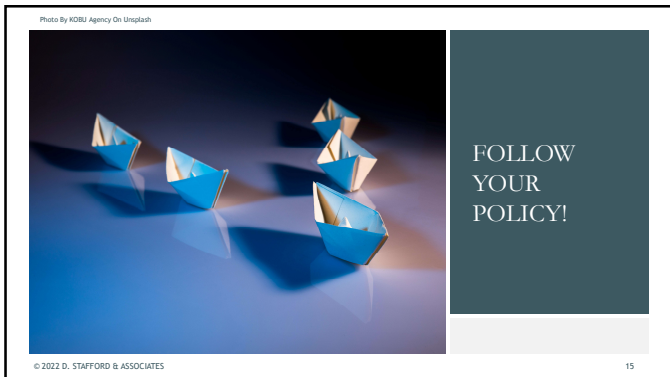
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## Report Writing Goals

**Compilation of Evidence**

**Summary of Facts**

**Documentation of Process**

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16

## 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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## Report Steps

Prelim Report

• Evidence Directly Related

Parties Review & Submit Written Response

Final Report

• Summary of Relevant Evidence

Parties Review & Submit Written Response

Final Report and Written Responses

Hearing

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