



TITLE IX/VAWA INVESTIGATOR TRAINING

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TELL US ABOUT YOURSELF



How many investigations of Title IX matters have you participated in?

- Not applicable (I have a different role in the process)
- None
- Less than 10
- 10 or more

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AGENDA



- Introduction and Legal Landscape
- Overview of the Process
- Working with the Parties
- Stages of Investigation
- Drafting an Investigation Report
- The Decision-Making Process
- Weighing Evidence and Assessing Credibility

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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
 - 78% involved one or both parties consuming alcohol
 - 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



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THE LEGAL LANDSCAPE



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SESSION OVERVIEW

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



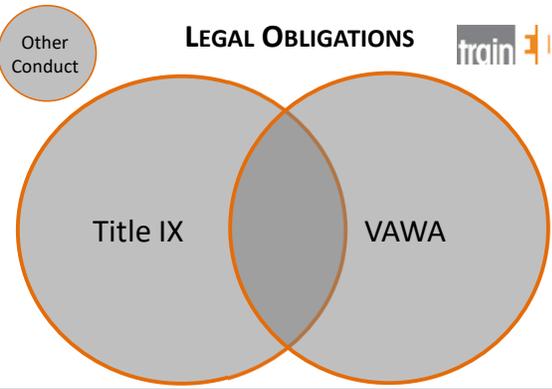
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LEGAL OBLIGATIONS



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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

quid pro quo

hostile environment

sexual assault & 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

sexual assault &
VAWA crimes

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TITLE IX—SEXUAL HARASSMENT 

- **VAWA Crimes—Sexual Assault:**
 - **Rape:** The carnal knowledge of a person, 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 or physical incapacity.
 - **Sodomy:** Oral or anal sexual intercourse with another person, 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 or physical incapacity.
 - **Sexual Assault With An Object:** To use an object or instrument to unlawfully penetrate, however slightly, the genital or anal opening of the body of another person, 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 or physical incapacity.



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TITLE IX—SEXUAL HARASSMENT 

- **VAWA Crimes—Sexual Assault:**
 - **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 or physical incapacity.
 - **Incest:** Nonforcible sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.
 - **Statutory Rape:** Nonforcible 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 

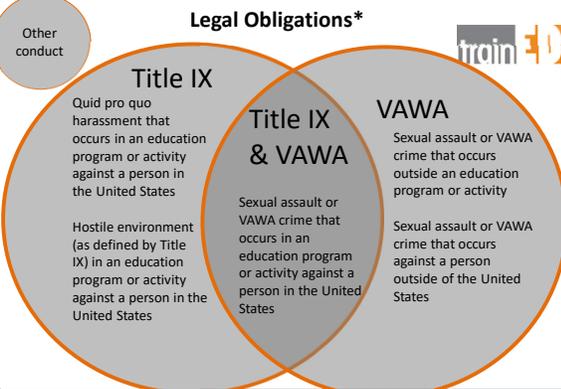
- Male/Female
- Female/Male
- Female/Female
- Male/Male
- Gender Identity



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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 if know or reasonably suspect abuse or neglect of a child
 - Report to police or county department

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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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TRAINING REQUIREMENTS 

- Train Title IX Coordinator, investigator, decision-maker, or facilitator of informal resolution process on
 - Definition of sexual harassment
 - Scope of the institution's education program or activity
 - How to conduct investigation and grievance process, including hearings, appeals, and informal resolution processes, and how to serve impartially, including by avoiding prejudice of the facts at interest, conflicts of interest, and bias
 - Issues related to sexual assault, domestic violence, dating violence, and stalking (annually)
 - How to conduct an investigation and hearing that protects the safety of complainants and promotes accountability (effects of trauma) (annually)

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TRAINING REQUIREMENTS 

- Train Title IX Coordinator, investigator, decision-maker, or facilitator of informal resolution process on (cont.)
 - Relevant evidence and how it should be used during a proceeding (annual)
 - Proper techniques for questioning witnesses (annual)
 - Basic procedural rules for conducting a proceeding (annual)
 - Avoiding actual and perceived conflicts of interest (annual)
 - Institution's policies and procedures

