



**TRAUMA-INFORMED TRAINING  
FOR FIRST RESPONDERS, CONFIDENTIAL  
RESOURCES, AND CAMPUS SECURITY**

**Kathryn Nash  
Emily Mawer**

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**AGENDA**




- Session 1: The Legal Landscape
- Session 2: Title IX Team
- Session 3: The Complaint Process
- Session 4: Rape Myths and Neurobiology of Sexual Assault
- Session 5: Creating a Culture of Understanding and Prevention

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**TERMINOLOGY**




- DOE = Department of Education
- Recipient = Institutions covered by Title IX
- OCR = Department of Education’s Office for Civil Rights
- VAWA = Violence Against Women Reauthorization Act
- FERPA = Family Educational Rights and Privacy Act
- CSA = Campus Security Authority
- Investigation/Grievance Procedures/Complaint Procedures
- Adjudicator/Decision-Maker
- Complainant/Reporting Party/accuser/victim/survivor
- Respondent/Responding Party/accused/alleged perpetrator

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## SEXUAL VIOLENCE STATISTICS



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## SEXUAL VIOLENCE STATISTICS

- United Educators' Study
  - 28% of reports resulted in lawsuits, demand letters, or federal Title IX complaints
  - 40% of complainants delayed reporting, waiting, on average, nearly a year after the incident
  - 80% of complainants were freshmen or sophomores
  - 90% of complainants knew the respondent
  - About 50% of incidents occurred in residence halls



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## SEXUAL VIOLENCE STATISTICS

- Types of sexual assault:
  - Incapacitation: 33%
  - Physical force: 29%
  - Failed consent: 16%
  - Sexual coercion: 13%
  - Drug-facilitated: 7%
- 78% involved one or both parties consuming alcohol
- 45% of respondents found responsible
  - In 80% of those cases, respondent expelled or suspended



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## SESSION 1: THE LEGAL LANDSCAPE



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## SESSION OVERVIEW

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- Title IX
- Clery Act
- Violence Against Women Reauthorization Act
- Defining Sexual Misconduct
- Interaction with Other Laws
- Risks of Non-Compliance
- Case Studies



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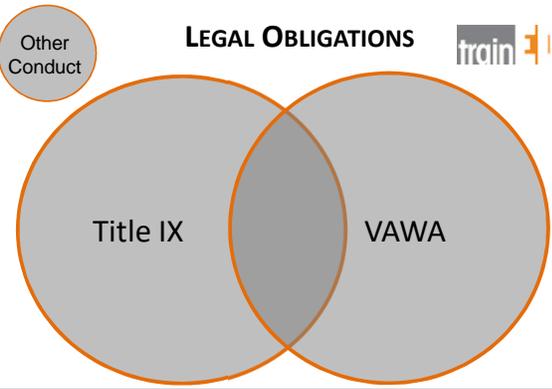
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## LEGAL OBLIGATIONS

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Other Conduct

Title IX

VAWA

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**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 educational program or activity receiving Federal financial assistance”



20 U.S.C. § 1681

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**WHO MUST COMPLY WITH TITLE IX?** 

- Institutions that receive federal funds
  - Students
  - Employees
  - Third Parties
    - Visitors
    - Vendors



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**DISCRIMINATION  
“ON THE BASIS OF SEX”** 

- Includes:
  - Sexual harassment
  - Differential treatment



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**WHEN INSTITUTIONS MUST RESPOND UNDER TITLE IX** 

- Institution has actual knowledge of
- Sexual harassment
- In an education program or activity of the institution 
- Against a person in the United States

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**WHEN INSTITUTIONS MUST RESPOND UNDER TITLE IX** 

- Actual knowledge
  - Notice of sexual harassment or allegations of sexual harassment to the Title IX Coordinator or an official who has authority to institute corrective measures on behalf of the institution
    - Notice includes, but is not limited to, a report of sexual harassment to the Title IX Coordinator
  - Vicarious liability and constructive notice are insufficient
  - Standard not met if the only official with actual knowledge is the respondent

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**WHEN INSTITUTIONS MUST RESPOND UNDER TITLE IX** 

- Actual knowledge (cont.)
  - The following does not qualify an individual as having the authority to institute corrective measures
    - Mere ability or obligation to report sexual harassment
    - Ability or obligation to inform a student about how to report
    - Being trained in how to report

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**WHEN INSTITUTIONS MUST RESPOND UNDER TITLE IX** 

- Education program or activity
  - Locations, events, or circumstances over which the recipient exercised substantial control over both the respondent and the context in which the sexual harassment occurs
    - Includes all incidents of sexual harassment occurring on an institution's campus
    - Also includes off-campus conduct if
      - Occurs as part of the institution's "operations"
      - Institution exercised substantial control over the respondent and the context of alleged sexual harassment
      - Occurs at an off-campus building owned or controlled by a student organization officially recognized by the postsecondary institution (e.g., fraternities and sororities)

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**HOW INSTITUTIONS MUST RESPOND UNDER TITLE IX** 

- Must respond promptly in a manner that is not deliberately indifferent
- Deliberately indifferent = response is clearly unreasonable in light of the known circumstances
- Follow grievance process outlined in the regulations 

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**THE LEGAL LANDSCAPE** 

- All schools receiving federal funds must:
  - Publish Notice of Nondiscrimination
  - Designate a Title IX Coordinator
  - Disseminate policy prohibiting sex discrimination
  - Adopt and publish fair and equitable grievance procedures
  - Offer supportive measures to a complainant
  - Follow a legally compliant grievance process
  - Train individuals with heightened responsibilities
  - Train students and employees



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**OCR'S ENFORCEMENT AND GUIDANCE** 

- OCR's Role:
  - Issue guidance
  - Compliance reviews
  - Resolution agreements



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**CLERY ACT** 

- Provide accurate, timely, and complete information
- Regarding certain types of crimes/incidents
- Occurring on or adjacent to campus
- To promote campus safety and consumer protection



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**VIOLENCE AGAINST WOMEN REAUTHORIZATION ACT (VAWA)** 

- Extends Clery crimes to include VAWA crimes: domestic violence, dating violence, and stalking
- Requires discipline procedures for addressing sexual misconduct
- Requires education programs to promote awareness
- Codified parts of 2011 Dear Colleague Letter on Title IX

