

# Learning Foundation

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Compliance and Rights

# Trainer

- Kevin Carmody, M.A. Ed.D. expected 2021
  - (Dissertation: “Experiences of Sexual Assault Survivors Participating in a Title IX Investigation”)
- Over 10 years investigating Title IX cases
- Served as Title IX Coordinator since 2015
- Conducted numerous trainings and professional development on Sexual Misconduct and Title IX for ASCA, NASPA, ACPA, ACUI, and others
- Co-Chair ASCA Sexual Misconduct Institute 2018-2019



# Title IX

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Title IX of the Education Amendments of 1972 (Title IX), 20 W.S.C. §§ 1681 et seq., and its implementing regulations, 34 C.F.R. Part 106

Enacted by Congress, Title IX seeks to reduce or eliminate barriers to educational opportunity caused by sex discrimination in institutions that receive federal funding



## TITLE IX

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.

# Title VII

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Title VII of the Civil Rights Act of 1964 (Title VII)

*"It shall be an unlawful employment practice for an **employer**... 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.**"*

— Title VII, Civil Rights Act of 1964

# Title VII

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## Covers:

- Hiring/Firing
- Compensation, assignment, classification
- Job Advertisement
- Recruitment
- Testing
- Facilities
- Training and apprenticeship programs
- Fringe Benefits
- Pay, retirement plans, disability leave
- Other terms and conditions of employment
- **Sexual Harassment**

# Michigan Elliott-Larsen Civil Rights Act

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Elliott-Larsen Act or Public Act 453 of 1976 is Michigan's version of the Civil Rights Act passed federally.

Prohibits discrimination on the basis of *religion, race, color, national origin, age, sex, height, weight, familial status, or marital status* in employment, housing, **education** and access to public accommodations.



# Alma College Nondiscrimination Statement

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“Alma College adheres to all federal and state civil rights laws banning discrimination in private institutions of higher education. Alma College will not discriminate against any employee or applicant for employment, student or applicant for admission on the basis of ***race, color, sex, religion, national or ethnic origin, physical or mental disability, age, height, weight, marital status, sexual orientation, gender, gender identity, arrest record, genetic information, or any other protected category under applicable local, state or federal laws***; including protections for those opposing discrimination or participating in any grievance process on campus or within the Equal Employment Opportunity Commission or other human rights agencies.”



# Existing Guidance

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2001 Revised Sexual Harassment Guidance  
2013 Dear Colleague Letter (Retaliation)  
2015 Dear Colleague Letter (Title IX Coordinators)  
2020 Regulations Addressing Sexual Harassment

# Guidance on Sexual Misconduct

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- Revised Sexual Harassment Guidance, 2001
- Dear Colleague Letter, 2011 – since recalled
- Dear Colleague Letter, 2013
- Not Alone Report – White House Task Force Report, 2014
- DOE Q and A Document, 2014 – since recalled
- Dear Colleague Letter, 2015
- The Handbook for Campus Safety and Security Reporting, 2016
- Dear Colleague Letter, 2016 – since recalled
- Dear Colleague Letter and Q and A, 2017 (Interim guidance)

# 2001 Revised Guidance

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- Title IX guidance promulgated by the DOE/OCR
- Replaced the 1997 Guidance
  - Revisions were made following the resolution of multiple SCOTUS cases addressing private litigation under Title IX (i.e. *Gebser* and *Davis*)
  - Guidance distinguishes from compliance vs private litigation matters
- “Notice” and “Request for Comments” were published in the Federal Register in November 2000
- Final guidance released in January 2001



# 2001 Revised Guidance

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- Principles of the 1997 and 2001 Guidance
  - Sexual harassment... “interfere with a student’s academic performance and emotional and physical well-being.” (pg. ii)
  - “the good judgement and common sense of teachers and school administrators are important elements of a response that meets the requirements of Title IX.” (pg. ii)
  - “prompt and effective action calculated to **end** the harassment, **prevent** its recurrence, and, as appropriate, **remedy** its effects.” (pg. iii)
  - “do not overreact to behavior that does not rise to the level of sexual harassment.”(pg. iii)
  - “well-publicized and effective grievance procedures.” (pg. iii)

# 2001 Revised Guidance

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- Sexual Harassment
  - “Unwanted conduct of a sexual nature” (pg. 2)
  - Unwelcome: “not [requested] or [invited] and ‘[regarded] as undesirable or offensive.’” (pg. 8)
- DOE Requirements
  - “Issue a policy against sex discrimination,
  - Adoption and publication of grievance procedures (prompt and equitable resolution)...
  - Designate at least one employee to coordinate compliance” (pg. 4)

# 2001 Revised Guidance

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- Assessing alleged acts of sexual harassment
  - Does the conduct alleged **deny or limit** a “student’s ability to participate in or benefit from the program based on sex?” If so then,
  - The school’s responsibility depends upon the “identity of the harasser and the context in which the harassment occurs.” (pg. 5)



# 2001 Revised Guidance

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- Two types of harassment
  - *Quid pro quo*
  - Hostile environment harassment
    - “sufficiently serious to limit or deny a student’s ability to participate in or benefit from the school’s program...” (pg. 5)
    - Consideration of **subjective and objective** perspectives (pg. 5)
    - “Constellation of surrounding circumstances, expectations, and relationships” (pg. vi, pg. 5)

# 2001 Revised Guidance

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- “Recipient agrees that...will not, on the basis of sex...
  - Subject students to separate or different rules of behavior, sanctions, or other treatment.” (pg. 4)
- “Title IX does not require a school to adopt a policy specifically prohibiting sexual harassment or to provide separate grievance procedures for sexual harassment complaints. However, its nondiscrimination policy and grievance procedures for handling discrimination complaints must **provide effective means for preventing and responding** to sexual harassment.” (pg. 19)

# 2001 Revised Guidance

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- “Gender-based harassment, including that predicated on sex-stereotyping, is covered by Title IX if it is sufficiently serious to deny or limit a student’s ability to participate in or benefit...” (pg. v)
- “Although Title IX does not prohibit discrimination on the basis of sexual orientation, sexual harassment directed at gay or lesbian students that is sufficiently serious to limit or deny a student’s ability to participate in or benefit from the school’s program constitutes sexual harassment...” (pg. 3)



# 2001 Revised Guidance

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- Evidence about the **relative credibility** of the allegedly harassed student and the alleged harasser. (pg. 9)
  - Detail and consistency of the account
  - Existence of corroborative evidence in relation to whether it should logically exist
  - “Evidence that the alleged harasser has been found to have harassed others may support the credibility of the student claiming the harassment;”
  - “Conversely, the student’s claim will be weakened if he or she has been found to have made false allegations against other individuals.”
  - “Evidence of the allegedly harassed student’s reaction or behavior after the alleged harassment.”
  - “Evidence about whether the student claiming harassment filed a complaint or took other action to protest the conduct soon after the alleged incident occurred.”

# 2001 Revised Guidance

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- On notice when a responsible employee
  - “knew, or in the exercise of reasonable care should have known, about the harassment.” (pg. 13)
  - Should have known: “would have learned of the harassment if it had exercised reasonable care or made a ‘reasonably diligent inquiry.’” (pg. 13)
- Responsible employee is any employee who
  - “has the authority to take action to redress the harassment,
  - who has the duty to report to appropriate school officials sexual harassment or any other misconduct by students or employees, or
  - an individual who a student could reasonably believe has this authority or responsibility.” (pg. 13)
- Must be trained

# 2001 Revised Guidance

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- Investigative steps will vary depending upon
  - “the nature of the allegations, the source of the complaint, the age of the student or students involved,
  - the size and administrative structure of the school, and other factors.”  
(pg. 15)



# 2001 Revised Guidance

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- May be appropriate to take **interim measures**
  - “In all cases, schools should make every effort to prevent disclosure of the names of all parties involved – the complainant, the witnesses, and the accused -- except to the extent necessary to carry out an investigation.” (pg. 16)
  - Measures may include housing reassignment, class schedule adjustments, etc.
  - “Potential criminal conduct, school personnel should determine whether appropriate law enforcement authorities should be notified.” (pg. 16)

# 2001 Revised Guidance

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- “...may be required to provide other services to the student who was harassed if necessary to address the effects of the harassment” (pg. 16)
- “should take steps to prevent any further harassment and to prevent any retaliation against the student who made the complaint (or was the subject of the harassment), against the person who filed a complaint on behalf of a student, or against those who provided information as witnesses.” (pg. 17)

# 2001 Revised Guidance

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- Responding to requests for confidentiality of the complainant
  - “discuss confidentiality standards and concerns with the complainant initially;”
  - make clear that “Title IX prohibits retaliation will take steps to prevent retaliation and will take strong responsive actions if retaliation occurs.”
  - “take all reasonable steps to investigate and respond to the complaint consistent with the student’s request as long as doing so does not prevent the school from responding effectively to the harassment and preventing harassment of other students.” (pg. 17)
- “Evaluate the confidentiality request in the context of its responsibility to provide a safe and nondiscriminatory environment for all students” (pg. 17)
- Other means may be available to address the harassment outside of the use of the grievance procedures



# 2001 Revised Guidance

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- Prompt and equitable grievance procedures
  - “Notice...of the procedure, including where complaints may be filed;
  - Application of the procedure to complaints alleging harassment...;
  - Adequate, reliable, and impartial investigation of complaints, including the opportunity to present witnesses and other evidence;
  - Designated and reasonably prompt timeframes for the major stages of the complaint process;
  - Notice to the parties of the outcome of the complaint; and
  - An assurance that the school will take steps to prevent recurrence of any harassment and to correct its discriminatory effects on the complainant and others, if appropriate.” (pg. 16)

# 2001 Revised Guidance

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- When the investigation results in a determination that harassment has occurred, the school should
  - Take “reasonable, timely, age-appropriate, and effective corrective action”
    - Tailored to the specific situation
    - End the harassment
    - Series of escalating consequences may be necessary if initial steps are ineffective at stopping the harassment” (pg. 16)
  - **“Minimize, as much as possible, the burden on the student who was harassed.”**  
(pg. 16)

# 2001 Revised Guidance

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- OCR emphasizes that grievance procedures must
  - Be available, clear, and easily understood
- OCR recognizes that
  - Procedures will “vary considerably in detail, specificity, and components...” (pg. 20)
  - Timelines “will vary depending on the complexity of the investigation and the severity and extent of the harassment” (pg.20)
  - It is not advisable to have the complainant “work out the problem directly with the individual alleged to have been harassing” (pg. 20)
  - Mediation in sexual assault cases is not appropriate



# 2001 Revised Guidance

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- Regarding due process rights of the parties
  - “Procedures that ensure the Title IX rights of the complainant, while at the same time **according due process to both parties involved**, will lead to sound and supportable decisions. Of course, schools should ensure that steps to accord due process rights do not restrict or unnecessarily delay the protections provided by Title IX to the complainant.”

# 2001 Revised Guidance

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- OCR case resolution processes – The DOE/OCR will consider whether
  - “the school has a disseminated policy prohibiting sex discrimination under Title IX and effective grievance procedures;
  - the school appropriately investigated or otherwise responded to allegations of sexual harassment; and
  - the school has taken immediate and effective corrective action responsive to the harassment, including effective actions to end the harassment, prevent its recurrence, and, as appropriate, remedy its effects.” (pg. 14)
- OCR will take no further action if the above steps if
  - the above steps have been taken, or
  - will be taken
- OCR must seek voluntary compliance/resolution

# FERPA and Title IX

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- FERPA provides
  - Right to review, inspect, and request modification/additions
- Information gathered through a campus based process is protected as an education record under FERPA
  - Including any law enforcement or medical information obtained
- Neither FERPA or Title IX override a federally protected due process right
  - OCR has been clear on this since 1997

(U.S. Department of Education, 2001)



# FERPA and Title IX

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- OCR does not recognize a conflict between FERPA and Title IX with notice of outcome
- OCR does recognize a potential for conflict related to notice of sanction
  - Generally may only disclose to the complainant sanctions directly related to the complainant

(U.S. Department of Education, 2001)

# Dear Colleague Letter 2013

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- Speaks directly to **retaliation**
  - By either institution or student
  - Includes intimidating, threatening, coercing, or in anyway discriminating against the individual who has filed a report

(U.S. Department of Education, 2013)

# Dear Colleague Letter 2015

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*“I write to remind you that all school districts, colleges, and universities receiving federal financial assistance must designate at least one employee to coordinate their efforts to comply with and carry out their responsibilities under Title IX.” - Asst. Sec. for OCR*

- Provided additional clarification on the importance of the Title IX coordinator
  - Independent
  - Full time
  - Multiple coordinators
  - Support for Title IX coordinators

(U.S. Department of Education, 2015)



# New Regulations

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2020 Regulations for Addressing Sexual Harassment

# 2020 Regulations

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- In effect as of August 14, 2020
  - Went through rulemaking process – responding to all comments
- Specifically speaks to:
  - Definitions of Sexual Harassment (including Sexual Assault, Dating Violence, Domestic Violence, and Stalking)
  - Jurisdiction of institutional response to Title IX (geography and those participating in educational program)
  - Requirements for Response (Informal Response, Notice, Hearing procedures)

# 2020 Regulations

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- Definition of Sexual Harassment
  - Defined using the standard in *Davis v. Monroe County Board of Education (1999)*
    - Sexual Harassment is conduct on the basis of sex that involves either:
      - 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 (**Quid Pro Quo**)
      - Unwelcome conduct determined by a reasonable person to be so severe, pervasive and objectively offensive that it effectively denies a person equal access to an education program or activity (**Hostile Environment**)
  - Affirms that Sexual Assault is a form of Sexual Harassment covered under Title IX, and also adds that Dating Violence, Domestic Violence, and Stalking are forms of Sexual Harassment as well.
  - Further defines these, using the definitions in the Clery Act



# 2020 Regulations

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- Jurisdiction of Title IX
  - New regulations define that Title IX only applies to reports of Sexual Harassment
    - **In the United States**
    - **On campus grounds**, or a location controlled by the college, or a registered student organization
    - Reports outside this jurisdiction **must** be dismissed by the Title IX Coordinator, but may be referred using a separate policy/process
  - For either an informal or formal process to move forward, a complainant (reporting party) must be engaged or attempting to be engaged in the educational program and submit **a signed formal complaint**
    - Educational program includes alumni activity, may include attendance at events open to the public that occur on campus
    - Title IX Coordinators may sign a formal complaint in some cases
    - I perceive this to need to be narrowly tailored
    - Reports without a formal complaint may still receive **supportive measures**, but **must** be dismissed by the Title IX Coordinator

# 2020 Regulations

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- Investigation
  - **Must** investigate formal complaints
  - Statement that respondent (responding party) is presumed **not responsible** until evidence is gathered and weighed
  - Burden to gather evidence rests on the College and not on the parties
    - **Inculpatory** and **Exculpatory** evidence
    - Cannot access privileged information without consent of the party
  - **Cannot restrict** the ability of either party to **discuss the allegations** under investigation or to gather and present relevant evidence
    - Still prohibit retaliation
  - Written notice of date, time, location, participants, and purpose of all hearings, interviews, or other meetings **with sufficient time to prepare to participate**