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TRAINING REQUIREMENTS 

- Investigators must also receive training on
 - Issues of relevance to create an investigative report that fairly summarizes relevant evidence
- Training materials must not rely on sex stereotypes and must promote impartial investigations and adjudications
- Training materials must be publicly available on institution's website

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RECORDKEEPING REQUIREMENTS 

- Title IX – for 7 years, must maintain:
 - Investigation and adjudication records
 - Training materials for investigators, decision-makers, coordinators, and persons designated to facilitate informal resolution process
 - Any actions taken (including supportive measures) in response to a report of sexual harassment

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RECORDKEEPING REQUIREMENTS 

- Examples of investigator’s records:
 - Communications with parties and other correspondence relating to investigation (including documentation of verbal in-person/phone conversations)
 - Investigator’s notes
 - Party and witness statements, if applicable
 - Recordings of interviews or interview notes
 - Other evidence received (text messages, pictures, emails, etc.)
 - Investigation report or summary
 - Start and stop dates of investigation suspension
 - Training records – relating to investigators, adjudicators, appeal officers, and other involved officials, as well as training received by parties

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CHANGES TO TITLE IX 

- March 8, 2021: Executive Order
 - President Biden called for a review of regulations, including the 2020 Title IX regulations
- June 7 – 11, 2021: Virtual public hearing
 - 600 individuals spoke at the hearing
 - DOE also accepted written comments

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CHANGES TO TITLE IX 

- June 22, 2021: Public Notice: DOE interprets Title IX to prohibit discrimination based on sexual orientation and gender identity
 - Effective June 22, 2021
 - Relying on *Bostock v. Clayton County*
- June 23, 2021: Dear Educator Letter
 - Links to public notice, fact sheet, other resources
 - Anticipates issuing a Notice of Proposed Rulemaking and a Q&A
- May 2022: Proposed Rules Expected

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Q & A 



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OVERVIEW OF PROCESS



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- ### RESPONDING TO A REPORT
- Title IX Coordinator can delegate intake duties to others, but:
 - Avoid conflicts
 - Oversee training
 - Determine appropriate process
 - Ensure process is user-friendly
 - Make roles and responsibilities clear
 - Oversee process to ensure compliance and effectiveness
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- ### RESPONDING TO A REPORT
- Title IX:
 - Institution has actual knowledge of
 - Sexual harassment (as defined by regulations)
 - In an education program or activity of the institution
 - Against a person in the United States
 - VAWA:
 - Allegations of sexual assault, domestic violence, dating violence, or stalking
 - Applies regardless of location of alleged conduct (on or off campus; in or out of the education program of activity; in or out of the U.S.)
- 
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RESPONDING TO A REPORT 

- Response must treat complainant and respondent equitably by
 - Providing written explanation of rights and options to complainants of sexual assault or VAWA crime
 - Offering supportive measures to a complainant (with or without formal complaint)
 - Following a grievance process that complies with the applicable regulations before imposing any disciplinary sanctions or other actions that are not supportive measures against a respondent

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RESPONDING TO A REPORT 

- Report vs. Formal Complaint
 - Report
 - Initiates obligation to respond, including offering supportive measures (see next slide for more details)
 - 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

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RESPONDING TO A REPORT 

- Title IX Coordinator must promptly contact complainant (with or without formal complaint)
 - Inform complainant of the availability of supportive/interim measures with or without the filing of a formal complaint
 - Consider complainant's wishes with respect to supportive/interim measures
 - Explain the process for filing a formal complaint
 - Notify complainant of right to report to law enforcement and offer help with report (VAWA)
 - Provide complainant with written notice of rights (VAWA)



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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

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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

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RESPONDING TO A REPORT




- Other obligations:
 - Notify campus security, if necessary
 - Clergy report, if necessary