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## DEFINING SEXUAL MISCONDUCT



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## TITLE IX—SEXUAL HARASSMENT

- Conduct *on the basis of sex* that satisfies one or more of the following:
  - Quid pro quo
  - Hostile environment
  - Sexual assault and VAWA crimes



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## TITLE IX—SEXUAL HARASSMENT

- Quid pro quo:
  - Employee conditions aid, benefit, or service of the institution on an individual's participation in unwelcome sexual conduct
  - Examples
    - Supervisor conditioning promotion on participation in sexual advance
    - Professor conditioning grade on participation in sexual advance



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**TITLE IX—SEXUAL HARASSMENT** 

- Hostile Environment:
  - Unwelcome conduct (on the basis of sex) determined by a reasonable person to be *so severe, pervasive, and objectively offensive* that it effectively denies a person equal access to the institution's education program or activity



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**TITLE IX—SEXUAL HARASSMENT** 

- Examples: Multiple incidents of the following conduct may constitute hostile environment sexual harassment
  - Unwelcome sexual flirtations, advances, or propositions
  - Requests for sexual favors
  - Verbal abuse of a sexual nature, obscene language, off-color jokes, sexual innuendo, and gossip about sexual relations
  - The display of derogatory or sexually suggestive posters, cartoons, drawings, objects, notes, letters, photos, emails, or text messages
  - Visual conduct such as leering or making gestures
  - Sexually suggestive comments about an individual's body or body parts, or sexually degrading words to describe an individual



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**TITLE IX—SEXUAL HARASSMENT** 

- Examples: Multiple incidents of the following conduct may constitute hostile environment sexual harassment
  - Unwelcome touching of a sexual nature such as patting, caressing, pinching, or brushing against another's body
  - Unwelcome verbal or physical conduct against an individual related to the individual's gender identity or the individual's conformity or failure to conform to gender stereotypes
  - Cyber harassment, including but not limited to disseminating information, photos, or videos of a sexual nature without consent
  - Videotaping or taking photographs of a sexual nature without consent



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**TITLE IX—SEXUAL HARASSMENT** 

- Sexual Assault
- VAWA Crimes
  - Dating violence
  - Domestic violence
  - Stalking
- As defined in Clery
- Consent: No particular definition of consent with respect to sexual assault is required



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**TITLE IX—SEXUAL HARASSMENT** 

▪ **Sexual Assault:**

- **Rape:** The penetration, no matter how slight, of the vagina or anus with any body part or object or oral penetration by a sex organ of another person without the consent of the victim
- **Fondling:** The touching of the private body parts of another person for the purpose of sexual gratification without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental incapacity

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**TITLE IX—SEXUAL HARASSMENT** 

▪ **Sexual Assault:**

- **Incest:** Sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law
- **Statutory Rape:** Sexual intercourse with a person who is under the statutory age of consent



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### TITLE IX—SEXUAL HARASSMENT



- **VAWA Crimes:**
  - **Domestic Violence:** committed by current/former spouse, intimate partner, co-parent, cohabitant, or others protected under domestic or family violence law
  - **Dating Violence:** person with whom victim has/had a social relationship of a romantic or intimate nature (determined by reporting party's perspective and length, type, and frequency of interaction)
  - **Stalking:** course of conduct directed at a specific person that would cause fear for safety or substantial emotional distress

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### TITLE IX—SEXUAL HARASSMENT

- Male/Female
- Female/Male
- Female/Female
- Male/Male
- Gender Identity



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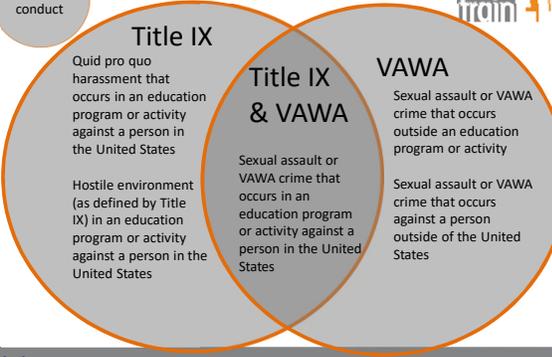
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### Legal Obligations\*



**Other conduct**

**Title IX**  
 Quid pro quo harassment that occurs in an education program or activity against a person in the United States  
 Hostile environment (as defined by Title IX) in an education program or activity against a person in the United States

**Title IX & VAWA**  
 Sexual assault or VAWA crime that occurs in an education program or activity against a person in the United States

**VAWA**  
 Sexual assault or VAWA crime that occurs outside an education program or activity  
 Sexual assault or VAWA crime that occurs against a person outside of the United States

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### INTERACTION WITH OTHER LAWS

- FERPA: Family Educational Rights and Privacy Act
  - Limits disclosure of student education records
  - Several exceptions permit disclosure
    - In Title IX cases, exception permits school to disclose to both parties all directly related evidence, all information in the investigation report and attachments that goes to the decision-maker, and statement of, and rationale for, the final results of any disciplinary proceedings or appeals, including sanctions and whether remedies will be provided
      - Required by Title IX
      - Does not include what the remedies are
    - In cases involving sexual assault/VAWA crime, exception permits school to disclose to the parties any information provided to the decision-makers and the final results of the disciplinary proceedings, including all sanctions



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### INTERACTION WITH OTHER LAWS

- Mandatory reporting laws: state-specific laws requiring school employees to report child abuse
  - Mandatory reporters may include teachers, coaches, administrators, or others who interact with minors or who supervise those who interact with minors
  - Must report – know or reasonably suspect abuse or neglect of a child or vulnerable adult
  - Report to police or designated government official
    - Immediately → as soon as possible but no more than 24 hours
- Title VII and state anti-discrimination laws
- Disability accommodation laws
- State student safety laws

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### RISKS OF NON-COMPLIANCE

- OCR enforcement
- Clery Act enforcement
- Lawsuits
  - Private right of action under Title IX, breach of contract, interference with contract, negligence, negligence *per se*, negligent supervision, intentional infliction of emotional distress, defamation, violation of right to due process at public schools, invasion of privacy/violation of confidentiality
- Public relations



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## CASE STUDIES

Spotting the Issues

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## CASE STUDY

- Abby asks her economics T.A., Jenny, if she can meet with her sometime to ask a few questions about class. Abby tells Jenny that she's gone to the professor a few times during office hours but every time she's gone he has made inappropriate sexual jokes.
  - Is this sexual harassment?
  - Title IX obligations?
  - Clery obligations?