# 2020 Regulations

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- Investigation Report
  - Prior to completion of investigative report, must give each party and their advisor **10 days to inspect and review** the gathered evidence. Each party may then submit a written response
    - Must respond to this response in the final investigation report
  - **Final investigation report** must be provided to parties and advisors at least **10 days** prior to a hearing for review and **written response**
    - Pre-hearing meeting



# 2020 Regulations

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- Decision
  - Must be sent to parties **simultaneously**, and include:
    - **Allegations** potentially constituting sexual harassment
    - **Procedural steps taken** from receipt of formal complaint through determination, including any notifications to the parties, interviews with parties and witnesses, methods used to gather other evidence, and hearings held
    - **Findings of fact supporting the determination**
    - **Conclusions** regarding application of code of conduct to the facts
    - **Statement of, and rationale for**, the result as to each allegation, including determination regarding responsibility, any disciplinary sanctions imposed and whether remedies designed to restore or preserve equal access to the education program or activity will be provided.
    - **Procedures and grounds** for appealCan (will) be conducted with parties in separate rooms

# 2020 Regulations

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- Appeal
  - **Must** offer both parties an appeal from a **determination of responsibility**, and from the College's **dismissal of a formal complaint** or any allegations therein on the following bases:
    - **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; and
    - **The Title IX Coordinator, investigator(s), or decision-maker(s) had a conflict of interest or bias** for or against parties (generally or individually) that affected the outcome
    - **May offer appeal equally to both parties on additional bases**
  - Decision-maker in appeals **must not be the same decision-maker in hearing**, the investigator, or the Title IX Coordinator

# 2020 Regulations

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- Informal Resolution

- **Participation in informal resolution** cannot be a condition of continued enrollment, employment, or enjoyment of any other right.
- To participate in an informal resolution, **formal complaint must be filed.**
- Participation in the informal process **precludes resuming a formal complaint arising from the same allegations**
- Both parties must **consent in writing** to the informal process
  - Can withdraw consent and resume grievance process
- **Not allowed for allegation of employee sexually harassing a student**



# Proposed 2019 Guidance and New Regulations comparison

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- Live hearing with cross-examination conducted by the parties' advisor
  - Cannot use any account from someone not subject to cross-examination
- Schools only required to investigate formal complaints that occur on campus
  - May still be able to address off-campus behavior (**through separate process**)
- Sexual Harassment redefined as severe, persistent **AND** pervasive
  - One instance of sexual assault still counts as Sexual Harassment under Title IX
- Must allow 10 days access to information before a hearing can be scheduled
- Formalizes choice of Preponderance of Evidence or Clear and Convincing

# Additional Guidance

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Jeanne Clery Act and VAWA

# Violence Against Women Reauthorization (VAWA) 2013

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- Amended the Jeanne Clery Act
  - Report domestic violence, dating violence, and stalking, beyond crime categories the Clery Act already mandates;
  - Adopt certain student discipline procedures, such as for notifying complainants of their rights, options and resources; and
  - Adopt certain institutional policies to address and prevent campus sexual violence.



# 2016 Revised Clery Handbook

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- Requires **simultaneous notification**, in writing, to both the complainant and respondent
  - **The result** of any institutional disciplinary proceeding that arises from an allegation of dating violence, domestic violence, sexual assault or stalking;
  - The institution's **procedures for the accused and the victim to appeal the result** of the institutional disciplinary proceeding, if such procedures are available;
  - **Any change to the result**; and
  - **When such results become final**

# 2016 Revised Clery Handbook

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- “Result” is defined as any initial, interim and final decision by any official or entity authorized to resolve disciplinary matters within the institution
- Must include:
  - Sanctions imposed by the institution
  - Rationale for the result and sanctions

# 2016 Revised Clery Handbook

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- Rationale for result and sanctions must include:
  - Information presented during the proceeding
    - Explanation for how the evidence was weighed
    - How the evidence and information support the result and sanctions
    - Description of how the institution's standard of evidence was applied
- It is not sufficient to say:
  - "the evidence presented met the institution's standard of evidence" **OR**
  - "the evidence presented did NOT meet the institution's standard of evidence"

(U.S. Department of Education, 2016)



# Where Clery and Title IX Intersect

## The Clery Act

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- Campus Security Authorities (CSAs)
- Non-personally identifiable information
- All Clery crimes
- Accommodations
- Disciplinary Procedures

## Title IX

- Responsible employees
- All relevant details
- Sex discrimination, including sexual harassment which includes sexual violence
- Interim measures
- Grievance procedures

Civil Rights Act  
1964

Higher Education Act  
1965

Violence Against Women Act  
(VAWA)  
1994

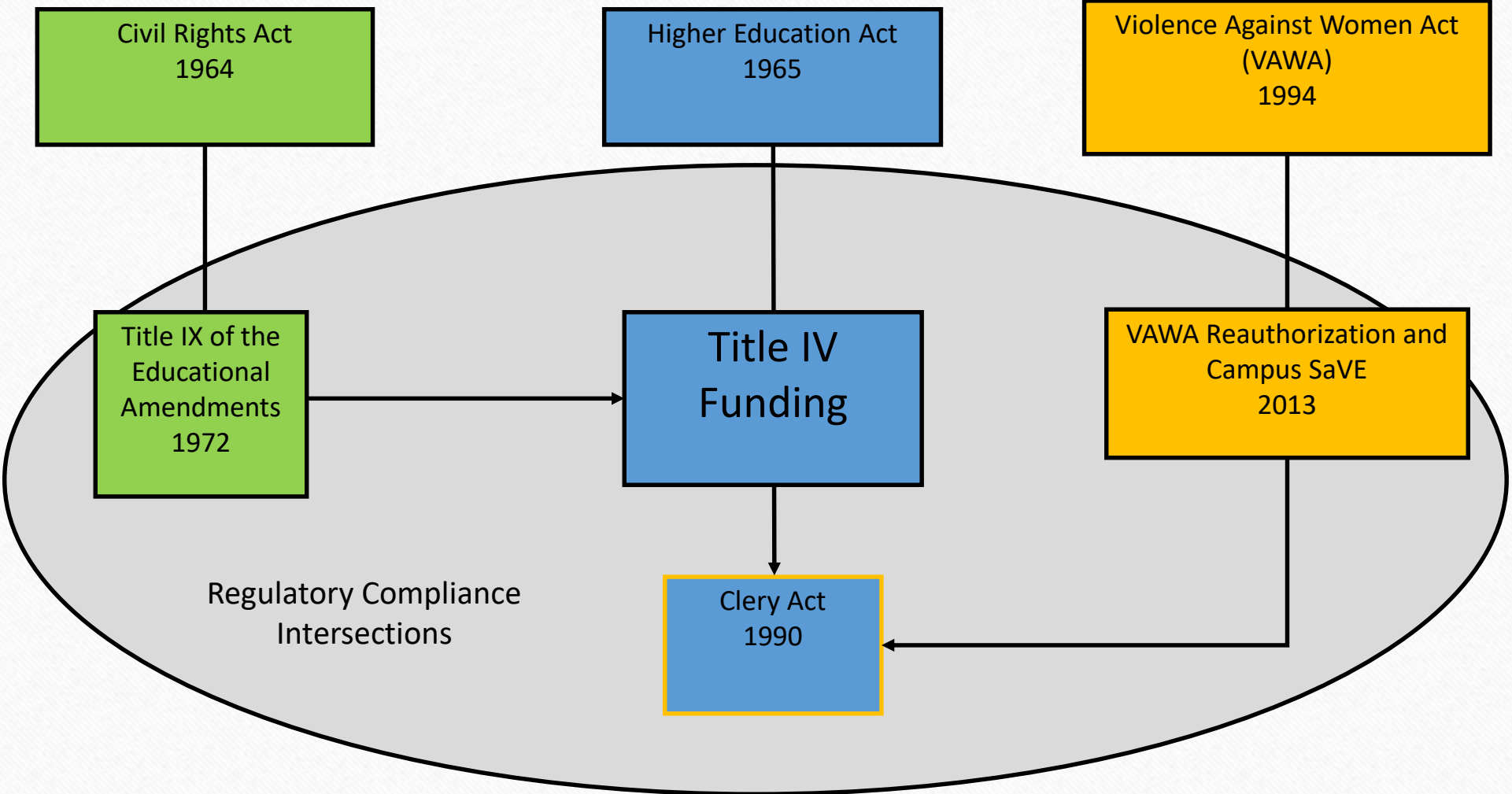
Title IX of the  
Educational  
Amendments  
1972

Title IV  
Funding

VAWA Reauthorization and  
Campus SaVE  
2013

Regulatory Compliance  
Intersections

Clery Act  
1990



# Title IX, ADA, and Section 504

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- A documented disability is not generally viewed as a justifiable cause for prohibited behavior
- Interim and/or remedial measures may include access to resources typically available for those with documented disabilities
- Rely on your documented ADA/504 compliance processes to provide appropriate accommodations
  - May provide a better opportunity for individuals to participate more fully

(McKendall, M.J, 2009)



# Rights of the Involved Parties

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OCR Guidance

# Rights of the Respondent and Complainant

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- OCR expect equity in the process
  - Rights afforded the respondent are afforded the complainant
- Clearly articulate, **verbally and in writing**, when and how parties may
  - Access, review and seek to make additions to the file
  - Amnesty options available – generally understood as complainant oriented
  - Access to confidential and/or privileged campus and community resources
- Both parties should be provided the options to submit information **verbally, in writing, or not at all**

(U.S. Department of Education, 2001)

# Witness(es) or Other Involved Parties

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- Witnesses do not have the same fundamental rights as complainant/respondent
  - To access the file
  - Receive notice of outcome or sanctions
- May prove necessary to make a limited release of information
  - In order to ensure implementation of sanctions (i.e. no contact with witness)
  - Order of trespass from campus
- Protection from Retaliation



# References

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McKendall, M.J. (2009). "The Intersection of Student Disability and Discipline Issues." Presented at the National Conference on Law and Higher Education. Stetson University College of Law. Retrieved from <http://www.stetson.edu/law/conferences/highered/archive/media/higher-ed-archives-2009/document/i-mckendall-intersection-of-disability-pdf.pdf>

U. S. Department of Education. Office for Civil Rights. (2001). *Revised sexual harassment guidance: harassment of students by school employees, other students, or third parties.*

U. S. Department of Education. Office for Civil Rights. (2013). *Dear Colleague Letter.*

U. S. Department of Education. Office for Civil Rights. (2015). *Dear Colleague Letter.*

U. S. Department of Education. Office for Civil Rights (2020). *Regulations for Addressing Sexual Harassment.*

U. S. Department of Education. Office for Postsecondary Education. (2016). *The Handbook for Campus Safety and Security Reporting.* Accessed July 5, 2017. <https://www2.ed.gov/admins/lead/safety/handbook.pdf>

# Learning Foundation

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Discrimination and Sexual Misconduct

# Overview

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- Policy Definitions
  - Discrimination
  - Bias-Related Harassment
  - Sexual Harassment
- What does this look like?
  - As investigators, how can we know what we're looking at



# Discrimination

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- Differential treatment on the basis of...
- race, color, sex, religion, national or ethnic origin, physical or mental disability, age, height, weight, marital status, sexual orientation, gender, gender identity, arrest record, genetic information
- In regards to employment, education, housing, public accommodations

# Discrimination

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- Does not have to be directed at a single person
- May not necessarily be repeated
- May not be actionable

## Examples

- Stereotyping
- Favoritism
- Preference of individuals who fit within identity groups
- Microaggressions





# Bias-Related Harassment

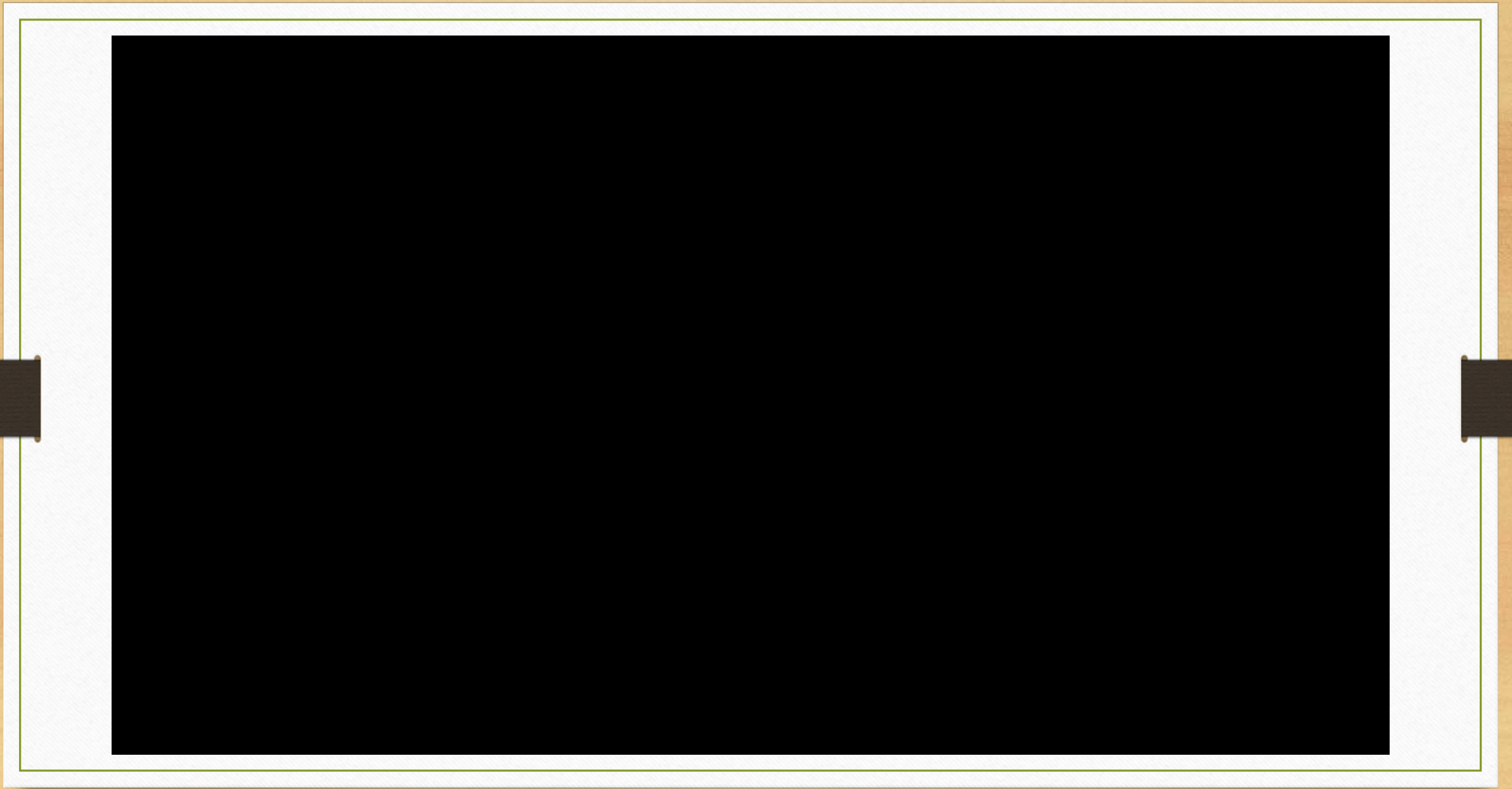
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- Unwanted conduct, directed towards an individual, that is based on...
- race, color, sex, religion, national or ethnic origin, physical or mental disability, age, height, weight, marital status, sexual orientation, gender, gender identity, arrest record, genetic information
- Sufficiently **severe** or **repeated/pervasive**
- Makes person feel intimidated, threatened, humiliated (**Subjective**) and a reasonable person would feel intimidated, threatened, humiliated (**Objective**)

# Bias-Related Harassment

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- Conduct may be oral, written, graphic, or physical
- Usually easy to establish if behavior is unwanted, and if the behavior is based on a protected identity
- Need to determine:
  - Severity
  - Persistence/Pervasiveness
  - Reasonableness





# Sexual Harassment

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- Sexual Assault
  - Non-Consensual Sexual Contact
  - Non-Consensual Sexual Intercourse
- Intimate Partner Violence
  - Domestic Violence
  - Dating Violence
- Stalking



# Sexual Harassment

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- Unwelcome sexual behavior or behavior targeted due to gender or sex
  - Verbal, Written, Graphic, or Physical
- Types
  - Quid Pro Quo
  - Hostile Environment
- **Quid Pro Quo**
  - “This for That”
  - Promising favor or threatening consequence in exchange for sex/romance
- **Hostile Environment**
  - “So severe, pervasive and objectively offensive that it limits a person’s ability to engage in the educational program.”