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RESPONDING TO A FORMAL COMPLAINT

- Formal complaint
 - VAWA: No specific requirements
 - Title IX:
 - Document filed by a complainant or signed by the Title IX Coordinator alleging sexual harassment against a respondent and requesting that the recipient investigate the allegation of sexual harassment
 - At the time of filing a formal complaint, a complainant must be participating in or attempting to participate in the education program or activity of the recipient with which the formal complaint is filed
 - Where the Title IX Coordinator signs a formal complaint, the Title IX Coordinator is not a complainant or otherwise a party, and must comply with the requirements to be free from conflicts and bias

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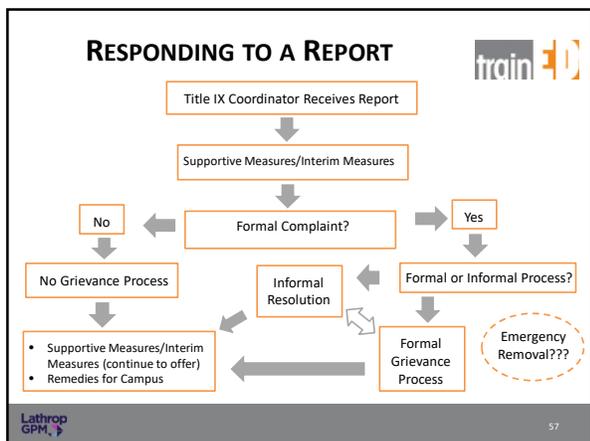
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INFORMAL RESOLUTION

- 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

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RESPONDING TO A FORMAL COMPLAINT – SUPPORTIVE/INTERIM MEASURES 

- Review support/interim measures available during an investigation
 - Periodically update both parties on status of investigation
 - No contact orders
 - Available to both parties
 - Designed to restore or preserve equal access to education program or activity without unreasonably burdening the other party
 - All others mentioned earlier



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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



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FORMAL GRIEVANCE PROCESS 

- Must treat complainants and respondents equitably by
 - Providing remedies to a complainant where a determination of responsibility for sexual harassment has been made
 - Remedies must be designed to restore or preserve equal access to the institution’s education program or activity
 - May include the same individualized services as “supportive measures”
 - Do not need to be “non-disciplinary” or “non-punitive” and do not need to avoid burdening the respondent
 - Following grievance process that complies with applicable regulations before imposing disciplinary sanctions or other actions that are not supportive measures

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FORMAL GRIEVANCE PROCESS 

- Objective evaluation of all relevant evidence
 - Inculpatory and exculpatory evidence
 - Credibility determinations may not be based on status as complainant, respondent, or witness
- No conflicts of interest or bias as Title IX Coordinator, investigator, decision-maker, or facilitator of informal resolution process
 - For or against complainants or respondents generally
 - For or against an individual complainant or respondent
- Presumption of non-responsibility

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**FORMAL GRIEVANCE PROCESS:
DUAL ROLES UNDER TITLE IX** 

- Title IX requires independent decision-maker
 - Title IX Coordinator and decision-maker must be different individuals
 - Investigator and decision-maker must be different individuals
 - Title IX Coordinator and investigator may offer recommendations regarding findings and/or conclusions on responsibility, but decision-maker has independent obligation to objectively evaluate relevant evidence and cannot simply defer to recommendations
- Title IX Coordinator may act as investigator

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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



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FORMAL GRIEVANCE PROCESS — OTHER REQUIREMENTS 

- Burden of proof and gathering evidence is on the institution, not on the parties
- May not restrict ability of either party to discuss the allegations or to gather and present relevant evidence
- Allow advisor of choice

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FORMAL GRIEVANCE PROCESS — ADVISORS 

- Parties have a right to an advisor of their choice
- May be, but not required to be, an attorney
- Advisors have right to receive copies all directly related evidence (Title IX only)
- Advisors may cross-examine parties and witnesses at live hearing (Title IX only)
- Institution must provide if none (Title IX only)
 - Limited role
- May otherwise limit extent of advisor’s participation in the process (must apply equally)