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## CASE STUDY

- Campus safety receives a report of yelling and crashing sounds coming from an apartment on campus. When they arrive at the apartment they find Chris and Laura, who report that they are boyfriend and girlfriend. They tell the officers that they were just having a little fight and its no big deal. Officers notice that both Chris and Laura appear to have minor injuries.
  - Title IX obligations?
  - Clery obligations?

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## SESSION 2: THE TITLE IX TEAM



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## SESSION OVERVIEW

- Identifying the Title IX Team
- First Responders
  - Confidential Resources
  - Designated First Responders (Campus Safety Officers; Title IX Coordinator; Deputy Coordinators)
  - Other First Responders
- Title IX Coordinator Responsibilities
- Case Studies



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## THE TEAM

- Title IX Coordinator
- Deputy Coordinator(s)
- Investigators
- Adjudicators/hearing board
- Appeal officers
- Decision makers
- Campus Security
- Student Affairs
- Human Resources
- Counseling/support service providers
- Community partners
- Others



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## FIRST RESPONDERS



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## WHO ARE FIRST RESPONDERS?

- Individuals likely to receive reports of sexual harassment
  - **Designated First Responders** – responsible for intake of reports/complaints, may include:
    - Title IX Coordinator and Deputy Coordinators
    - Campus Security
  - **Confidential First Responders**, may include:
    - Counseling and health center personnel
    - Clergy
  - **Other First Responders**, may include:
    - Title IX team
    - Student services
    - Resident assistants and other residential staff
    - Coaches
    - Faculty

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## ROLE OF ALL FIRST RESPONDERS

- Assist the institution in stopping harassment, preventing its recurrence, and addressing its effects
  - Speak up if you see inappropriate behavior
  - Encourage reporting – help breakdown barriers to reporting
  - Build confidence in the school's process, so perpetrators are held responsible
  - Make Title IX Coordinator aware of reports\*
  - Handle matter discreetly – need to know (generally just Title IX Coordinator)\*
  - Create awareness of available resources and interim measures to ensure that complainants get help

\*Confidential resources must keep all reports confidential and cannot share report unless statutory exception applies

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## CONFIDENTIAL RESOURCES



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## WHO ARE CONFIDENTIAL RESOURCES?



- Confidential resources under Title IX:
  - Professional and pastoral counselors
  - Others with state-law privilege
  - Non-professional counselors or advocates?

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## WHO ARE CONFIDENTIAL RESOURCES?

- Pastoral counselor:
  - A person who is associated with a religious order or denomination, is recognized by that religious order or denomination as someone who provides confidential counseling, and is functioning within the scope of that recognition as a pastoral counselor
- Professional counselor:
  - A person whose official responsibilities include providing mental health counseling to members of the institution's community and who is functioning within the scope of his or her license or certification
- Anyone designated as confidential under state law and is functioning under such designation

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### WHO ARE CONFIDENTIAL RESOURCES?

- Non-professional counselors or advocates?
  - Other individuals who provide assistance to students who experience sexual violence, but who are not professional or pastoral counselors
  - Includes all individuals who work or volunteer in on-campus sexual assault centers, victim advocacy offices, women's centers, or health centers, including front desk staff and students
  - Confidential Resource?
    - Depends on state law



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### CASE STUDY

Rev. Mary Gray is a pastor who provides counseling services to students at the university counseling center. At her first appointment with Jessie, Jessie tells Rev. Gray that he was sexually assaulted a few days ago by a student who lives in his dorm. Jessie tells Rev. Gray he has been sleeping at a friend's dorm since the assault because he doesn't want to risk running into the student who assaulted him.

Should Rev. Gray report the alleged assault to the Title IX Coordinator? Does the university have a Clery reporting obligation related to the alleged assault?

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### LIMITATIONS ON CONFIDENTIAL RESOURCES – STATE LAW PRIVILEGE

- Title IX reporting requirements vs. state law privilege
- Pastoral and professional counselors (and others with privilege under state law)
  - No reporting requirements under Title IX or Clery
- Risk if you treat as confidential those who are not confidential under state law
  - Court or OCR may conclude that individual is an official who has authority to institute corrective measures on behalf of the institution
  - May be required to testify in the event of litigation

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**CASE STUDY**



In addition to working in the counseling center, Rev. Gray teaches a religion course on Wednesday evenings. After class one day, a student in her class, Samantha, asks to speak with her. Samantha asks Rev. Gray if she can have an extension on her midterm paper. Samantha explains that she's been having a lot of trouble concentrating on her studies lately because her ex-boyfriend, who is also a student at the university, has been coming to her dorm room, showing up outside her classes, and sending her text messages constantly. Samantha tells Rev. Gray that she just needs some extra time while she figures out what to do.

- Should Rev. Gray report the alleged conduct to the Title IX Coordinator?
- Does the university have a Clery reporting obligation related to the allegations?
- What if Samantha came to see Rev. Gray during her hours at the counseling center?

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**LIMITATIONS ON CONFIDENTIAL RESOURCES – DUAL ROLES**



- Employees who are clergy or licensed professionals
  - Must be functioning within the scope of their recognition as pastoral counselor or of their professional license or certification
  - Example: theology professor
- Volunteers who are not volunteering
  - Example: student who works in health center



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**STUDENT HEALTH SERVICES: CONFIDENTIAL RESOURCES**



- Screen students for incidents of sexual violence and sexual harassment
- Receive training:
  - best practices for interacting with victims
  - preserving evidence
  - campus disciplinary processes
  - locally available resources
- Must be available to meet with victims



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### CASE STUDY



During his initial appointment with Rev. Gray, Jessie told her that he was sexually assaulted by another student in his dorm. Jessie told Rev. Gray that he has been sleeping at a friend's dorm because he doesn't want to risk running into the student who assaulted him.