# Sexual Assault

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Sexual assault is defined as any sexual act directed against another person, without consent, including instances where the person(s) is incapable of giving consent. This behavior includes:

## Non-Consensual Sexual Contact

- Sexual touching without Consent

## Non-Consensual Sexual Intercourse

- Sexual Penetration without Consent

# Sexual Assault – Serial Offending

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- Some debate on serial nature of those who commit sexual assault
- Those who report that they are, find a pattern of grooming behavior consistent with sophisticated predation
  - Lisak, D. & Miller, M., (2002). Repeat rape and multiple offending among undetected rapists. *Violence and Victims*, 17(1), 73-84.
  - Thompson, S. (October, 1996). A behavioral analysis of date/acquaintance assault. Presented at International Conference on Sexual Assault on Campus.
- One primary study that posits that there is not significant risk of repeat offense
  - Swartout, K.M., Koss, M.P., White, J.W., Thompson, M.P., Abbey, A., Bellis, A.L., (2015). Trajectory analysis of the campus serial rapist assumption. *JAMA Pediatr*, 169(12), 1148-1154.

# Intimate Partner Violence (IPV)

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WOMEN AGED **16-24**  
EXPERIENCE THE  
**HIGHEST RATE**  
OF INTIMIDATE PARTNER  
VIOLENCE

LOVEISRESPECT.ORG

Emotional Abuse or Violence (physical and/or verbal), Threats of Violence within current or prior relationship

- Name-Calling
- Threatening to hurt oneself if the other person breaks up with them
- Emotional manipulation
- ***Sexual Exploitation***
- Pushing, Slapping, Pinching, Biting, Punching, Choking



# Intimate Partner Violence (IPV)

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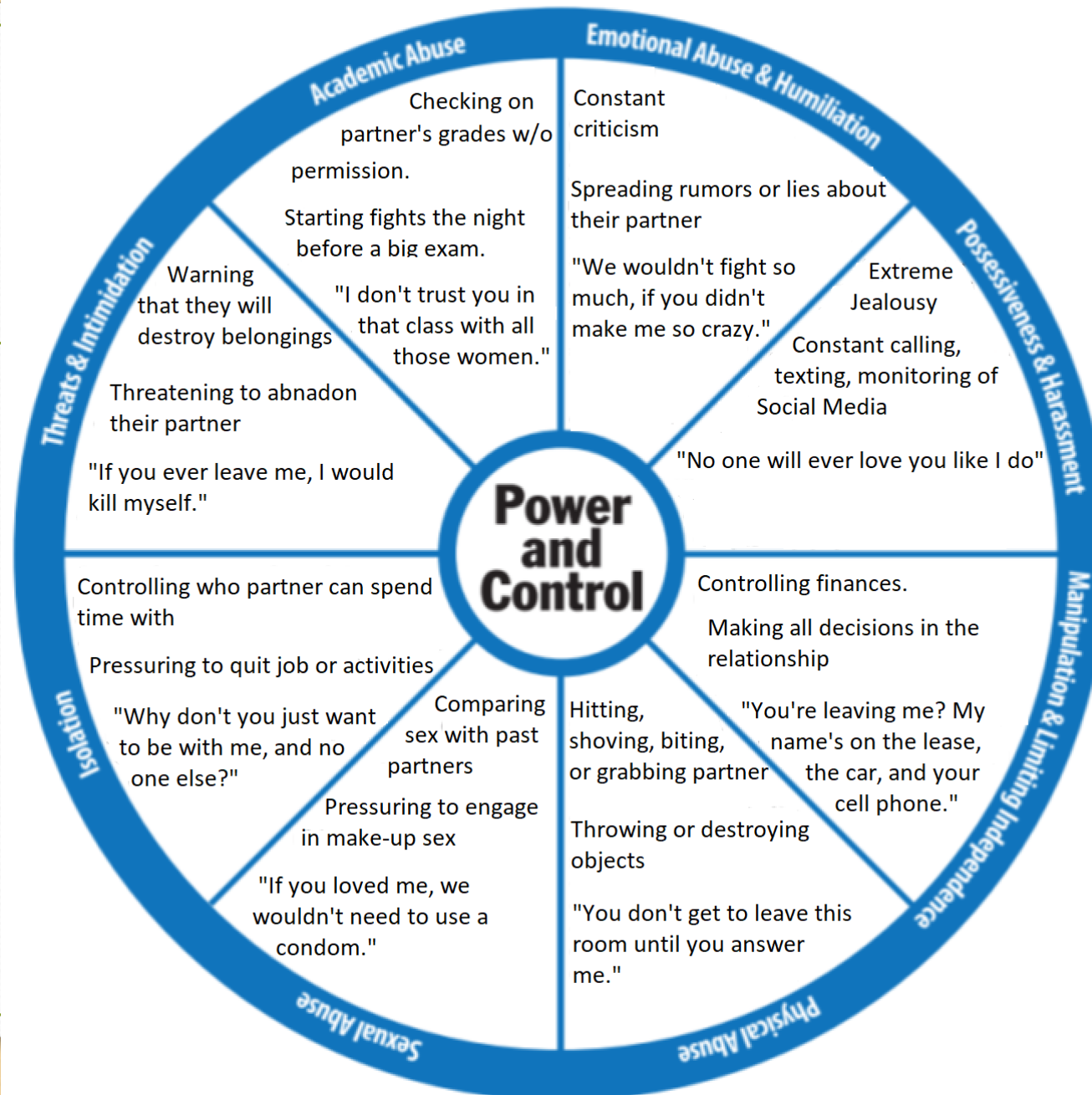
## Domestic Violence

- Violence (physical or emotional) committed by:
  - Current or former spouse or intimate partner
  - Person with whom shares a child in common
  - Person who is cohabitating or has cohabitated with the victim as a spouse or intimate partner
  - Person similarly situated to a spouse

## Dating Violence

- Violence (physical or emotional) committed by:
  - Person who has been in a social relationship of a romantic or intimate nature with the victim; and
  - Where the existence of such a relationship shall be determined based on a consideration of the following factors:
    - Length of relationship
    - Type of relationship
    - Frequency of interaction between persons involved in the relationship

# Dating Violence Happens on College Campuses Too



University of Wisconsin End Violence on Campus, 2016

# Stalking

- Course of conduct (more than once)
- Directed at a specific person
- Unwanted
- Would cause a reasonable person to feel fear, or suffer substantial emotional distress





Stalking Victims in the United States,  
U.S. Department of Justice, 2012

**TABLE 4**

**Nature of stalking and harassment behaviors experienced by victims**

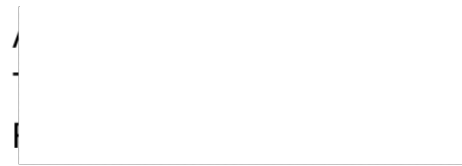
	Percent of victims		
	All	Stalking	Harassment
Unwanted phone calls and messages	63.5%	66.7%	58.3%
Unwanted letters and e-mail	28.4	30.7	24.7
Spreading rumors	31.2	36.3	22.9
Following or spying	26.1	34.4	12.5
Showing up at places	24.1	31.6	11.8
Waiting for victim	21.8	29.3	9.5
Leaving unwanted presents	9.8	12.5	5.5
Number of victims	5,305,730	3,300,570	2,005,160

Note: Detail sums to more than 100% because multiple responses were permitted. See appendix table 3 for standard errors.

Source: Bureau of Justice Statistics, National Crime Victimization Survey, Supplemental Victimization Survey, 2006.

## Complainant

Will you please stop acting this way? Just be mature. I didn't use your family for anything and I stayed with your parents for 3 whole days because they offered. You're being ridiculous and showing your true colors. I want you to stop contacting me.



Sent from my iPhone

[See More](#)



11

## Complainant

If you do any of that or if you contact me on any platform of social media or through email/phone/text again I'm filing a police report for harassment. This is your one and only warning from me.

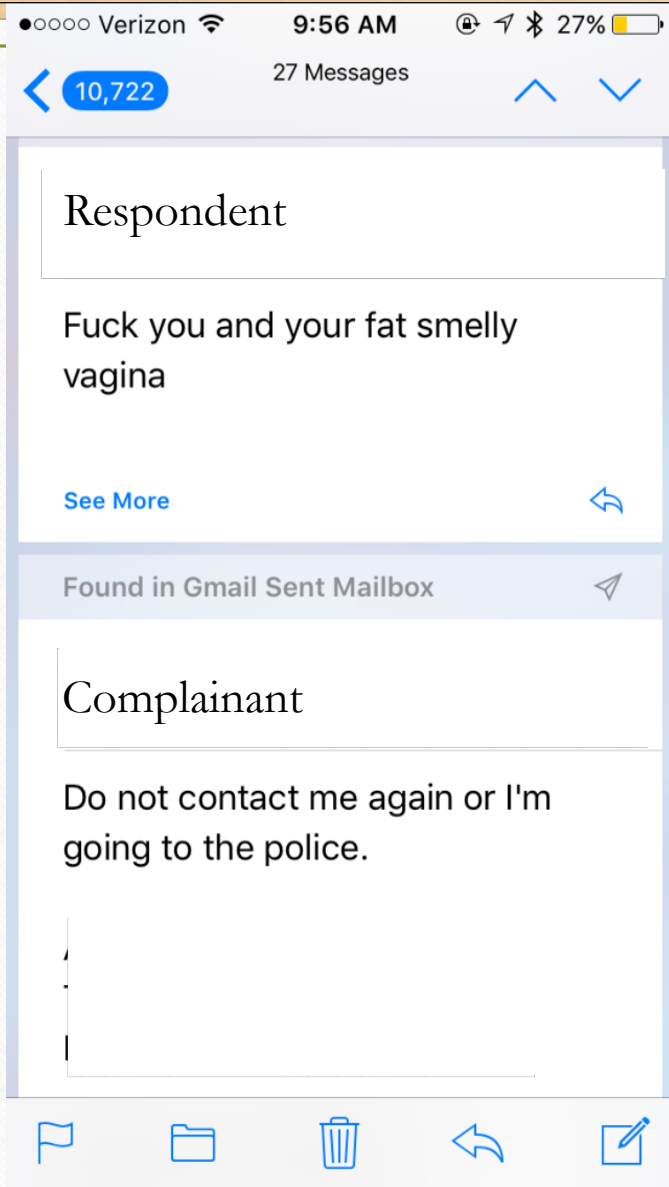
You can mail me a check to pay me back or have your mother contact me to handle it. My address is



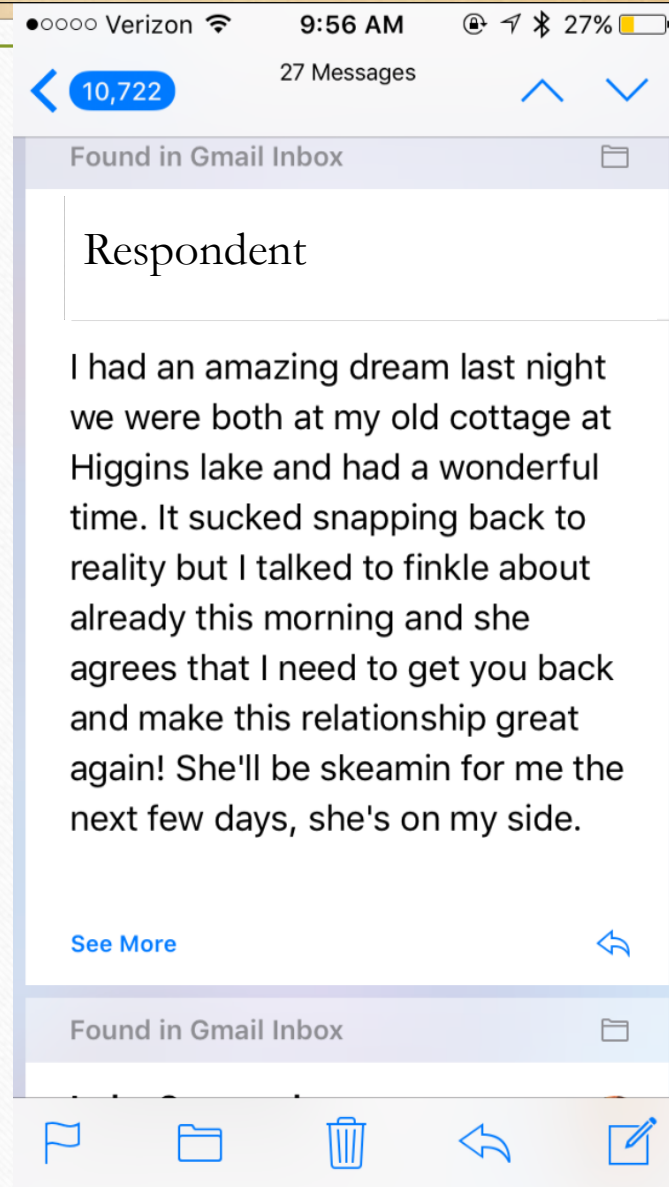
DO NOT contact me again.