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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)



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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

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FORMAL GRIEVANCE PROCESS 

- Policy must:
 - Describe range of possible sanctions and remedies or list the possible sanctions and remedies
 - Describe range of supportive measures available to both parties
 - Describe appeal bases and procedures

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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

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FORMAL GRIEVANCE PROCESS 

- Any provisions, rules, or practices other than those required by the regulations that an institution adopts as part of its grievance process must apply equally to both parties



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FORMAL GRIEVANCE PROCESS — DISMISSAL OF FORMAL COMPLAINT 

- Mandatory dismissal under Title IX**
 - Must dismiss formal complaint if alleged conduct
 - even if proved, would not constitute sexual harassment
 - did not occur in the institution's education program or activity or
 - did not occur against a person in the United States
 - Such dismissal does not preclude action under another provision of institution's code of conduct
- Discretionary dismissal under Title IX**
 - May dismiss formal complaint if at any time during the investigation or hearing
 - complainant notifies the Title IX Coordinator in writing that the complainant would like to withdraw the formal complaint or any allegations, therein
 - respondent is no longer enrolled or employed by the recipient or
 - specific circumstances prevent the recipient from gathering sufficient evidence to reach a determination as to the formal complaint or allegations therein

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FORMAL GRIEVANCE PROCESS — CONSOLIDATION OF FORMAL COMPLAINTS 

- Title IX:** An institution may consolidate formal complaints as to allegations of sexual harassment against more than one respondent, or by more than one complainant against one or more respondents, or by one party against the other party, where the *allegations of sexual harassment arise out of the same facts or circumstances*
- VAWA:** No specific guidance

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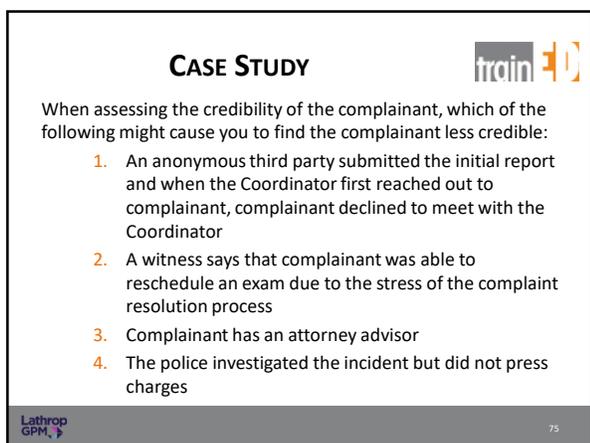
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CASE STUDY

When assessing the credibility of the respondent, which of the following might cause you to find the respondent less credible:

1. Respondent declined to provide any suggested witnesses as part of the investigation
2. Respondent sent complainant a text message a few days after the alleged assault that said "I'm sorry for what happened"
3. A witness recounts a conversation with respondent where respondent's account of the sexual encounter differed in some ways from what respondent told the investigator
4. Respondent has an attorney advisor

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SESSION OVERVIEW

- Rape Myths
- Secondary Victimization
- Common Victim Responses
- Neurobiology of Sexual Assault
- How to serve impartially
 - Working with Complainant
 - Working with Respondent



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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

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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"



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SECONDARY VICTIMIZATION 

- Examples of behaviors:
 - Discouraging the victim from making the report
 - Telling victim 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



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COMMON VICTIM RESPONSES 

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



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NEUROBIOLOGY OF SEXUAL ASSAULT 