Because she is a counselor and saw Jessie in her capacity as a counselor, Rev. Gray does not report the allegations. Is there anything Rev. Gray should tell Jessie related to the university's sexual misconduct policy?

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### INFORMATION CONFIDENTIAL RESOURCES SHOULD PROVIDE TO COMPLAINANTS



- Provide complainants with reporting options and rights
  - Explain right to report to campus authorities and/or local law enforcement
  - Offer to assist with filing such complaints
- Discuss the reporting and the campus disciplinary processes (institution specific)
  - Complaint filed with Title IX Coordinator
  - Informal or formal resolution
  - Describe process – i.e. fact finding investigation, possible hearing
  - Interim measures, possible sanctions

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### INFORMATION CONFIDENTIAL RESOURCES SHOULD PROVIDE TO COMPLAINANTS



- Discuss process if report to law enforcement
  - What is the local legal process for sexual assault or sexual harassment claims?
- Inform/offer information regarding legal assistance
- Discuss/offer campus resources for counseling, medical, and academic support, as well as other support services or interim measures



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**INFORMATION CONFIDENTIAL RESOURCES SHOULD PROVIDE TO COMPLAINANTS** 

- Discuss the importance of preserving evidence
  - Try to avoid activities that could damage evidence, such as: bathing, showering, cleaning up the area, using the rest room, changing clothes, brushing hair, doing laundry
  - Try to store any physical evidence in an impermeable or non-porous container
  - Write down everything you can remember about the incident as soon as possible
  - Take photographs
  - Save any text messages, Facebook messages, Twitter messages, etc. that could be helpful
  - Record the chain of custody



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**INFORMATION CONFIDENTIAL RESOURCES SHOULD PROVIDE TO COMPLAINANTS** 

- Discuss school's prevention of and response to retaliation
  - Title IX includes protections against retaliation
  - School officials will not only take steps to prevent retaliation, but also take strong responsive action if it occurs
  - This includes retaliatory actions taken by the school and school officials



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**INFORMATION CONFIDENTIAL RESOURCES SHOULD PROVIDE TO COMPLAINANTS** 

- Disclose institution's limited ability to respond if request for confidentiality
- Written notice of rights (resources, how to request interim measures)



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## DESIGNATED FIRST RESPONDERS



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## CASE STUDY

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Officer Wayne, a campus safety officer, receives a call from Erin. Erin tells Officer Wayne that she was at a frat party a few weeks ago and ended up getting really drunk. Erin says that she woke up the next morning in the fraternity house with a guy named David sleeping next to her. Erin tells Officer Wayne that she blacked out at some point in the night but has vague memories of being with David. She says that she thinks they had sex but that she was too intoxicated to give consent.

- How should Officer Wayne respond?

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## ROLE OF CAMPUS SAFETY

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- Level of involvement is an institution-specific decision
  - Likely conduct intake of report/complaint
  - May be involved in initial risk assessment and immediate protective actions, if any
  - May serve as investigator

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**ROLE OF DESIGNATED FIRST RESPONDERS** 

- Institution-specific decision – Level of involvement in process and at what point to hand matter over to Title IX Coordinator or Deputy Coordinator
- If responsible for intake of report/complaint
  - Allow individual to provide a narrative account (*See also Session 4*)
  - Use form to document the report/complaint, helpful to know:
    - Who – name of respondent, relationship to complainant, relationship to institution (student, staff, faculty, visitor)
    - What – nature of allegation (sexual harassment, sexual assault, domestic violence, dating violence, or stalking ) – don't need all of the details
    - When – Date and time the alleged incident occurred
    - Where – location of alleged incident
  - Obtain consent to move forward with process, if not, explain that Title IX Coordinator will evaluate request for confidentiality
  - Review policy and procedures, including interim measures, right to report to police, available resources
  - Provide written notice of rights

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**CLERY CSAs** 

- “Campus Security Authority” under Clery
  - Campus security department
  - Individuals or organizations designated to receive reports of criminal incidents from students and employees
  - Officials who have significant responsibility for student and campus activities
- Clery reporting duties
  - If CSA receives a report of a Clery crime – must include it as a crime report in Clery statistics (daily crime log and annual security report)
  - If CSA receives a report of a Clery crime and institution considers it to be a serious or continuing threat to students and employees – timely warning
  - Process for gathering statistics varies from institution to institution

Lathrop GPM,  65

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**OTHER FIRST RESPONDERS** 



Lathrop GPM,  66

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**CASE STUDY**



Coach Carlson notices that a member of the team, Sarah, has not been herself the last few days at tennis practice. Coach Carlson asks to talk with Sarah after practice. When asked if there is anything wrong, Sarah tells Coach Carlson that she has been dealing with something personal. Sarah tells her that she would like someone to talk to about it and asks if they can talk in the Coach's office because she doesn't want anyone to overhear.

- How should Coach Carlson respond?

Lathrop GPM,  67

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**ROLE OF OTHER FIRST RESPONDERS**



- Role does NOT include:
  - Keeping report confidential from Title IX Coordinator
  - Investigating the complaint\* – not your job to get all of the details
  - Adjudicating the complaint\*
  - Answering detailed questions relating to process
  - Promising that institution won't move forward with process unless individual consents

\*If you play dual role – serving as first responder and investigator/adjudicator on same case – may create conflict

Lathrop GPM,  68

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**OTHER FIRST RESPONDERS:  
RESPONDING TO A REPORT**



- Before individual discloses confidential information, explain:
  - You aren't a confidential resource
  - You have certain reporting obligations and may be required to report to Title IX Coordinator
  - You can't promise confidentiality, but will be discreet

Lathrop GPM,  69

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**CASE STUDY**



Coach Carlson explains to Sarah that she is not a confidential resource and that, depending on what Sarah tells her, she may have reporting obligations. Coach Carlson explains that even if she has to report the information to someone at the university, she will be discreet.

Sarah responds, “I just want someone to talk through things with. I don’t want anyone else to know. It’s really not a big deal, it’s not like something that has to be reported, can you just promise not to tell anyone?”