12 (No Contact)



13 (Response)



14



10,722

Found in Gmail Inbox

Respondent

Lol how are you going to choose joy when you haven't even been with me at all in over 2 months. Please delete all of our pictures together if you really want this. Prove that you really wanna be single and delete our entire history

See More



10,722

Respondent

I don't want people to see us together having no joy at all. God forbid

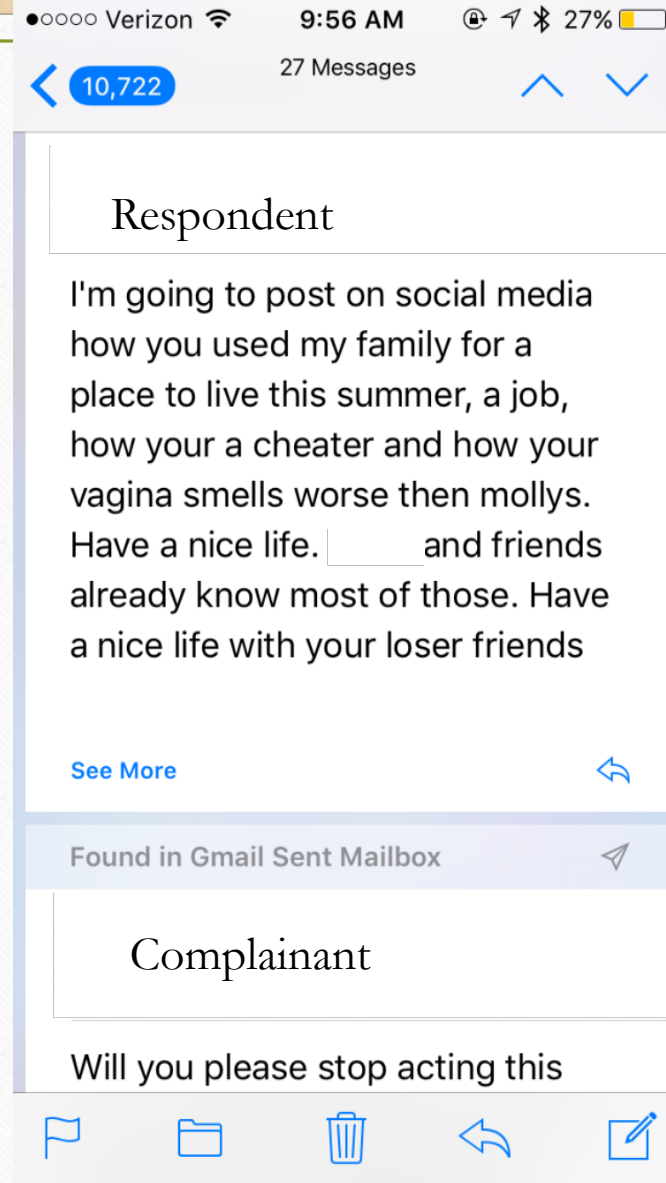
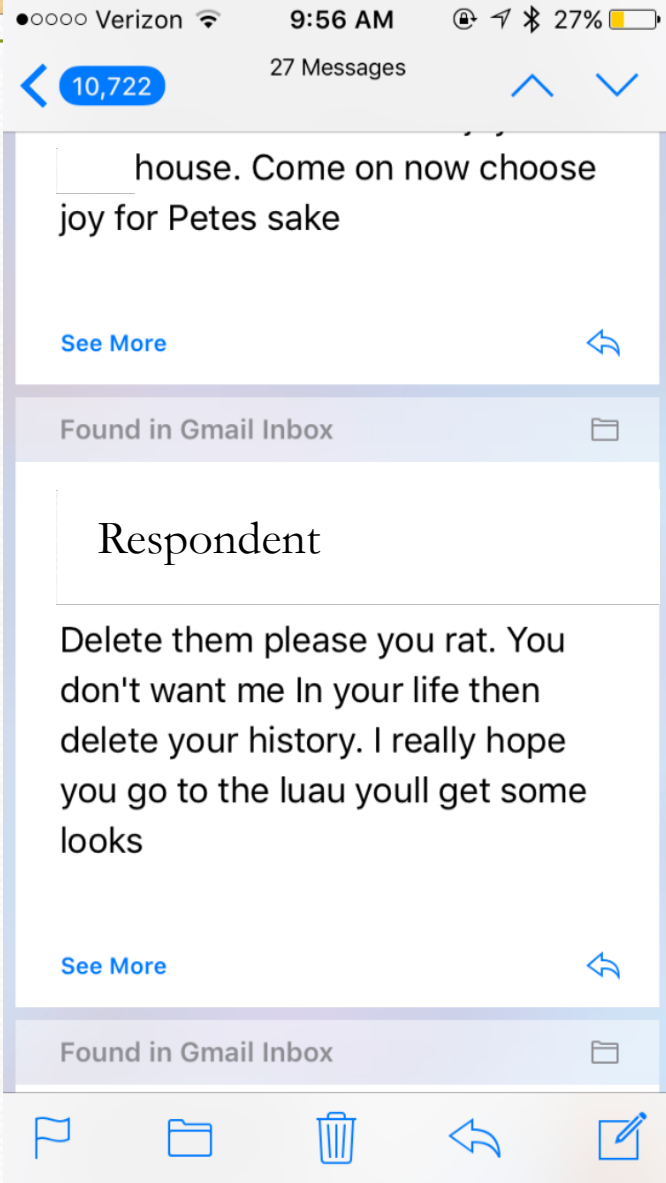
See More

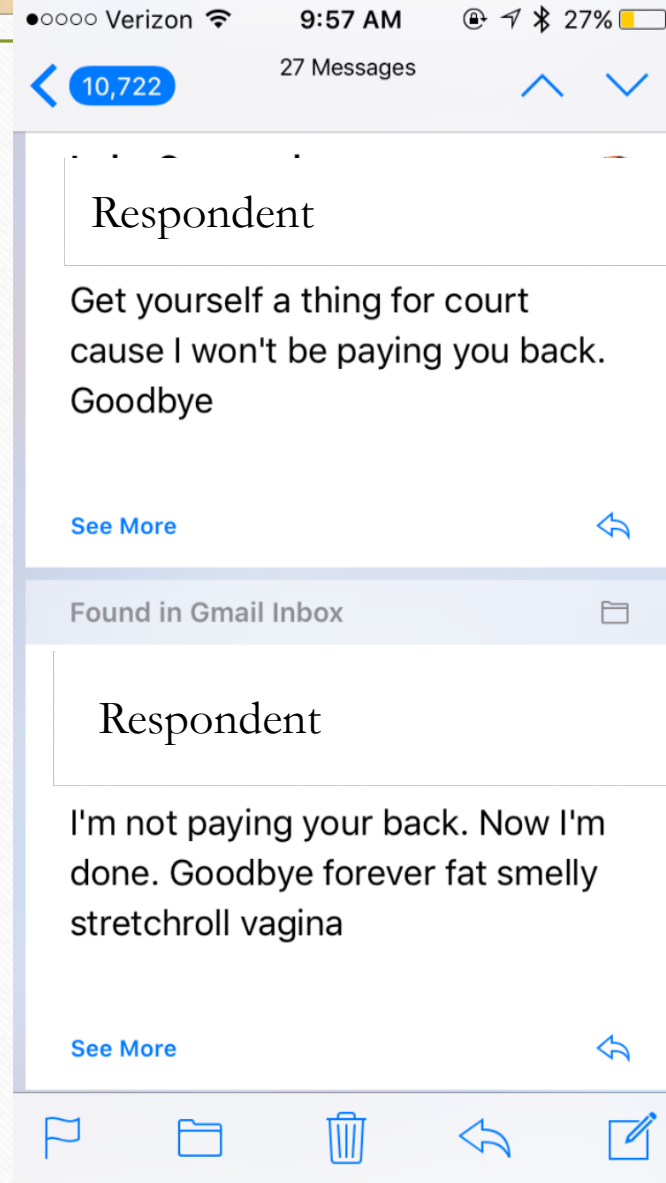
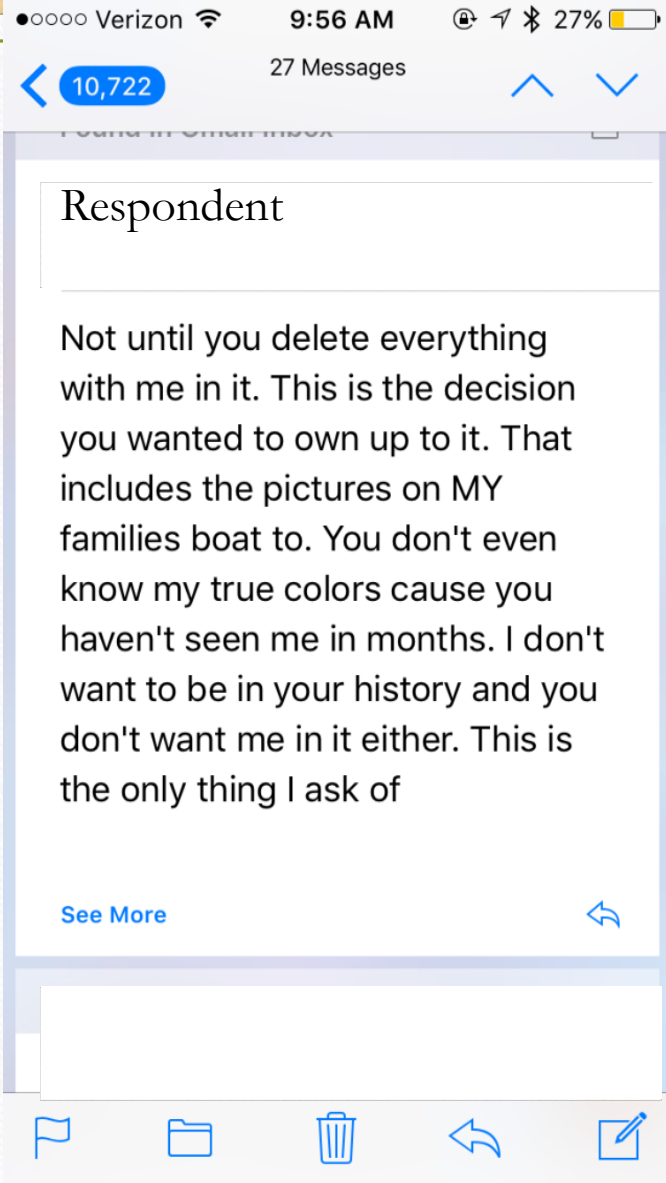
Found in Gmail Inbox

Respondent

Actually delete everything to do at the \_\_\_ house or has to do with \_\_\_ cause if you wanna break up you won't be allowed there as long as I live there. There's no joy at the









< 10,722

Respondent, about 2 weeks later

Hope everything is going well with you and your family. I know you get your wisdom teeth taken out soon, hope that goes well also. Have a good week, miss you.



# Threat and Risk Assessment

- 81% of women stalked by a former or current partner/spouse were physically assaulted by that person
- If physical abuse, sexual abuse, and sexual abuse are all present: the risk of harm to the reporting party increases significantly



# Questions?

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# Learning Foundation

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Our Process and Your Role

# Ensuring Compliance

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For all Civil Rights issues:

- When we know or reasonably should know...
- Must take prompt and effective action to...
  - Eliminate the harassment
  - Prevent it from reoccurring
  - Remedy the effects

# Role of the Civil Rights/Title IX Coordinator

---

- Ensuring training and oversight of the Case Management Team
- Intake Meetings with both parties
  - Interim Remedies
  - Referrals to supports
  - Preliminary Inquiry
- Assigning Investigators
- Consultation During Cases
- Reviewing Investigation Reports for thoroughness
- Communication with all parties involved
- Documentation storage and organization



# Role of the Case Management Team

---

- Mandated Reporters/Responsible Employees
  - You are more likely be sought out to talk to about these issues
- **Primary Role**
  - Investigating Reports of Discrimination, Harassment, or Sexual Misconduct
- **Will** also be called upon to serve as an advisor/support person
- May serve on an appeal panel
- May serve as a hearing agent
  - Dave and Amanda
  - Panel Hearings







# Protect & Respect Our Scots

[College Policy](#) [State Law & Definitions](#) [Disabilities](#) [Discrimination & Harassment](#) [Sexual Misconduct](#) [FAQ](#)



**Civil Rights/Title IX Coordinator:**  
Kevin Carmody  
[carmodykd@alma.edu](mailto:carmodykd@alma.edu)  
(989) 463-7467

#### RELATED LINKS

- [Full Policy](#)
- [Equity Grievance Panel](#)
- [Campus Crime Statistics](#)
- [HEDS Sexual Assault Campus Climate Survey](#)
- [Web Accessibility Policy](#)

<a href="#">GET HELP</a>	<a href="#">POLICIES &amp; PROCEDURES</a>
<a href="#">FILE A REPORT</a>	<a href="#">CONFIDENTIAL SUPPORT</a>

#### A Message from the Alma College President:

Providing a safe and positive environment for students, faculty and staff is our highest priority at Alma College. In this section of the website, we affirm the college's commitment to promote the goals of fairness and equity at the college, outline the options for reporting civil rights concerns, including civil rights misconduct, and describe the procedures for investigating and resolving complaints.



# File a Report

You have options — Alma College can help.

If a policy violation has taken place, please use this online form to report the information to the college. If you wish to remain anonymous, please write “ANONYMOUS” in the form for your name. Mandated reporters at Alma College must share their name when using this form.

## Online Reporting Form

After this form is submitted, it will be sent directly to Kevin Carmody, the Civil Rights/Title IX Coordinator, who will then follow up on them, or assign them, as appropriate.

## Other Reporting Options

You can report a policy violation directly to Kevin Carmody, the Civil Rights/Title IX investigator, your supervisor, or to any Alma College official.