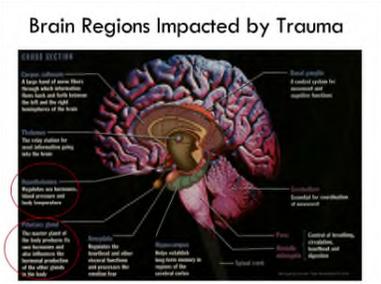
The Neurobiology of Sexual Assault

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82

NEUROBIOLOGY OF SEXUAL ASSAULT 

Brain Regions Impacted by Trauma



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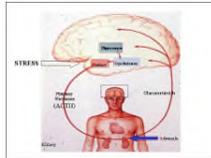
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NEUROBIOLOGY OF SEXUAL ASSAULT 

Brain-Body Regions Impacted by Trauma

HPA Axis

Balances body following stress by releasing of various hormones/chemicals



SOURCE: Swartz et al., 2005

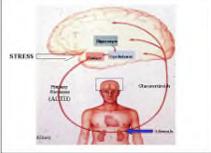
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NEUROBIOLOGY OF SEXUAL ASSAULT 

Brain-Body Regions Impacted by Trauma

- Catecholamines:** Fight or flight response
- Cortisol:** Energy available
- Opioids:** Prevent pain
- Oxytocin:** Promotes good feelings



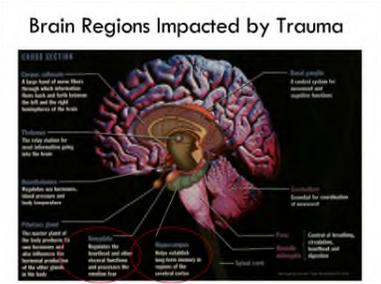
SOURCE: Southwick et al., 2005

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NEUROBIOLOGY OF SEXUAL ASSAULT 

Brain Regions Impacted by Trauma



SOURCE: Southwick et al., 2005

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NEUROBIOLOGY OF SEXUAL ASSAULT 

Memory Processes Impacted by Trauma

Hippocampus processes information into memories

- Encoding = Organizing sensory information
- Consolidation = Grouping information into memories and storing them

Amygdala specializes in the processing of emotional memories (works with the hippocampus)

Both structures are VERY sensitive to hormonal fluctuations



SOURCE: Southwick et al., 2005

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NEUROBIOLOGY OF SEXUAL ASSAULT

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Like These . . .

- Catecholamines:** Fight or flight response
- Cortisol:** Energy available
- Opioids:** Prevent pain
- Oxytocin:** Promotes good feelings

THESE HORMONES IMPAIR MEMORY CONSOLIDATION

SOURCE: Southwick et al., 2005

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NEUROBIOLOGY OF SEXUAL ASSAULT

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What Happens During A Sexual Assault

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

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NEUROBIOLOGY OF SEXUAL ASSAULT

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What Happens During A Sexual Assault

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

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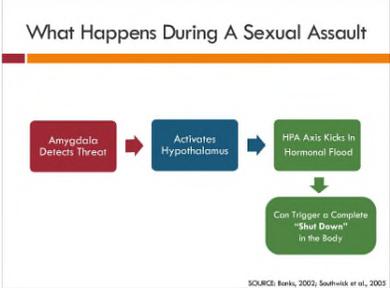
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NEUROBIOLOGY OF SEXUAL ASSAULT



What Happens During A Sexual Assault



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

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

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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: Foa et al., 2007; Coltrano et al., 1993; Heith et al., 2005

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COMMON BEHAVIORS DURING ASSAULT




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

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MEMORY 

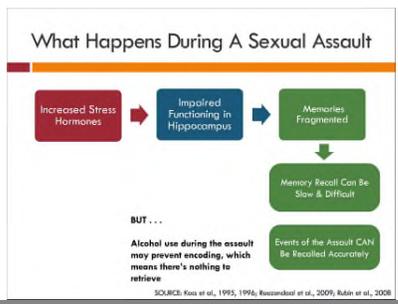
What Happens During A Sexual Assault

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MEMORY 

What Happens During A Sexual Assault



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MEMORY 

Case Study: Memory Fragmentation

- 25 year-old woman
- Raped by a friend's brother at 4th July party
- Filed police report
- Detective interview was when it all went to hell

"He wouldn't let up, pounding me with question after question. Trying to trick me, trying to get me to mess up. I wanted to say, 'hold on, give me a minute to think'. No, he kept coming at me."