Lathrop GPM,  70

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**OTHER FIRST RESPONDERS:  
RESPONDING TO A REPORT**



- If individual wants confidentiality, offer assistance in finding confidential resource



Lathrop GPM,  71

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**OTHER FIRST RESPONDERS:  
RESPONDING TO A REPORT**



- Explain institution’s process including:
  - Report to Title IX Coordinator
    - Offer to assist the individual in reporting to Title IX Coordinator
    - Explain if you have information of possible sexual misconduct, you must report to Title IX Coordinator
  - Title IX Coordinator evaluates request for confidentiality
  - Interim measures available
  - Protections against retaliation
  - Complaint resolution process (institution specific)
- Direct individual to Title IX Coordinator for specific questions

Lathrop GPM,  72

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**OTHER FIRST RESPONDERS:  
RESPONDING TO A REPORT** 

- Discuss the importance of preserving evidence
  - Try to avoid activities that could damage evidence, such as: bathing, showering, cleaning up the area, using the rest room, changing clothes, brushing hair, doing laundry
  - Try to store any physical evidence in an impermeable or non-porous container
  - Write down everything you can remember about the incident as soon as possible
  - Take photographs
  - Save any text messages, Facebook messages, Twitter messages, etc. that could be helpful
  - Record the chain of custody



Lathrop GPM,  73

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**TITLE IX COORDINATOR  
RESPONSIBILITIES** 



Lathrop GPM,  74

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**TITLE IX COORDINATOR  
RESPONSIBILITIES** 

- Create and implement policies
- Ensure training requirements are met
- Oversee the grievance process
- Identify and address any patterns or systemic problems
- Additional responsibilities

Lathrop GPM,  75

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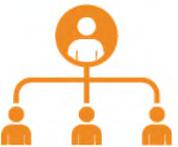
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### RESPONSE OF TITLE IX COORDINATOR

- Title IX Coordinator can delegate intake duties to others, but:
  - Avoid conflicts
  - Make roles and responsibilities clear
  - Ensure process is user friendly
  - Oversee process to ensure compliance and effectiveness



Lathrop GPM,  77

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### RESPONSE OF TITLE IX COORDINATOR TO INITIAL REPORT

- Assess immediate safety and well-being for individual and campus
  - Consider whether emergency removal is necessary
- Notify complainant of right to contact law enforcement (or not to) and seek medical treatment; offer institution's assistance
- Enter into crime log, assess for timely warning
- Offer/provide supportive/interim measures
- Explain the process for filing a formal complaint
- Provide written notice of rights to complainant (VAWA)
- Notify complainant of importance of preserving evidence (VAWA)

Lathrop GPM,  78

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**RESPONDING TO A REPORT –  
SUPPORTIVE/INTERIM MEASURES**




- Offered to complainant and respondent
- Must be non-disciplinary, non-punitive
- Must be without fee or charge to the complainant or respondent
- Available before or after the filing of a formal complaint or where no formal complaint is filed
- Designed to restore or preserve equal access to recipient's education program or activity without unreasonably burdening the other party
- Including measures designed to protect safety of all parties or the educational environment, or deter sexual harassment
- Must maintain as confidential as long as confidentiality does not impair ability of the institution to provide measures

Lathrop GPM,  79

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**RESPONDING TO A REPORT –  
SUPPORTIVE/INTERIM MEASURES**




- Examples
  - Mutual restrictions on contact between the parties
  - Change academic or extracurricular activities, living, transportation, dining, and working situations
  - Access to resources, such as victim advocacy, housing assistance, academic support, counseling, disability services, health and mental health services, legal assistance, visa and immigration assistance, campus escort services, increased security, and student financial aid
- If school does not offer these services, enter into MOU with local victim services provider, if possible

Lathrop GPM,  80

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**CASE STUDY**



Melany comes into her R.A. Rachel's room late one night crying. Melany shuts the door and tells Rachel that she needs someone to talk to. She tells Rachel that for the last few weeks she's been seeing a guy named Ryan, whom she met at a club. She says that he's not a student and is actually a few years older than her. Melany tells Rachel that two nights ago they went out together and then Ryan took Melany back to his place even though she told him she wanted to come back to campus. Melany says that Ryan pressured her into having sex with him.

- Title IX obligations?
- VAWA obligations?
- Clery obligations?

Lathrop GPM,  81

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**CASE STUDY**



Rachel responds that she will need to report what Melany told her to the Title IX Coordinator. Melany says that she does not want to report to the school. She says that since Ryan is not a student, there's nothing the school can do to help her. She says that she is not going to see Ryan again. She tells Rachel that she just wanted to talk to her about it, but she doesn't want anyone else to know. What should Rachel do?

Lathrop GPM  82

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**RESPONDING TO A REPORT—REQUESTS FOR CONFIDENTIALITY OR NO ACTION**




▪ Recommended Approach:

- Factors to consider
  - Seriousness of the alleged harassment
  - Increased risk of additional violence by the respondent
    - Other complaints about the same respondent
    - History of violence from arrests/records from prior school
    - Respondent threatened further violence
  - Increased risk of additional violence under similar circumstances
    - Pattern of perpetration at a given location or with a certain group
  - Whether sexual violence was perpetrated with a weapon
  - Age of the complainant
  - Whether school has other means to obtain evidence (security footage, eye witness or physical evidence)
    - Notice will still need to identify parties involved
  - Rights of the respondent to receive information about the complainant and the allegations if a formal proceeding with sanctions may result

Lathrop GPM  83

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**RESPONDING TO A REPORT—REQUESTS FOR CONFIDENTIALITY OR NO ACTION**




▪ Recommended Approach:

- If the school determines it *can* honor the request for confidentiality/no action
  - Continue to offer supportive measures
- If the school determines it *cannot* honor the request for confidentiality/no action
  - Inform the complainant prior to proceeding
  - Continue to offer supportive measures
  - Title IX Coordinator signs formal complaint and begins process

Lathrop GPM  84

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**CASE STUDY** 

Rachel tells Melany that she will still need to report the allegation to the Title IX Coordinator. She also offers to go with Melany if Melany wants to report herself. Melany tells Rachel that she will make the report herself and that Rachel does not need to go with her. Anything else Rachel should do?