## Confidential Reporting

It is very important for students and employees to remember that discussing any policy violation to a mandated reporter will result in a formal Equity Grievance investigation **regardless** of the wishes of the reporting party. If you do not wish to start a formal investigation, please only speak about the policy violation with a confidential reporting party. There are three locations on campus where a person(s) can talk about and report an Equity Grievance violation without triggering a formal investigation. They include:

- **The Counseling and Wellness Center**
- **The Wilcox Medical Center**

### Civil Rights/Title IX Coordinator:

Kevin Carmody

[carmodykd@alma.edu](mailto:carmodykd@alma.edu)

(989) 463-7467

### RELATED LINKS

- [Full Policy](#)
- [Campus Crime Statistics](#)

**Your Name (Required)\***

*(Please write ANONYMOUS if you wish to remain anonymous. Please note that anonymous reports may limit the College's ability to address the behavior reported. Staff who are mandated reporters must share their names.)*

**Contact (Phone and/or Email)**

**Date of Incident (Required)\***

**Location of Incident (Required)\***

*Please select a location*

**Specific Location**

**Please provide a description of the incident in as much detail as possible, including the name(s) of any person or organization involved.\***

**Who else, if anyone, has this been reported to? (Check all that apply)**

- Police
- Housing Staff
- Counseling
- Professor
- Other
- None

**If you chose other, please add the person that this was reported to.**

**Does the reporting party/survivor want the College to follow up on this matter? (Please note: the College may be obligated to follow up regardless of the answer below) (Required)\***

- Yes
- No
- Unknown

**Certification: (Required)\***

- Check here to certify that all the above information provided on this form is true and accurate to the best of my knowledge or belief

I'm not a robot



reCAPTCHA  
Privacy - Terms

# Supportive Measures

---

- Referral to Counseling and Health Services
- Education to the college community
- Altering the housing situation of either party
- Altering work arrangements
- Providing campus escorts
- No contact or limited contact between parties
- Adjustments to academic deadlines
- Adjustment to course schedules
- Interim suspension or employment leave



# Informal Resolution

---

- Supportive Measures coordinated by Title IX Coordinator
- Education, Mediation, etc. **cannot** be conducted by the Title IX Coordinator
  - May need to assign you to assist
- Informal Resolution may not be used in cases where a staff member is accused of Sexual Harassment by a student
- Mediation is still not appropriate for Sexual Assault cases

# Role of the advisor

---

- Can accompany advisee to any and all meetings that the advisee is able to attend
- Help prepare for the meeting
  - Advise ethically, with integrity, and in good faith
- Confer quietly, or pass notes to the advisee
- **Cross-Examination at live hearing**
- May not attend in their advisee's absence
- Able to review materials along with their advisee



# Role of the advisor

---

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# Cross-Examination

---

- Cross-Examination has two goals:
  - To have a party/witness introduce new information
  - To challenge the credibility of the witness or the information they presented
- Cross-Examination is based on a **theory**
  - Cultivate what you think would best serve your advisee's case
  - Good cross-examination requires preparation
- Open-ended questions are generally better than closed questions
  - At the same time, it's generally advised that you ask questions that have a single answer rather than multiple – Good cross-examination attempts to **control the narrative**

# Cross-Examination (cont.)

---

- Questions asked must be **relevant**
  - The Chair ultimately determines what is relevant and what isn't
- Questions may not be asked about the sexual history or predisposition are not allowed ***unless*** they show that someone other than the responding party may have done it
  - Ex. "As you engaged in sexual activity with multiple people at the party that night, how can you be sure that (Responding Party) was the one who assaulted you?"

# Bias and Conflict of Interest

---

- Generally, anyone involved in the process (Title IX Coordinator, Investigator(s), Decision-maker(s)) can't have bias towards parties in total
  - For/Against Reporting Parties or Responding Parties
  - I would extend this to bias towards protected identities held by the parties as well (Gender, Race, Religion, etc.)



# Conflict of Interest

---

- Would a reasonable person believe that you have a conflict involving the parties involved?
  - Alma is a small campus and you likely have some relationship with the people involved
- **MUST** recuse when:
  - Family relationships; Financial relationships; Personal animus towards involved parties; Otherwise involved in the case
- **LIKELY** recuse when:
  - Close personal relationship; Supervisory relationships; Party involved requests that you recuse yourself

# What Conflict of Interest *Isn't*

---

- Sharing identities with the parties
  - Being a man, woman, black, Christian, survivor, athlete, being in a sorority/fraternity, etc.
- Previous background in advocacy, or having worked as an attorney
- Having otherwise professional/collegial relationship with involved party
  - “I had this person in class last year.”
  - “This person was an RA who we let go for an unrelated reason.”
  - “I attended a social event at their house around Christmas with the rest of the department.”

# Responsibility of the Investigators

---

- Review the materials
- Form an investigation plan with co-investigator
- Identify space for interviews
- Email parties to schedule Interview
  - Outreach Templates
  - Copy Civil Rights/Title IX Coordinator
- Note-taking, and compiling documents (text messages, written statements, etc.)
- Preliminary Report - Send information gathered to parties for review (10 days)
- Write Final Report
  - Including documentation and responses or rationale for parties' responses to preliminary report
- Send to Civil Rights/Title IX Coordinator
  - Civil Rights/Title IX Coordinator will notify parties of next steps
- Be prepared to meet with the Hearing Officer separately, or as part of a hearing



# Adjudication

---

- Determination of Responsibility, and Sanctions
- Generally a Panel will be convened with a Hearing Chair (Dave and Amanda)
  - Hearings will likely occur via Microsoft Teams with parties and witnesses in separate rooms
- Investigators should expect to attend the hearing as witnesses
  - This may not be the case, but we will see
- Decision must be communicated to parties simultaneously (or as close as we can)

# Hearing Outline

---

- Introductions
- Reading of Charges
- Panel asks questions of Reporting Party
- Cross-Examination of Reporting Party (conducted by Advisor)
- Panel asks questions of Responding Party
- Cross-Examination of Responding Party (conducted by Advisor)
- Panel asks questions, followed by Cross-Examination of Witnesses (one by one)
- Closing Remarks

# Student Sanctions

---

The following are the sanctions that Alma College may impose upon students or organizations singly or in combination:

- *Warning*
- *Probation*
- *Suspension*
- *Expulsion*
- *Organizational Sanctions.* Deactivation, de-recognition, loss of all privileges (including registration), for a specified period of time.
- *Other* (less serious offenses): such as conflict resolution, education, counseling, etc.



# Appeals

---

- Both parties have right to appeal
- Appeals must be sent to the Civil Rights/Title IX Coordinator or Deputy Coordinator
- Panel will be assigned from the Case Management Team
- Acceptable Grounds
  - Procedural error or omission that significantly impacted the outcome of the hearing
  - Consider new evidence, unknown or unavailable during the original hearing or investigation that could substantially impact the original finding or sanction
  - **Bias or Conflict of Interest by the Title IX Coordinator, Investigator(s), or Decision-Maker(s)**
  - The sanctions fall outside the range of sanctions Alma College has designated for this offense
- Decision is deferential to the original decision, making changes only if there is a clear error
- Decision regarding the Appeal is final

# Questions?

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# Foundation

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Understanding Both Parties



# A Tale of Two Stories

---

*I tried to push it out of my mind, but it was so heavy I didn't talk, I didn't eat, I didn't sleep, I didn't interact with anyone. After work, I would drive to a secluded place to scream. I didn't talk, I didn't eat, I didn't sleep, I didn't interact with anyone, and I became isolated from the ones I loved most. For over a week after the incident, I didn't get any calls or updates about that night or what happened to me. The only symbol that proved that it hadn't just been a bad dream, was the sweatshirt from the hospital in my drawer.*

*-Victim Impact letter read in Stanford Assault case*

*When I got the email, it was like a thunderclap. I saw my future, all of the hard work, everything just up in smoke. Since I got that email, I haven't been able to eat, or sleep. I keep thinking about that night to see if there was anything at all that I did that I wasn't supposed to, but everything we did was completely consensual. And I'm just terrified that it won't matter, because she said that it wasn't.*

*-Adapted from a Written Statement*

# Foundation

---

Understanding the Reporting Party

# Understanding the Reporting Party

---

- Defining Trauma
  - Impact on Complainants/Respondents/Witnesses
- Introduction to Neurobiology
  - Note: Today's presenter is an amateur Neurobiologist!
  - This work is largely based on the expertise of others

"Trauma is a normal response to an abnormal situation"  
-Van der Kolk



# What is Trauma?

---

Extreme threat/terror/horror

+

Lack of control/Perceived lack of control

-Dr. Christopher Wilson, Psy.D., 2017

Exposure to actual or threatened death, serious injury, or sexual violence in one (or more) of the following ways:

- Directly experiencing the traumatic event(s).
- Witnessing, in person, the event(s) as it occurred to others.
- Learning that the traumatic event(s) occurred to a close family member or close friend. In cases of actual or threatened death of a family member or friend, the event(s) must have been violent or accidental.
- Experiencing repeated or extreme exposure to aversive details of the traumatic event(s) (e.g., first responders collecting human remains; police officers repeatedly exposed to details of child abuse).

-DSM 5 Criteria, 2014

# Other Aspects of Trauma

---

- Experiences that are emotionally painful and distressing, that overwhelm people's ability to cope
- Situation and person specific
- More than violence: more subtle forms-- discrimination, racism, oppression, etc. can have a cumulative impact

# What does it mean to be Trauma-Informed

---

“A ‘trauma-informed’ system is one in which:

- all components of a given system have been reconsidered and evaluated in the light of a basic understanding of the role that violence plays in the lives of people seeking mental health and addiction services—
- [and] uses that understanding to design service systems that accommodate the vulnerabilities of trauma survivors
- allows services to be delivered in a way that will avoid inadvertent re-traumatization and will facilitate consumer participation in treatment” (Harris & FalLOT, 2001).



# Where does Trauma show up?

---

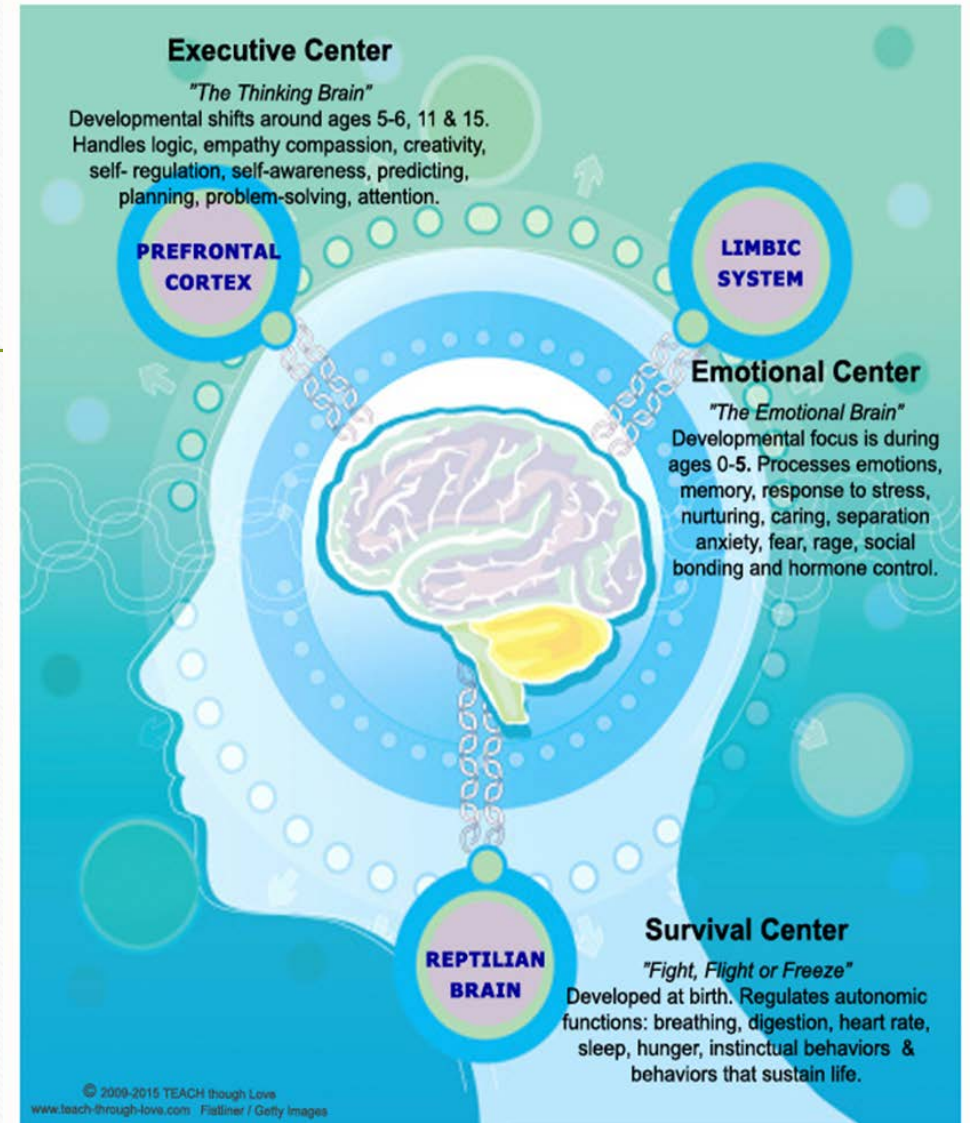
- Impacts:
  - Physical Response (Freeze/Fight/Flight)
  - Cognitive (Memory)
  - Emotional Regulation (Affect)
  - Behavioral (Decision-Making)
- Impact is:
  - Immediate (during the incident);
  - Persistent (immediately following);
  - May be permanent (impacts brain structure)
- How someone acted during the incident
- Whether someone discloses
  - How they do it, to whom
  - What the narrative sounds like
- Whether someone reports/takes action
- How they behave in the aftermath
  - With friends/family
  - With medical personnel
  - Investigators/law enforcement
  - In a hearing





# Loss of Prefrontal Regulation

- No “If-Then” logical thinking
  - Often make “irrational” decisions
- No ability to process temporal questions.
  - “Are we there yet?”
- Inability to make meaning of experience and feelings
  - Self-Blame





# Bottom-Up Attention



- Focus on the elements that are most frightening
  - “Gun focus”
- Or the elements that are immediately in front of them
  - Can’t control where they focus