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MEMORY 

Case Study: Memory Fragmentation

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MEMORY 

Case Study: Memory Fragmentation

"We talked it through. And I didn't feel rattled and freaked out. I'm sure I was incoherent and he just let it roll. He was patient. I felt like I was piecing it together, like a puzzle, we were putting together a puzzle together. And drinking coffee."

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MEMORY 

Case Study: Memory Fragmentation

Q: So, why did you do that? (give her the coffee)

A: It helps. Not the coffee so much, just the moment to let it all come together in their heads.

Q: What do you mean?

A: I don't know why it's like that, I've just noticed that over the years. If you give them a few minutes to breathe It starts to make more sense. I don't know why, it just does.

 **MEMORY CONSOLIDATION**
A DOCUMENTED NEUROBIOLOGICAL CONDITION

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99

MEMORY



Case Study: Memory Fragmentation

Q: Were you worried that if you gave her some time, she'd just make something up?

R: Nah, not really. I mean, some victims lie, but most don't. Besides, if they're lying, we'll catch 'em at it eventually. I think it's just hard for victims to talk about and we just need to have a little patience.

 **MEMORY CONSOLIDATION**
A DOCUMENTED NEUROBIOLOGICAL CONDITION

Lathrop GPM,  100

100

IMPACT OF TRAUMA ON MEMORY




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

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SENSORY DETAILS



- Victims of trauma may be able to recount vivid sensory details, including certain things the victim saw, heard, or smelled during the assault
- These details could provide more information about the incident and may help clarify the victim's memory
- Use open-ended questions
 - What can you recall about what happened?
- May also use sensory-based questions
 - What did you see?
 - What did you hear?
 - What did you smell?
 - What did you taste?
 - What did you touch?

Lathrop GPM,  102

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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,  103

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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,  104

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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,  105

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SERVING IMPARTIALLY 

- Avoid prejudice of the facts at issue
- Avoid conflicts of interest
- Avoid bias
- Avoid appearing to agree with either party's account

Lathrop GPM  106

106

SERVING IMPARTIALLY 

- Set boundaries
 - Make objective role clear up front
 - Not counseling
 - Differentiate from your other roles within institution
 - Know how to respond when coming close to line
 - Point to resources on campus



Lathrop GPM  107

107

SERVING IMPARTIALLY 

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



Lathrop GPM  108

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**SERVING IMPARTIALLY —
WORKING WITH COMPLAINANT**



- Slow down
- Make him/her feel comfortable
- Consider timing and locations
- Allow sufficient time for thorough exploration of the issues
- Develop rapport and allow for closure
- Explain process
- Remind the complainant of the ability to ask questions and present information during the entire process

Lathrop GPM,  109

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**SERVING IMPARTIALLY —
WORKING WITH COMPLAINANT**



- Recognize the impact of trauma on memory
 - Allow the complainant to give a narrative
 - Use open-ended free recall questions
 - Build in an opportunity for follow-up
 - Allow a written narrative if that is more comfortable
- Memory may be impaired by alcohol
- Use “account” or “experience” rather than “story”
- Allow advisor to be present
- Avoid secondary victimization
- Be transparent about how information will be used

Lathrop GPM,  110

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**SERVING IMPARTIALLY —
WORKING WITH RESPONDENT**



- Recognize stress involved with being accused of sexual misconduct
 - He/she may be defensive
 - He/she may be nervous or uncomfortable
- Explain fair and equitable process
- Do not appear to take sides
- Use impartial language
- Afford same opportunity to provide narrative of experience, to provide physical or other evidence, etc.
- Memory may be impaired by alcohol