Lathrop GPM,  85

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**SESSION 3: THE COMPLAINT PROCESS**



Lathrop GPM,  86

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**THE COMPLAINT PROCESS** 

- **Report vs. Formal Complaint**
  - **Report**
    - Initiates obligation to respond, including offering supportive measures
    - Complainant's identity may be kept confidential from respondent
  - **Formal complaint**
    - Initiates grievance process
    - Cannot be filed anonymously
      - Requires complainant's physical or digital signature or otherwise indicates that the complainant is the person filing the complaint
      - Title IX Coordinator can sign a complaint
      - Grievance process requires that complainant's identity be disclosed to respondent, if known

Lathrop GPM,  87

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## INFORMAL RESOLUTION

- VAWA: No specific requirements
- Title IX:
  - Any time prior to determination, may facilitate informal resolution process, such as mediation, if
    - Provide parties with detailed written notice
    - Obtain parties' voluntary written consent to informal process
  - May not offer informal resolution unless a formal complaint is filed
  - May not offer or facilitate informal resolution to resolve allegations that an employee sexually harassed a student

Lathrop GPM,  88

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## FORMAL GRIEVANCE PROCESS

- The process the school uses to resolve sexual harassment complaints. This includes the fact-gathering investigation and any hearing or decision-making process the school uses to determine:
  - Whether or not the conduct occurred using
    - Preponderance of the evidence standard ("more likely than not") or
    - Clear and convincing evidence standard ("highly probable"); and
  - If the conduct occurred, what actions the school will take to eliminate the hostile environment, prevent its recurrence, and remedy its effects, which may include:
    - Imposing sanctions on the respondent;
    - Providing remedies for the complainant; and
    - Addressing the campus community



Lathrop GPM,  89

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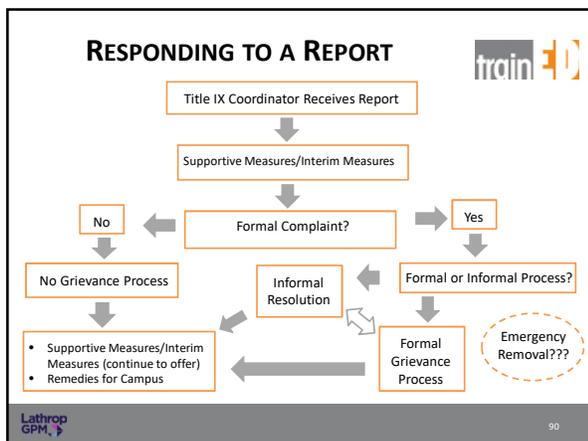
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**FORMAL GRIEVANCE PROCESS — TIMEFRAMES** 

- Reasonably prompt timeframes
  - Including timeframes for filing and resolving appeals and informal resolution processes
- Temporary delay or extension of timeframes for good cause, which may include
  - Absence of parties, a party's advisor, or witnesses
  - Concurrent law enforcement activity
  - Need for language assistance or accommodations of disability
- Must provide written notice to parties of the delay or extension and the reason for it
- Some timeframes are set by the regulations (Title IX)



Lathrop GPM,  91

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**FORMAL GRIEVANCE PROCESS — CRIMINAL PROCESS** 



- Separate from criminal investigation
- May not dissuade complainant from going to police in cases involving allegations of criminal conduct—should encourage reporting to police
- May temporarily delay for initial police investigation
  - Prior guidance said police evidence-gathering stage typically takes 7-10 days
  - Must resume when notified that police are done gathering evidence
- May not delay for criminal prosecution

Lathrop GPM,  92

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**FORMAL GRIEVANCE PROCESS — EQUAL RIGHTS FOR THE PARTIES** 

- Interview/hear from both parties
- Equal opportunity for parties
  - Identify/present fact witnesses and evidence, including inculpatory and exculpatory evidence
  - Access to evidence (if any) (Title IX and VAWA)
    - Must allow access for sexual assault/VAWA
    - Must provide copy for Title IX
  - Right to an advisor (may be attorney) (Title IX and VAWA)
    - May limit extent of participation (must apply equally)
    - If party has no advisor, school will provide for cross-examination
  - Participate in pre-hearing meeting (if any)
  - Identify/present character or expert witnesses (if any)
  - Written notice of
    - Meetings
    - Allegations
    - Informal Complaint Process
  - Written simultaneous notices of outcome



Lathrop GPM,  93

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**FORMAL GRIEVANCE PROCESS** 

- Privileged information
  - Do not require, allow, rely upon, otherwise use questions or evidence that constitute or seek disclosure of, information protected under a legally recognized privilege, unless person holding such privilege has waived the privilege
- Treatment records
  - Institution cannot access, consider, disclose, or otherwise use a party's records that are made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in the professional's or paraprofessional's capacity, or assisting in that capacity, and which are made and maintained in connection with the provision of treatment to the party, unless the school obtains that party's voluntary, written consent to do so

Lathrop GPM,  94

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**SESSION 4: RAPE MYTHS AND THE NEUROBIOLOGY OF SEXUAL ASSAULT** 



Lathrop GPM,  95

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**CASE STUDY** 

What might cause you to doubt an allegation of sexual assault:

1. Complainant spent the night in respondent's room after the alleged assault
2. The police investigated the incident but did not press charges

What might cause you to believe the allegation occurred:

1. Respondent criticized complainant's credibility
2. Respondent has an attorney advisor

Lathrop GPM,  96

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### SESSION OVERVIEW



- Rape Myths
- Secondary Victimization
- Common Victim Responses
- Neurobiology of Sexual Assault
- Impact of Culture
- Interacting with the Parties

Lathrop GPM,  97

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### RAPE MYTHS



Myth	Reality
Rape is primarily sexually motivated	Rape combines elements of power, anger and sexuality
Rapists are usually strangers	Most perpetrators are known to the victim
The victim did something to cause the rape	No behavior warrants being raped; under no circumstances can the victim be blamed
Acquaintance rape is not as traumatic	There are no differences in victim psychological symptoms between acquaintance and stranger rape