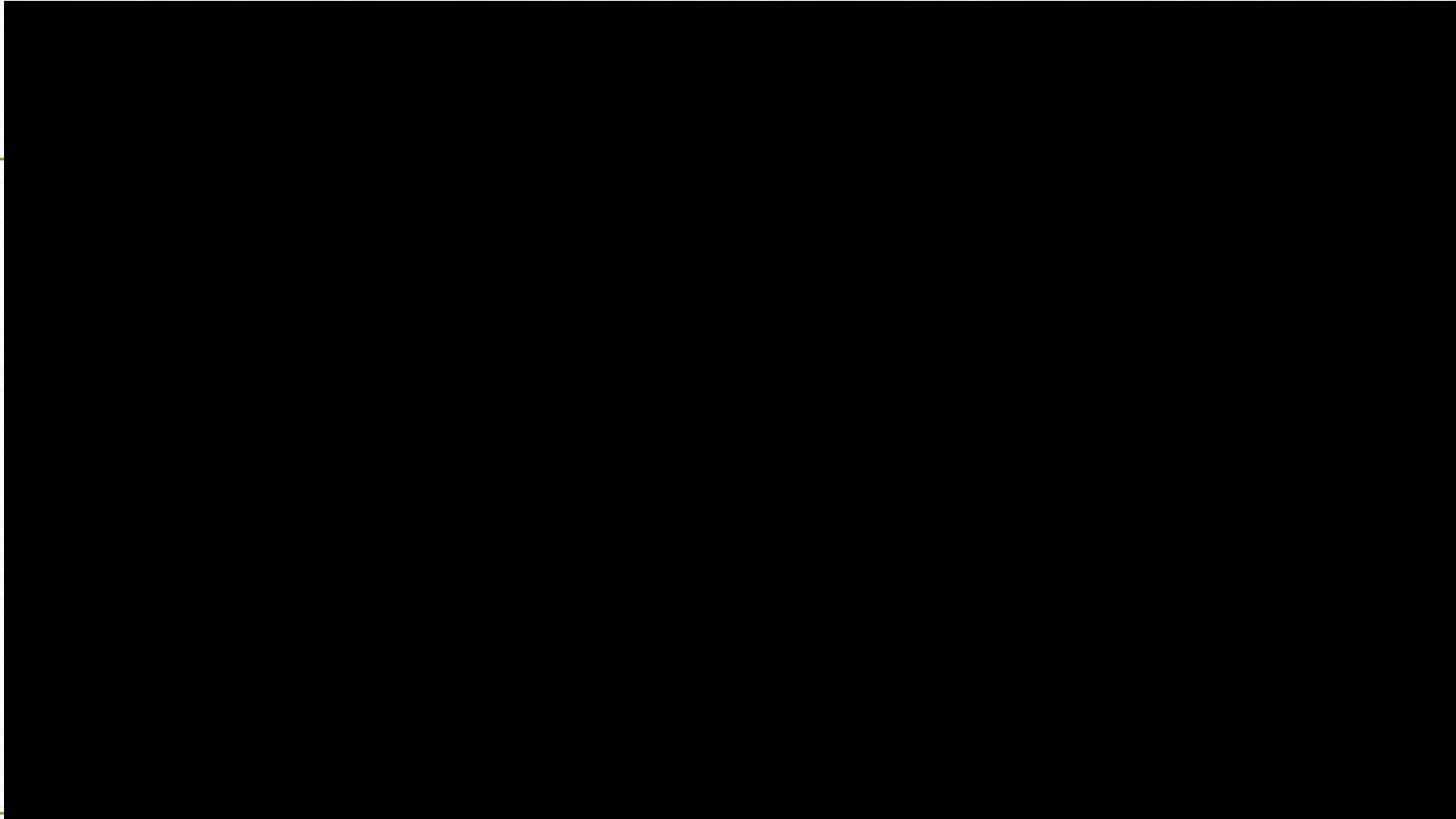
# Survival Reflexes

---

- Freeze – Fight – Flight
- Types of Freezing
  - Pause
    - Momentary freezing while they determine what happens
  - Tonic Immobility
    - Remain conscious, but unable to move.
- Other survival reflexes



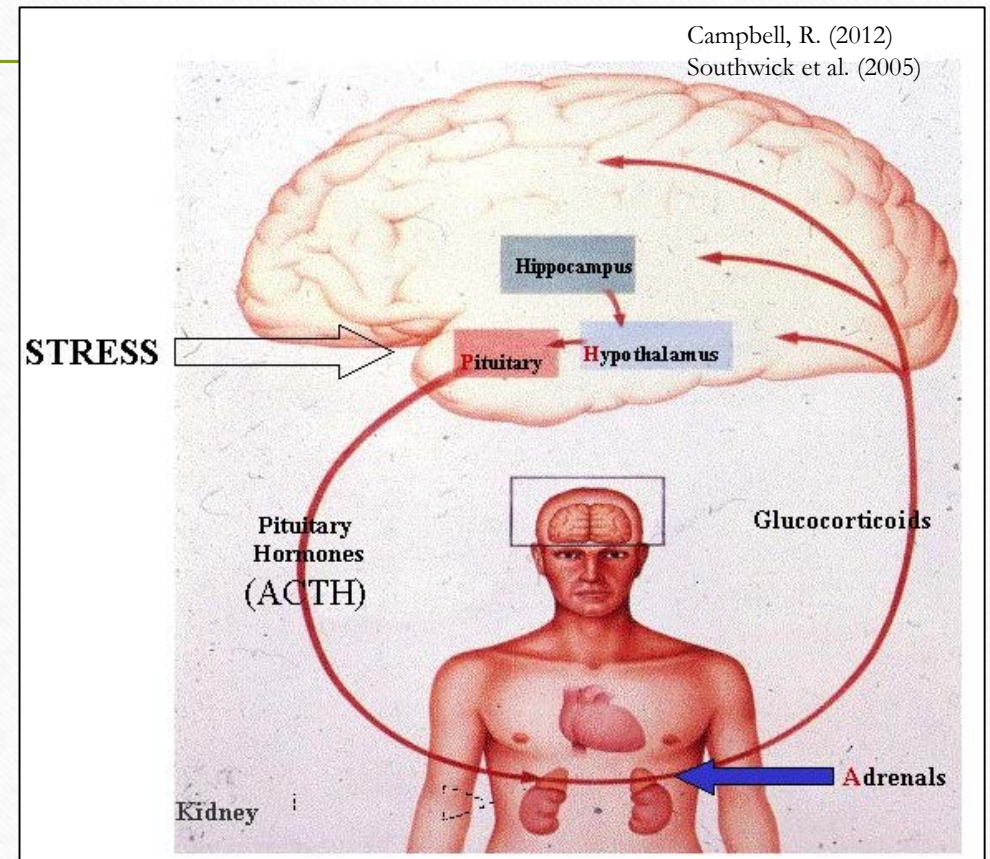
# Trauma and Memory





# What Happens During a Sexual Assault

- **Catecholamine Increases:**
  - Fight or Flight Response
  - Results in impaired rational thought.
- **Cortisol Increases:**
  - Keeps energy available
  - Immobilizes
- **Opioids Increase:**
  - Prevent pain
  - Results in little or no emotion when interviewed.



# Negative Interview Pattern Resulting in Case Attrition (86% nationally)

---

- Survivor chooses to report
- Story is not organized, “doesn’t make any sense.”
  - Increases stress hormones impair normal functioning of Hypothalamus
    - Encoding lacking
    - Difficulty in consolidating memories.
- Survivor told or senses police/hearing officer does not believe them.
- Survivor feels system is against them.
- Survivor disengages from process due to secondary victimization.
- Survivor recants or is told no action will be taken



# Foundation

---

Understanding the Responding Party



# Understanding the Responding Party

---

- Defining Stress
  - Stress vs. Trauma
  - Impact of long-term stress
- Implications for our work
  - Investigations
  - Self-Care



# Stress

---

- Stress refers to a neurophysiological response to a perceived threat.
  - Hypothalamus sets off an alarm system which prompts adrenal glands to release hormones.
  - Adrenaline increases heart rate, elevates blood pressure
  - Triggers Fight-or-Flight response
- Long-term stress can lead to significant health challenges
  - Insomnia, High Blood Pressure, Anxiety, Heart Disease, etc.

(Mayo Clinic Staff, n.d.)

# Acute Stress vs. Trauma

---

## Similarities

- Invasive thoughts
- Disassociation
- Avoidance
- Long-term damage to health and psyche
- Increased risk for suicidality

## Differences

- Source
- Timing
- Duration



# Secondary Victimization

---

- **Secondary Victimization**: “Attitudes, beliefs and behaviors by social system personnel that victims experience as victim blaming and insensitive. It exacerbates their trauma, and it makes them feel like what they’re experiencing is a second rape – hence the term “secondary victimization.”

*Campbell, R. (2012) The Neurobiology of Sexual Assault*

- **Victim Blaming**
  - Myths
- **Loss of Control**
  - Frazier et al. (2003)

# Implications for Investigations

---

- Recognize that our process will likely lead to secondary victimization
  - This may lead to more inconsistent statements
- Empathy has an effect of tamping down the stress response (Campbell, 2012)
  - Begin and close interview with empathy
- Allow for choice
  - “Start wherever you need to.”
  - Small choices – Where would you like to sit? Can I get you a water or tea?
- Take breaks

# Implications for Investigations, cont.

---

- The reporting party may have exhibited illogical behavior
  - Not fleeing, screaming, etc.
  - Seeing/Contacting the person after the event
- 25% of survivors of sexual assault will freeze (Campbell, 2012)
  - More likely if they have a history of trauma
- Reporting party may be concerned about being blamed (Rape Myths, promiscuity, underage drinking, etc.)
  - Remind about amnesty policy. Normalize that even if you're concerned that it might not sound good, it's most important to be honest with me.



# Implications for Investigations, cont.

---

- Start questioning broad
  - “Please share with me what you are able to about your experience”
  - Clarify details after actively listening to the narrative. “Tell me more about...”
  - “What, if anything, can you NOT forget about your experience?”
- Some elements may be challenging to recall
  - Timeline; How many times something happened, What exactly was said, etc.
- With alcohol, some memories may not be stored at all
- Emotions and sensory memories may be more intense
  - “What do you remember hearing/seeing/feeling/smelling when this was happening?”
  - “How has this experience affected you physically/emotionally?”
- Traumatic experiences may be stored as implicit memories

# Implications for Investigations

---

- Recognize that our process is stressful
  - This may lead to more inconsistent statements
- Empathy has an effect of tamping down the stress response (Campbell, 2012)
  - Begin and close interview with empathy
- Allow for choice
  - “Start wherever you need to.”
  - Small choices – Where would you like to sit? Can I get you a water or tea?
- Take breaks

# Implications for Investigations

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# Implications for Investigations, cont.

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- Emotions and sensory memories may be more intense
  - “What do you remember hearing/seeing/feeling/smelling when this was happening?”
  - “How has this experience affected you physically/emotionally?”
- Traumatic experiences may be stored as implicit memories

# ~~Vicarious~~ Trauma and Self-Care

---

- As caring people, it's impossible to not take on some of the hurt from people we talk with.
  - "Trauma is trauma is trauma" – Dr. Christopher Wilson
- Mirror Neurons and Trauma
  - Constantly tracking the emotional flow of one another
  - Accounts for rapport, empathy, but also vicarious trauma and burnout
- "It's a proven fact that we hold on to trauma. How can somebody who's holding so much trauma be of service to someone else if they're full up? You've got to empty the glass."  
– Mariska Hargitay, Joyful Heart Foundation

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# Learning Foundation

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Consent, Force, & Incapacitation

# Consent

---

- Policy Definition

- Consent is knowing, voluntary, and clear permission by word or action, to engage in mutually agreed upon sexual activity.
- It is the responsibility of each party to make certain that the other has consented before engaging in the activity.
- For consent to be valid, there must be a clear expression in words or actions that the other individual consented to that specific conduct.
- A person cannot consent if he or she is unable to understand what is happening or is disoriented, helpless, asleep or unconscious for any reason.
- An individual who engages in sexual activity when the individual knows, or should know, that the other person is physically or mentally incapacitated has violated this policy.

# Consent, cont.

---

## Sample factors that may contribute to an individual's consent

- **Age:** Is the person at or above the age of consent for that state? Does the age difference between the perpetrator and victim affect the age of consent in that state?
- **Vulnerable adults:** Is the person considered a vulnerable adult, such as an elderly or ill person? Is this adult dependent on others for care?
- **Developmental disability:** Does the person have a developmental disability or some type of mental incapacitation, such as a traumatic brain injury?
- **Physical disability:** Does the person have a physical disability, incapacity, or something that might create helplessness?
- **Unconsciousness:** Was the person sleeping, sedated, strangulated, or suffering from physical trauma?
- **Intoxication/Incapacitation:** Was the person intoxicated? Different states have different definitions of intoxication, and in some states it matters whether you voluntarily or involuntarily became intoxicated.
- **Relationship of victim/perpetrator:** Was the respondent in a position of authority, such as such as a teacher, marching band section leader, "Big" within a fraternity or sorority, or superior officer (ROTC)?



# Elements

**Force**

**Incapacitation**

**Consent**

# Force

---

- Physical Force
  - Violence
  - Threat of Violence
  - **There does not have to be bruises, or signs of resistance to demonstrate Force**
- Mental/Emotional Force
  - False Identity
  - Coercion

# Example Questions for Reporting Party

---

- When did you notice the bruises? How have these changed over time?
  - Note location, size, shape, coloration
- Help me to understand your thought process?
- *(Trauma) Notice physical remembrances (Rubbing wrists, hands on face, etc.)*
  - Will talk more – but trauma may encode memories physically



# Example Questions for Responding Party

---

- Why do you think this person made this report?
- Hand/Body Position – Help me to understand where your hands were at this point?
- Help me to understand your thought process?

# Impaired vs. Intoxicated vs. Incapacitated

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- Impaired

- Usually by alcohol or drugs
- Impairment starts upon consumption/use
- Continuum up to and including incapacitation
- Early stages of impairment are often undetectable to others
- Person can be impaired but still have capacity

- Intoxicated

- Has legal meaning in most states
- Intoxicated individuals still have capacity
- Intoxication can lead to incapacitation

# Impaired vs. Intoxicated vs. Incapacitated

---

## Incapacitated

- In the college setting, usually by drugs or alcohol
- Incapacitation can also result from disability (mental, developmental, or physical) or state of unconsciousness
- An incapacitated person is one who is “physically helpless” or substantially incapable of appraising their conduct, understanding potential consequences of sexual activity, or deciding to engage in sexual activity.

**Impairment**

**Intoxication**

**Incapacitation**





# Two Important Questions to Evaluate

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1. Was the reporting party incapacitated?
2. Did the responding party know, or should the respondent reasonably have known, that the reporting party was incapacitated?