Lathrop GPM,  98

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### SECONDARY VICTIMIZATION



- Secondary victimization:
  - The attitudes, beliefs and behaviors 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"

Lathrop GPM,  99

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### SECONDARY VICTIMIZATION

- Examples of behaviors:
  - Discouraging the victim from making the report
  - Telling them it's not serious enough to pursue
  - Asking about dress, behavior, or what they might have done to provoke the assault
- Psychological impact on victims:
  - Blamed
  - Depressed
  - Anxious
  - Violated
  - Reluctant to seek help



Lathrop GPM,  100

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### COMMON VICTIM RESPONSES

- Initial denial of incident
- No reporting/delayed reporting
- Maintaining contact with perpetrator
- Fight, flight, or freeze



Lathrop GPM,  101

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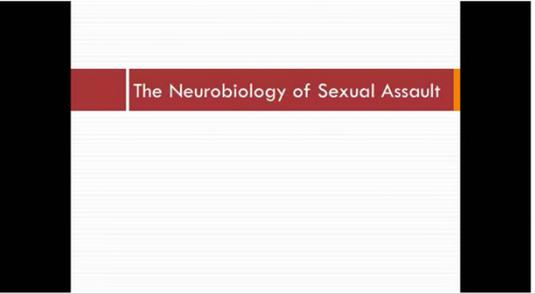
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### NEUROBIOLOGY OF SEXUAL ASSAULT



Lathrop GPM,  102

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**NEUROBIOLOGY OF SEXUAL ASSAULT** 

What Happens During A Sexual Assault



```
graph LR; A[Amygdala Detects Threat] --> B[Activates Hypothalamus]; B --> C[HPA Axis Kicks In Hormonal Flood];
```

SOURCE: Barks, 2002; Southwick et al., 2005

Lathrop GPM  109

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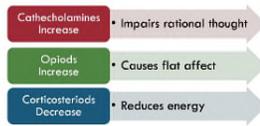
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**NEUROBIOLOGY OF SEXUAL ASSAULT** 

What Happens During A Sexual Assault



```
graph TD; A[Catecholamines Increase] --> B[Impairs rational thought]; C[Opioids Increase] --> D[Causes flat affect]; E[Corticosteroids Decrease] --> F[Reduces energy];
```

SOURCE: Barks, 2002; Southwick et al., 2005

Lathrop GPM  110

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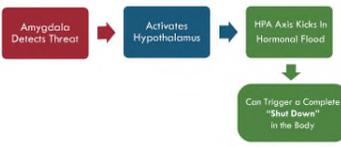
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**NEUROBIOLOGY OF SEXUAL ASSAULT** 

What Happens During A Sexual Assault



```
graph TD; A[Amygdala Detects Threat] --> B[Activates Hypothalamus]; B --> C[HPA Axis Kicks In Hormonal Flood]; C --> D[Can Trigger a Complete 'Shut Down' in the Body];
```

SOURCE: Barks, 2002; Southwick et al., 2005

Lathrop GPM  111

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### NEUROBIOLOGY OF SEXUAL ASSAULT

#### Tonic Immobility (TI)

- AKA: "Rape-induced paralysis"
- Autonomic (uncontrollable) mammalian response in extremely fearful situations
- Increased breathing, eye closure, paralysis
- 12-50% rape victims experience TI during assault
- TI is ~more common in victims who have been assaulted before (childhood, adolescence, or adult)

SOURCE: Pace et al., 2007; O'Leary et al., 1993; Heit et al., 2003

Lathrop GPM  112

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### COMMON BEHAVIORS DURING ASSAULT



- Impaired rational thought
- Flat affect
- Reduced energy
- Flight
- Fight
- Freeze

Lathrop GPM  113

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### MEMORY

#### What Happens During A Sexual Assault



Lathrop GPM  114

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## MEMORY

### What Happens During A Sexual Assault

```
graph TD; A[Increased Stress Hormones] --> B[Impaired Functioning in Hippocampus]; B --> C[Memories Fragmented]; C --> D[Memory Recall Can Be Slow & Difficult]; E[Events of the Assault CAN Be Recalled Accurately];
```

Lathrop GPM

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## IMPACT OF TRAUMA ON MEMORY

- Memories accurately stored
- Memory recall slow
- Fragmented story
- Concentration difficult
- Alcohol exception—may impact storage and accuracy of memories

Lathrop GPM

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## STAGES OF RECOVERY

- Initial shock
  - Physical and emotional reactions, ranging from withdrawal to expressive emotions
- Denial
  - Wanting to forget, attempting to continue normal routine
- Reactivation
  - Prompted by memories or recurring feelings
- Anger
  - Toward self, friends, society, legal system, respondent
- Integration
  - Thoughts and feelings become integrated into life experience and an individual begins to move forward

Adapted from Anne Franke, *Sexual Misconduct Complaints, 17 Tips for Student Discipline Adjudicators*. Available at <http://legalmomentum.org/resources/guide-university-discipline-panels-sexual-violence>.

Lathrop GPM

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**IMPACT OF CULTURE** 

- Cultural background is one of many factors that may impact the way that complainant, respondent, and witnesses react to the incident and present during the investigation interviews
- Different cultural backgrounds will influence individuals in different ways
- Be aware of and sensitive to possible cultural influences
- Incorporate training as appropriate



Lathrop GPM,  118

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**TRAUMA-INFORMED APPROACH GONE WRONG** 

- University of Mississippi lawsuit based in part on its training materials
  - Victims sometimes withhold facts and lie about details
  - Victims lie about anything that casts doubt on their account of the event
  - When complainants withhold exculpatory details or lie to an investigator or the hearing panel, the lies should be considered a side effect of an assault
- A trauma-informed approach should not unfairly favor the complainant or prejudice the decision-maker against the respondent



Lathrop GPM,  119

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**TAKE AWAY** 

- Do not automatically draw negative inference based on a behavior that may be a response to trauma
- If an individual exhibits behaviors associated with trauma, it does not automatically mean that individual experienced trauma
- A response consistent or inconsistent with a typical trauma response should not in and of itself be outcome determinative