# Examples of Questions – for Reporting Party

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- How much did you drink?
  - Out of what container/vessel?
  - Over what period of time?
- Did you pour your own drinks? If not, who did? How did you obtain them?
- Did you ingest any other drugs? Pills? (Prescription or otherwise)
- On a scale of 1-10, with 1 being completely sober and 10 being unconscious, what number would you say you were at?
  - Pros/cons of this scale

# Examples of Questions – for Witnesses/ Responding Party

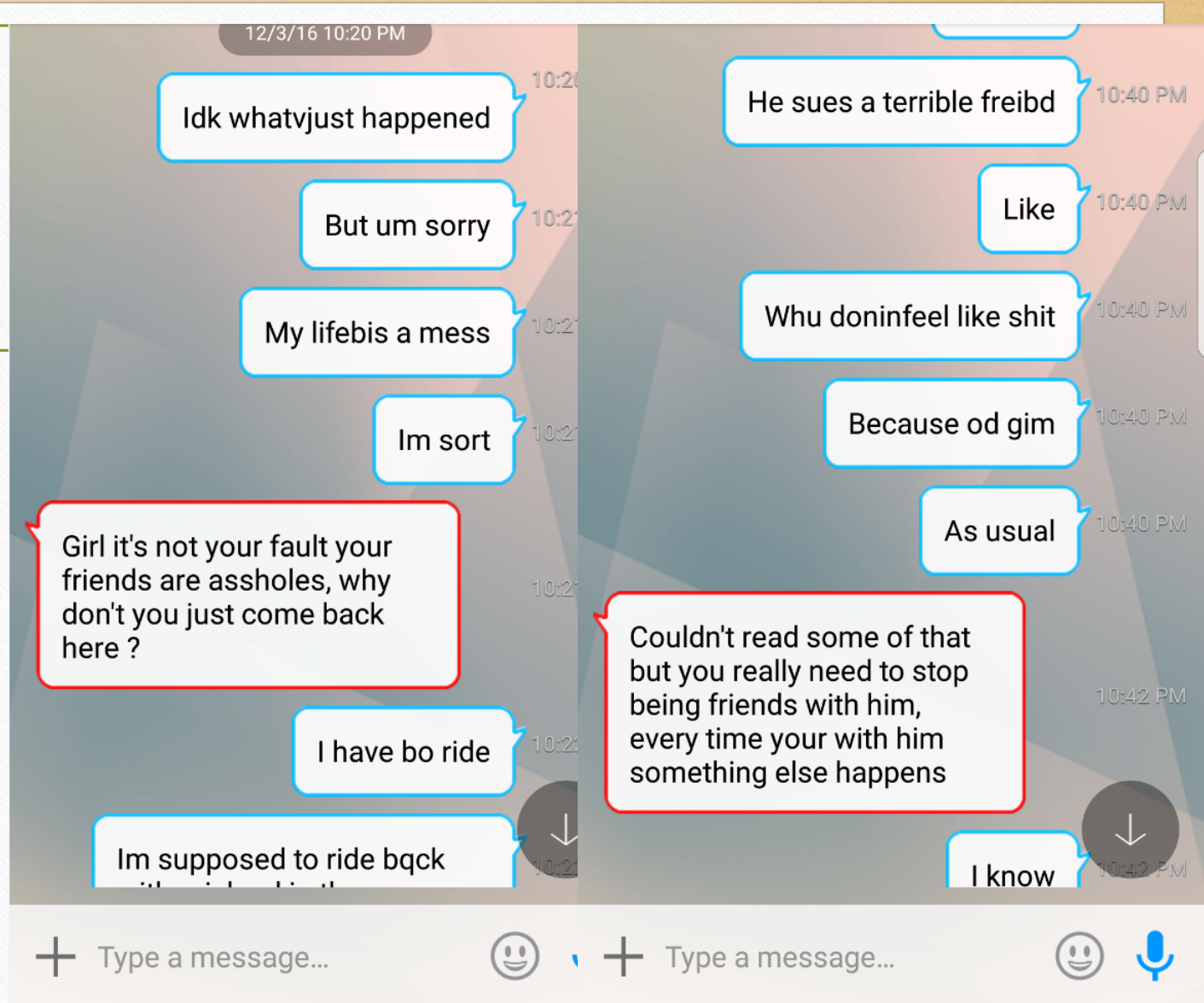
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- When did you see this person during the evening?
- Did you see this person drink that night?
  - How much did you see them drink?
- Had you ever seen this person drink before?
  - How was that different or the same than the night of the incident?
- Help me to understand what you mean by “drunk”?
- Would you have let the reporting party drive home that night?
- What specific behavior did you observe?
  - Focus on observable, outwardly facing behavior



# Other Evidence to Consider

- Surveillance
- Key swipe records
- Text messages



# What Does Affirmative Consent Look Like?

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- Mutual agreement to engage in sexual activity
  - Only applies to what was agreed to
- Explicit (enthusiastic) agreement
- It's about communication
  - Verbal
  - Non-verbal
  - Physical Cues
- On-going
  - Can be withdrawn

# What Affirmative Consent is NOT

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- Refusing to acknowledge when consent is withdrawn
- Not acknowledging “no”
- Assuming what a person is wearing is an invitation
- Someone under the legal age of consent (varies by state)
- Pressuring someone by using fear and intimidation
- Assuming you have permission because you have done it before
- Assuming someone consents to all sexual behaviors, because they consented to one sexual behavior
- Physiological Response (erection; lubrication; orgasm; etc.)
- Passivity



# Affirmative Consent, cont.

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- Cultural Implications for Consent
  - Gender Roles
  - Conflict / Boundaries
  - Spousal Responsibilities
  - Views of sexual orientations
  - Sex Education / Language about Sex and Body Parts

# Examples of Questions for Responding Party

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- What words or actions did you observe/hear from the reporting party that indicated to you, that there was consent?
  - Walk through every step of the sexual interaction
  - “Tell me more...”
- What was reporting party doing/saying during the sexual activity?
- Hand/Body positioning – Help me to understand where your hands were at this point.

# References

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1. National Highway Transportation Safety Administration. (n.d.) *The ABCs of BAC - A Guide to Understanding Blood Alcohol Concentration and Alcohol Impairment*. Retrieved August 15, 2015, from <http://www.nhtsa.gov/links/sid/ABCsBACWeb/page2.htm>.
2. University of North Carolina at Chapel Hill. (2015). *Incapacitation or Incapacitated*. Retrieved August 15, 2015, from <http://sexualassaultanddiscriminationpolicy.unc.edu/prohibited-conduct/incapacitation-incapacitated>.
3. Legal Role of Consent. Retrieved April 27, 2018 from <https://rainn.org>



# Learning Foundation

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Investigations

# Pre-Investigation

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# Investigation Planning

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- Initial information gathering regarding Reporting/Responding Parties
  - Intake
  - Incident Reports
  - Written Statements
- Determine which witnesses to interview
- Determine order of witnesses interviews
- Gather all relevant, reasonably available documents, media, and information



# Investigation Planning (cont'd)

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## Special considerations

- Multiple responding parties
- Student groups/organizations
- Cross-complaints

# Elements of Effective Interviewing

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# Interview Environment

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- Ideal interview space is:
  - Safe (physically and emotionally)
  - Private
  - Neutral (in location and décor)
  - Comfortable (both in furnishings and in size)
  - Set up to promote dialog
  - Designed to reduce distractions
- Interview space should reflect environment free of:
  - Elements of bias
  - Conflicts of interest



# Interview Environment

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- Things to have on hand:
  - Business cards/contact information for investigator(s)
  - Written copies of campus and community resources
  - Written copies of relevant campus policy and protocols
  - Paper & pen for student to take own notes if desired
- Consider having on hand:
  - Tissues
  - Water (or other beverage to offer)
  - Candy/mints
  - Stress ball, slinky, etc.

# Interviewing Tips

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- Dress/appearance
- Attend to your non-verbal behaviors
  - Focus on student, rather than advisor, support person, attorney, etc.
  - Present open posture
  - Balanced eye contact
- Practice active listening
- Demonstrate empathy but maintain proper boundaries
  - Do not “own” the emotions yourself
- Be mindful of your own reaction to triggering information
  - Consult with colleagues to learn more about your own non-verbal cues

# Interviewing Tips (cont'd)

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- Managing the difficult conversation
  - Acknowledge at the beginning that this could be a difficult conversation
  - Do not preface questions with, “I know this is hard” or “This must be difficult”
- Language is extremely important
  - Use correct anatomical terminology for body parts
  - Ask interviewees to explain what they mean when using slang or terms even if you think you understand them



# Framing the Initial Interview

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- Welcome & Introductions
- Use this as opportunity to begin building rapport
- Overview of the process
  - Explanation of investigatory process, resolution process, appeal rights
  - Have written copies of these materials available – flowcharts are helpful
- Review rights and options specific to that person's role
  - Reporting/Responding Parties' rights differ from witnesses
  - Discuss confidential resources, availability of interim measures and supports, other available resources

# Framing the Initial Interview (cont'd)

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- Discussion of roles
  - Investigator(s), advisor, support person, attorney, etc.
- Setting expectations for interview
  - Okay to take breaks
  - Explain notes are being taken, privacy considerations
- Discuss process
  - Explain when/how updates will be provided
  - Discuss prohibition against retaliation

# Reluctant Reporting Parties

---

Reporting Party may request confidentiality, that nothing be done, that doesn't want to participate in investigation

- Rescinded 2014 OCR Q&A remains instructive. Explain:
  - Ability to fully respond may be limited
  - Protections against retaliation
  - Need to analyze request against university's ability to maintain safe and non-discriminatory environment
- Document reporting party's request and rationale for honoring it (or not)



# Reluctant Reporting Parties (cont'd)

---

- If necessary/possible to proceed without reporting party's participation:
  - Seek detailed information from those with most direct knowledge
    - Witnesses
    - First responders
    - RA and/or police who spoke with complainant
  - Try to piece together narrative from physical information, e.g., social media, photographs, etc.
- Be mindful of rights and impact on respondent

# Reluctant Responding Parties

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- May be concern for impact on criminal process
- May want to first know what information has been reported/gathered
- May claim right to avoid incrimination
- If proceeding without respondent:
  - Try not to rely on complainant's narrative alone
  - Seek additional information to either support or refute claims
  - Avoid finding of responsibility/drawing adverse inference from refusal to participate

# Activity

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Pair up and develop an investigative strategy based on what you observe in the video.

<https://www.youtube.com/watch?v=y6zZYCb-hyQ&t=4s>

*Note that this activity may trigger some personal trauma. If you need assistance, please feel free to step out.*



# Goals of Questioning

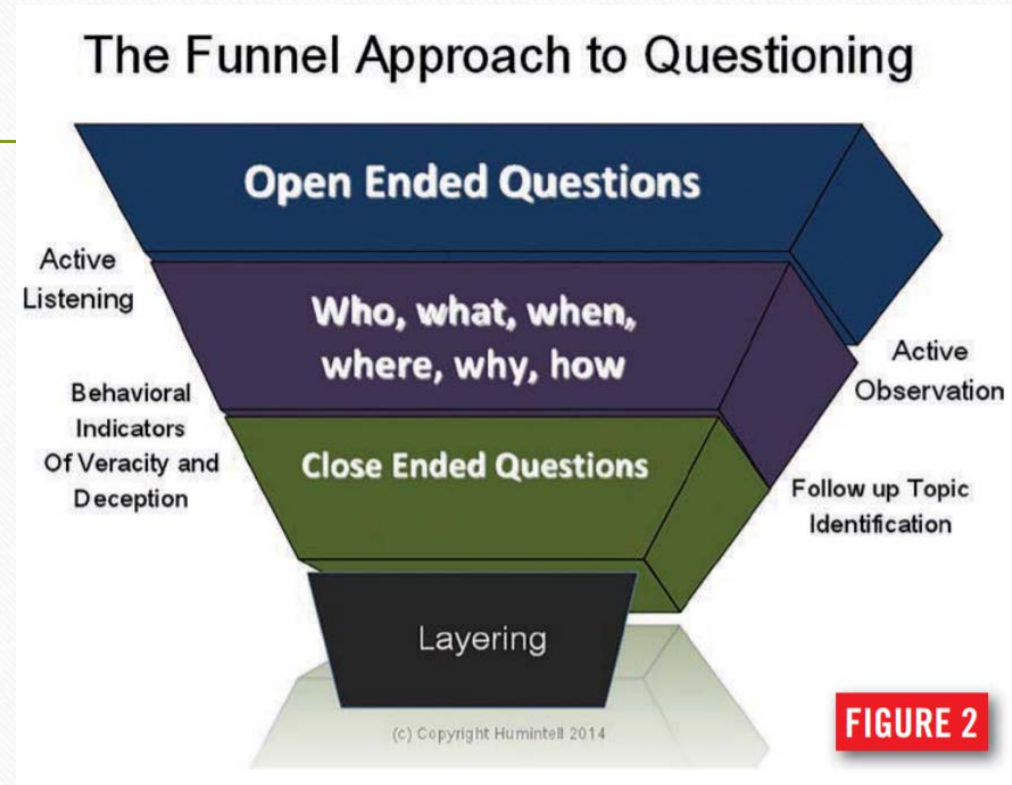
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- Establish a narrative and timeline of events
- Clarify conflicting information
- Understand how all parties perceived events

*Use elements of the policy related to the allegations as the framework for questions – indeed, as framework for entire investigation*

# “The Funnel”

- “Beginning wherever you wish, please help me to understand your experience.”
- “Tell me more about...”
- Can always go back to narrow down more specifics



# Tips for Effective Questioning

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- Ask open-ended questions
- Avoid leading questions
- Listen more than you speak—Be comfortable with silence
- Allow time for people to answer your questions
- Use appropriate tone
- Identify conflicting information
- Ask questions that reveal attitude and belief
- Avoid questions that imply judgment



# What Should I Ask?

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Ask yourself:

- Do I need to know the information?
- Will an answer to my question help me to understand what happened?
- Will getting an answer to this question inform the decision?

# To Ask or Not to Ask . . .

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- In framing the questions, be sensitive to the emotional states of both Reporting and Responding Parties.
- Do not make assumptions about Reporting Party's fragility or vulnerability.
- Important/relevant questions should always be asked.

# Useful Phrases

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- Would you be willing to tell me more about . . . ?
- How did you feel about . . . ?
- What did you do after . . . ? What happened then?
- What did you mean when you said . . . ?
- What was your reaction to . . . ?
- How did you become involved in . . . ?
- What is your understanding of . . . ?



# What to Ask When

---

- **“What”** questions ask for facts and details
- **“How”** questions ask about the process, sequence of events, or focus on emotions
- Closed **“Who/When/Where”** questions ask for the specifics of the situation
- Avoid **“Why”** questions that could be perceived as judgmental
- Avoid **multiple choice** questions

# Avoid Leading Questions

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- “Were you feeling stressed when you told your roommate what happened?”
- “Were you drunk after having 7 drinks?”
- “Were you worried after the complainant left your room?”

# Closing the Interview

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- Connection to additional witnesses/information
  - “Do you have any texts, pictures, etc. that may be related to this incident?”
  - “Is there anyone else you can think of that I should talk to? What information do you think they may be able to provide?”
- Wrap up questions
  - “Is there anything else you think I need to know?”
  - “Is there anything you were expecting me to ask that I did not?”
- Allow time for student to ask questions
- Additional information
  - How to contact you if they remember anything else after the interview or have additional questions
- Next steps
  - Will this person hear from you again? When should they expect that contact? What might that contact look like?



# Special Considerations for Reporting Party

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- Minimize number of interviews and interviewers
  - Could be retraumatizing to have to retell story multiple times
- Ask questions that speak to sensory elements of incident may unlock details
  - Sight, smell, taste, texture, sound, etc.
- Ask questions that speak to emotional elements of incident may unlock details
  - Allow complainant to unpack their feelings
  - May generate recall of incident-specific information

# Special Considerations for Reporting Party (cont'd)

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Possible questions – *sensory or emotional information*

- What is the memory that sticks out most for you?
- Is there anything you can add...?
- What sounds (smells, etc.) do you recall?
- Tell me more about what you recall feeling (physically) at that time.
- Tell me more about how this has impacted you.
  - Seek more information about the physical and emotional response
  - Seek more information about academic, social, personal, behavior impact

# Special Considerations for Responding Party

---

Undergoing an investigation may cause responding party to feel

- Stressed
- Shame and/or embarrassment
- Anger
- Hopeless

Important to provide respondent with appropriate resources/support

- Respondent who feels supported may be more likely to participate in process



# Special Considerations for Responding Party (cont'd)

---

Begin interview with broad inquiry

- Let's discuss the night of the alleged incident.
- Tell me more about what you were doing that night, starting at wherever "the beginning" is for you.
- You have been accused of behavior that night that violated our policy/code of conduct. Tell me why that may be.
- Tell me about your relationship/interaction(s) with the complainant.

# Special Considerations for Responding Party (cont'd)

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Possible interview questions – *consent*

- What did the complainant do or say that showed consent?
- Tell me more about what you observed from the complainant in response to your actions.
- What did you do when the complainant indicated that they weren't interested?
- What did the complainant do that showed they were enjoying the interaction?
- Was there a time you wondered if the complainant was into it?

# Special Considerations for Responding Party (cont'd)

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## Behavior Profile

“Nice Guy” – Often charming, well-liked

- **Target** – Younger, Flattered by attention
- **Approach/Test** – Desensitization to physical touch/space, Push alcohol
- **Separation** – Move from support
- **Attempt Consensual Sex**
  - If yes, date ends.
  - If no...
- **Intimidation** – Ignoring protest, usually not violent
- **Violation** – Take what they want
- **Termination** – Twofold: Get away from scene; Discourage/Discredit

## Grooming

- How did Reporting Party meet the Responding Party?
  - What was their first impression?
- Did the Responding Party target the Reporting Party?
  - Power Differentials – Age, Popularity, etc.
  - Was there intentional establishing trust?
- Did the Responding Party provide or facilitate alcohol use? Did this occur at the Responding Party’s “turf”
- Any time that the Reporting Party felt uncomfortable?
  - If alcohol is present, this likely won’t be there



# Special Considerations for Respondent (cont'd)

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Common responses:

- Denial based on character
  - *I would never do this because I'm a spiritual person*
  - *I know someone who was raped and there is no way I would do that*
- Denial based on physical condition
  - *I had so much to drink I couldn't maintain an erection*
  - *I'm the one who was blacked out – ask my friends how much I had to drink*
- Refuse to address the allegation
  - *Under the advice of counsel...*
  - *I want to see the file before I say anything.*

# Special Considerations for Respondent (cont'd)

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- Denial based on their prior sexual experience
  - *I was a virgin before that night*
  - *I'm the one who was violated*
  - *I'm not trying to brag, but I don't need to take advantage of anyone to get laid*
- Reframe incident or raise distractions
  - *This isn't about consent, it's about a bad breakup!*
  - *We should be talking about how [the complainant] took advantage of me.*
  - *If I wasn't a [special population], you wouldn't even be talking to me.*
  - *I've seen the news and know that the process is stacked against me.*

# Special Considerations for Witnesses

---

Often, the situations we are investigating are “word against word” – no direct witnesses. But witnesses can

- Fill in gaps in timeline
- Provide information about parties’ alcohol/drug use
- Provide observations regarding observable behaviors indicating possible incapacitation
- Provide contemporaneous accounts of what parties told them



# Special Considerations for Witnesses (cont'd)

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- Address confidentiality
  - Explain what, if any, confidentiality you can provide
  - If witness's name will be used, explain context and who will know
- Address protections against retaliation
- Connect to resources
  - If witness is showing signs of distress/discomfort, help connect them to assistance
  - If appropriate, consider offering interim measures such as no contact order
    - But consider whether that will restrict party's due process right to question them

# Special Considerations for Witnesses (cont'd)

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## Strategies:

- Be strategic in the order in which to interview them
- If possible, schedule interviews so as to minimize opportunities for witnesses to compare stories, notes, questions asked
- Listen for accounts that sound too familiar
  - Using same wording or phrasing
  - Telling story in exact same sequence
- Ask about the witness's use of alcohol/drugs and whether it affected their observations/memories
- The disinterested witness is the best source of information

# Note Taking Tips

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- Again, two investigator model is helpful
  - One takes lead on questions, other on notes
  - Person questioning should still take notes on items to follow up on in order to avoid interrupting
- Be mindful of distractions – loud keyboards, where note taker is sitting
- While verbatim notes are not necessary, quotes can be helpful
- Notes should be thorough, clear, and neutrally written
- Develop system of symbols to denote important items and indicate where follow up questions are necessary
- Clean up and finalize notes as soon after the interview as possible



# Gathering Documentary Information

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## Can include:

- Text Messages & Call Logs
- Photographs
- Social Media
  - Twitter, Instagram, Facebook, LinkedIn, Tinder, Grindr, Snapchat, Fade, etc.
- Video
  - Personal recordings and security/surveillance footage
- Building/Swipe Access
- Medical Records/SANE Records
- Guest Lists (parties, student organization events)
- Bar or restaurant receipts
- Journals

# Verifying Documentary Information

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- Text Messages

- Messages in a thread can be selectively deleted
- Ask student for phone bill to verify time stamps
- Ask others involved in the text conversation if they still have the messages

- Social Media Posts

- Templates online to fake posts/messages
- Ask student to sit at your computer/desk to print or screen capture

- Photographs

- Look at date and time of creation for digital images

# Relevancy of Information

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- Examples of potentially irrelevant information:
  - Does not speak to the issue
  - Speaks to a fact not in dispute
  - Sexual history
  - Character references/letters
- Sometimes, information can be prejudicial
  - Inflammatory social medial posts not related to the issue
  - Opinion/evaluative statements not backed by fact
- What to do with irrelevant/prejudicial information?
  - If you choose not to use/include something, document decision & rationale



# Prior Sexual History

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- Reporting Party claims she never has sex without a condom and she wouldn't have allowed respondent to have sex with her without a condom if she had not been incapacitated.
  - Responding Party claims this isn't true and that complainant has had sex with 3 of his friends who didn't use condoms. Responding Party wants investigator to interview friends and include information in report.
  - Reporting Party objects, saying her previous sexual history isn't relevant.
  - Responding Party says the information is relevant as to Reporting Party's credibility. He says she was not being truthful when she said she always uses condoms and his witnesses can prove it.
- **Would you allow this information?**

# Tools for Assessing Credibility

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- The best way to evaluate credibility is to use everyday tools and life skills
  - It's not complicated; we do it everyday.
  - Procedures are based on reason and common sense.
  - The process is a “search for the truth.”

# Tools for Assessing Credibility (cont'd.)

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- Factors that Influence Credibility
  - Direct observation or experience
  - Circumstantial/indirect information
    - Contemporaneous statements
    - Witness accounts
    - Documentation
  - Claimed lack of knowledge
  - Interest/motive/malice
  - Cultural factors



# Tools for Assessing Credibility (cont'd.)

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- Establishing Credibility: Listening to the Witness
  - Invest in learning the language of your witness
    - Do not attempt to reinterpret their language;
      - Quote whenever possible over summarization
  - Learn from the witness' narrative
    - Refrain from interrupting
    - Go back and follow up to clarify details
  - Explore the entire incident and investigative process with witness
    - Pay attention to areas which may be able to be corroborated

# Tools for Assessing Credibility (cont'd.)

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- Focus on Sensory details
- Pay attention to emotional cues and responses
- Create running timeline
- Barring other forms of information, the information of the unbiased person is given more weight.
- Give more weight to disputed information or events when corroborated by multiple witnesses
- Consistency versus inconsistency
  - Be aware of possible impact of trauma or retaliation for inconsistent statements

# Learning Foundation

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Report Writing and Document Keeping



# Documents in File

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(Back of Folder)

- Incident Report (Rationale if it stops here)
- Outreach (Rationale if it stops here)
- Interim Remedies (Rationale if it stops here)
- Investigation Report
  - Includes all evidence gathered
- Notice of Hearing
- Decision Letter
- Appeal

# What to Include Investigation Reports

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- Alleged Violations
- Jurisdiction
- Standard of Proof
- Involved Parties
- Investigative Timeline
- Background Information
- Statement from Reporting Party
- Statement from Responding Party
- Witness(es) Statement(s)
- Findings
- *Response(s)*
- Violations and Analysis
- Conclusion
- Appendix

# Template Investigation Report

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- Can be modified
- Does not include all elements that might come up in an investigation
- There is no requirement that we use this, but this is a tool for greater consistency



# Timeline and Background

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- Timeline of specific events occurring during the investigation
  - Dates of notice, interviews, review of file, etc.
- Background information
  - Circumstances under which the Complainant reported the conduct
  - When/how the notice of investigation/charge letter was sent to Respondent
  - When/how the Respondent and Complainant interviewed with office
  - Other documentation reviewed (text messages, screenshots, photos)

# Complainant, Respondent, & Witness Statements

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- Factual, neutral summary of interviews
  - Complainant's interview
  - Respondent's interview
  - Witness interview(s)
- Written in first or third person?
  - I've seen both, just be consistent

# Findings and Responses

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- Summarize separately the information that is undisputed and disputed
- For undisputed elements
  - “It is undisputed that the Complainant and Respondent engaged in mutual kissing.”
- For disputed elements
  - “It is disputed that the Respondent moved the Complainant’s underwear aside while on top of her and penetrated her vagina with his penis.”
- Separately provide summaries of the responses to findings from the complainant(s) and respondent(s)



# Violations and Analysis

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- Outline each potential violation and analyze it with the information gathered in the investigation
- Sexual Assault
  - The Civil Rights Policy defines sexual assault as any physical contact of a sexual nature when this contact is unwelcome and unwanted.
- Sexual Exploitation
  - The Civil Rights Policy defines sexual exploitation as non-consensual or abusive sexual advantage of another...

# Result (per Clery Handbook)

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- Result: “Any initial, interim and final decision by any official or entity authorized to resolve disciplinary matters within the institution”
- Be prepared to articulate, in writing, how information was weighted and credibility was assessed
- It is not sufficient to say
  - “the evidence presented met the institution’s standard of evidence,” or
  - “the evidence presented did NOT meet the institution’s standard of evidence”

(U.S. Department of Education, 2016)

# Conclusion

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- Based on the preponderance of the evidence, including statements from the Reporting Party, the Responding Party, and witnesses, we find sufficient evidence that the Responding Party is **responsible** for violating the policies as outlined previously in this report.
- We refer the matter to the Office of Student Life for a hearing, and recommend the following sanction(s)...



# Appendix/Exhibits

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- Full Meeting Notes
- If we ask either party to sign their statements, include their signature here
- Police Reports
- University Incident Reports and/or Complaints
- Phone Logs
- Text Messages
- Emails
- Photos
- Medical Records
- Social Media screenshots

# Writing Rationale Statements (per Clery Handbook)

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- Rationale for result and sanctions must include:
  - Information presented during the proceeding
  - Explanation for how the evidence was weighed
  - How the evidence and information support the result and sanctions
  - Description of how the institution's standard of evidence was applied

# Rationale Writing

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Two approaches:

1. Minimalist approach
  - a. Not too much detail
  - b. Keep it simple
  - c. Bare minimum amount of information
2. Extensive detail



# Rationale Writing

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- “I determined based on the preponderance of the evidence...”
- Avoid terms like “I believe” or “I think”
- Should include:
  - Elements of policy student is alleged to have violated
  - Facts from investigation/hearing
  - Nature of conversation with student

# Rationale Example

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- “Based on the information that was available to me, as the Hearing Officer in this case, I determined, by the preponderance of the evidence, that Joe Smith violated the sexual misconduct policy. The information I evaluated in this determination included: a report from University PD which documented a trip to the hospital for a forensic nurse exam, and the information provided at the hearing including medical records from the local hospital.”

# Rationales for Findings - Responsible

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This Administrative Hearing Officer found that there was preponderance for a finding of responsible based on the information provided in the hearing including the testimonies, investigative report, and supplementary documents. Evidence supporting this finding includes, but is not limited to, the following: During the hearing, the investigative report and information provided by or about the Respondent displayed the Respondent's interest in the Complainant as more than just "that RA friend to you." Respondent admitted in the hearing that after leaving a note with that message for Complainant (but before Complainant had seen the note), he touched the Complainant's knee for a period of time without obtaining any verbal or non-verbal consent allowing him to do so. After communicating in a variety of ways that she was not interested in a relationship with Respondent, including Complainant's specific direction that Respondent leave her alone and stop texting her, Respondent texted Complainant numerous times. Based on these surrounding factors and the definitions provided by the Code of Student Conduct, the Respondent was found to be in violation of the aforementioned charge.



# Rationales for Findings – Not Responsible

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The Administrative Hearing Officer found that there was not enough information to establish, by a preponderance of the evidence, the violation of Non-Consensual Sexual Contact and Sexual Harassment based on the definition of consent in the Code of Student Conduct. The investigation report and testimonies during the hearing provided contradictory information on the level of Complainant's intoxication, including but not limited to the extent to which Complainant's speaking and walking were impaired at the time of the events in question, the perception of the Complainant's witnesses as to her level of intoxication and whether Complainant was able to fully understand and consent to her interactions with Respondent during and after their time at the Restaurant.

# Rationales for Findings – Not Responsible

*(continued)*

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The Complainant described herself as blacked out during some of the conversations with other witnesses while at the Restaurant; however, several witnesses who saw her at the Restaurant and/or at Respondent's apartment after they left the Restaurant described her as talking coherently and walking without any trouble. Testimony provided by one of the Complainant's witnesses stated that she watched the Respondent order, pick-up, and provide the Complainant with one cup of wine and that she did not see Respondent put anything in the Complainant's drink. The Administrative Hearing Officer acknowledges that some of these contradictions could be read in a way that is consistent (e.g., the Complainant could have been blacked out and still appeared to other witnesses to be coherent). Viewing the information presented in its entirety, however, the Administrative Hearing Officer concluded that there was not sufficient evidence presented to establish a violation of 4.15a or 4.15b. The Administrative Hearing Officer did believe, however, that there was preponderance of evidence to find the Respondent in violation of 4.03a Acts of Harm: Bodily Harm. This determination is based on information provided during the hearing and in the investigative packet, including but not limited to pictures of Complainant and Respondent's acknowledgement that he saw no marks on Complainant's neck before they started kissing.



# Rationales for Sanctions

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In considering the most appropriate educational sanctions regarding this case for the Complainant and Respondent, this Administrative Hearing Officer reviewed the information provided in the investigative report, the information provided by the Respondent, and the sanctioning guidelines provided by the Code of Student Conduct. In doing so, this Administrative Hearing Officer has determined that the most appropriate resolution regarding this case is disciplinary probation along with the additional sanctions specified. The sanctioning in this matter also reflected “compelling factors” (Code Section *Identify section as needed*) offered by the Respondent to support a sanction different from the standard guidance including, but not limited to, information about the Respondent’s character and information provided by the Respondent regarding his insight to the behavior. The additional components are provided to help educate about community standards at the University and to facilitate the continued development of thoughtful, responsible, engaged members of the University community.



# Rationales for Sanctions

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The rationale provided for these sanctions is as follows: In considering the most appropriate educational sanctions regarding this case for the Complainant and Respondent, this Administrative Hearing Officer reviewed the impact statement provided by the Complainant, the information provided by the Respondent, the sanctioning guidance provided by the Code of Student Conduct, and the totality of the information presented about the case. In doing so, this Administrative Hearing Officer has determined that, in the Hearing Officer's professional judgment, suspension for a two-year period is the most appropriate resolution regarding this case. Factors that weighed into this decision included, but were not limited to, the nature and severity of the incident, the impact on the Complainant, Complainant's anticipated time to degree completion, and the educational mission set forth by the Code of Student Conduct. The sanctioning in this matter also reflected "compelling factors" (Code Section *Identify section as needed*)