Lathrop GPM,  120

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**INTERACTING WITH COMPLAINANTS:  
RESPONDING TO A REPORT** 

- Offer to go with individual to Title IX Coordinator to make a report/file a complaint
- If individual instead chooses to tell you:
  - Allow individual to tell their account
  - Slow down
  - Make individual feel comfortable
  - Not "investigating" allegation – don't need all of the details
  - Don't ask questions about what individual was wearing
  - Don't ask if the individual said no, yelled for help, tried to fight, tried to run
  - Use "account" or "experience" – not "story"
  - Don't draw conclusions – you aren't adjudicating
  - Take detailed notes after the individual is done
  - Be transparent about how information will be used
  - Contact the Title IX Coordinator
- See also Session 2 – First Responders

Lathrop GPM,  121

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**INTERACTING WITH RESPONDENT** 

- Recognize stress involved with being accused of sexual misconduct
  - He/she may be defensive or nervous
- Do not appear to take sides
- Don't draw conclusions – you aren't adjudicating
- Use impartial language
- Explain complaint process
- Afford same opportunity to provide narrative of experience
  - Not "investigating" allegation – don't need all of the details
- Be transparent in your roles and responsibilities
- Be transparent in how information will be used
- Contact the Title IX Coordinator

Lathrop GPM,  122

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**SERVING IMPARTIALLY** 

- Separate support/advocacy services from investigation/adjudication process
- Conflation of roles can: 
  - Impact thorough assessment of the facts
  - Create distrust/confusion by the parties
  - Give appearance of bias/lack of impartiality

Lathrop GPM,  123

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**SOURCES OF INFORMATION** 

- NIJ Presentation by Rebecca Campbell
- trainED gratefully acknowledges the U.S. Department of Justice, Office of Justice Programs, and National Institute of Justice for allowing us to reproduce, in part or in whole, the recording The Neurobiology of Sexual Assault. The opinions, findings, and conclusions or recommendations expressed in this recording are those of the speaker(s) and do not necessarily represent the official position or policies of the U.S. Department of Justice.

Lathrop GPM,  124

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**Q & A** 



Lathrop GPM,  125

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**SESSION 5: CREATING A CULTURE OF UNDERSTANDING & PREVENTION**



Lathrop GPM,  126

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### A CULTURE OF UNDERSTANDING

- Common Concerns from Students:
  - Lack of clarity and transparency in policy and process
  - Lack of communication and coordination with parties
  - Lack of fairness and equity
  - Complainants discouraged from reporting
  - Retaliation/harassment and re-victimization
  - Inadequate support during and after process
  - Failure to accommodate documented disabilities
  - Dissatisfaction with outcome or sanctions
  - Inadequate training, education, and prevention programs



Lathrop GPM  127

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### CREATING A CULTURE OF UNDERSTANDING

- Confidentiality – Revisited
  - Importance of confidential resources
    - Make confidential resources available and publicize their availability
      - Train employees who are required to report to notify complainants of their right to talk to a confidential resource
    - Many complainants will end up reporting after talking to a confidential resource
  - Even if confidentiality is not requested, always respect the parties' privacy
  - These practices will create trust on your campus and encourage reporting



Lathrop GPM  128

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### TRAINING

- Who?
  - Title IX Coordinators
  - Investigators
  - Individuals on hearing panels or who have responsibility for student discipline decisions
  - Student Affairs/HR
  - Residence Life staff
  - Security
  - Counseling staff
  - Other employees likely to witness or receive reports – faculty, certain staff, coaches, trainers, and athletic department members
  - Student leaders
  - New students and employees
  - Existing students and employees



Lathrop GPM  129

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**AWARENESS AND PREVENTION** 

- Collaboration with Title IX Coordinator
- Training for employees
- Training for students
  - bystander awareness
  - consent, incapacitation, coercion
  - the role of alcohol in sexual misconduct
  - reporting and resources
  - consequences of sexual harassment
  - discrimination
  - hazing and bullying
  - healthy relationships
- Awareness campaigns – It’s on Us, Locker Room Talk
- Collaborations between student groups on campus

Lathrop GPM,  130

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**CONSENT**  
IT'S SIMPLE AS TEA

<https://www.youtube.com/watch?v=igqM6irCWvM>

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**Q & A** 



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### UPCOMING TRAININGS

- Date to be Determined –
  - Training for Adjudicators in Non-Title IX Cases
  - Informal Resolutions Training
  - Title IX/VAWA Investigator Training
  - Title IX/VAWA Hearing Panel Training

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### ON DEMAND TRAININGS

- Available on-demand:
  - Title IX/VAWA Investigator Training
  - Annual Training for NEW Title IX Coordinators and Deputy Coordinators
  - Annual Training for ADVANCED Title IX Coordinators and Deputy Coordinators
  - Title IX/VAWA Hearing Panel Training
  - Title IX Update: Final Regulations
  - Conducting a Grievance Process Under the New Title IX Regulations
  - Trauma Informed Training for First Responders, Confidential Resources, and Campus Security
  - Making Your Sexual Misconduct Policy a 10
  - Title IX/VAWA Training for Chief Academic Officers
  - Title IX/VAWA Panel Discussion for Coaches and Athletic Directors
  - Compliance Update: New VAWA Guidance
  - Senior Leadership Training
  - Transgender Students and Employees Training
  - Minnesota Law Update: Title IX Coordinator Overview of Legal Requirements

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### ON DEMAND TRAININGS

- Available on-demand:
  - Confidential Resources Training
  - Attorneys Serving as Advisors
  - Panel Discussion on Interviewing Survivors of Sexual Assault
  - Fundamentals of FERPA
  - Drafting Your Notice of Determination
  - Post-VAWA Annual Security Report Drafting
  - Additional Requirements Under Minnesota's Campus Sexual Assault Law
  - Drafting Effective and Compliant Investigation Reports
  - Title IX Coordinator Training: Duties Beyond Sexual Assault
  - Train the Trainer: Title IX/VAWA Training for Coaches and Athletic Directors
  - Complying with the NCAA Sexual Violence Policy – Part 1
  - Complying with the NCAA Sexual Violence Policy – Part 2
  - Unique Challenges in Responding to Allegations of Domestic Violence, Dating Violence, and Stalking
- Prevention programs for students & employees—customizable online modules

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