Lathrop GPM,  111

111

**SERVING IMPARTIALLY —
WORKING WITH RESPONDENT** 



- Remind the respondent of the ability to ask questions and present information during the entire process
- Ensure the respondent is fully aware of the process and prohibition against retaliation
- Be transparent about how information will be used
- Allow advisor to be present

Lathrop GPM,  112

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COMMUNICATION 



- Identify contact person who will coordinate with multiple departments/people on complainant's/respondent's behalf
- Ensure regular and timely communications to both parties regarding: next steps, expectations, timing, and delays
- Ensure that parties have notice of all meetings
- Document all communications, including phone calls
- Use sensitive and informed tone and content, both to the parties and among team members

Lathrop GPM,  113

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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 of 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,  114

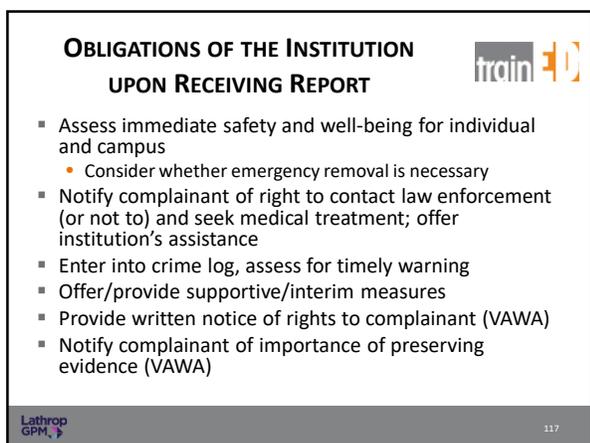
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PRE-INVESTIGATION OBLIGATIONS OF THE INSTITUTION 

- Upon formal complaint, provide written notice to known parties, including:
 - Notice of grievance process, including any informal resolution process
 - Notice of the allegations, including sufficient details known at the time and with sufficient time to prepare response before initial interview
 - Identities of the parties involved, if known
 - Conduct allegedly constituting sexual harassment
 - Date and location of the alleged incident, if known



Lathrop GPM  118

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PRE-INVESTIGATION OBLIGATIONS OF THE INSTITUTION 

- Upon formal complaint, provide written notice to both parties, including:
 - Statements that:
 - Respondent is presumed not responsible
 - Determination of responsibility is made at conclusion of grievance process
 - Right to advisor of choice who may be but is not required to be an attorney
 - Parties may inspect and review evidence as permitted in sexual misconduct policy
 - Inform parties of any policy provision that prohibits knowingly making false statements or knowingly submitting false information during the grievance process
 - Provide notice of *additional* allegations about the complainant or respondent that arise during process

Lathrop GPM  119

119

PRE-INVESTIGATION OBLIGATIONS OF THE INSTITUTION 

- Determine whether parties have advisors 
- Require advisors to sign advisor agreement (optional) 
- Consider whether informal resolution is appropriate 

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120

ROLE OF INVESTIGATOR



- Identify factual issues
- Give parties opportunity for input
- Compile investigation materials for decision-makers and parties
- Credibility and/or make recommendations?
 - Can offer recommendations regarding responsibility but ultimate determination must be made by separate adjudicator (Title IX)
- Role does not include:
 - Adjudication of complaint
 - Providing support or advocacy to either party
 - Serving as a confidential resource

Lathrop GPM,  121

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DIFFERENCES BETWEEN CRIMINAL AND INSTITUTIONAL INVESTIGATIONS



- Different standards of proof
 - Probable cause vs. beyond reasonable doubt vs. preponderance of evidence vs. clear and convincing
- Different investigation “powers”
 - Subpoena powers vs. disciplinary actions
- Timing of processes
- Cooperating with law enforcement
 - Memorandum of Understanding
 - Use of police report

Lathrop GPM,  122

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STAGES OF INVESTIGATION



- **Stage One:** Review complaint and outline investigation
- **Stage Two:** Gather evidence
- **Stage Three:** Review / Draft / Conduct additional interviews
- **Stage Four:** Make evidence available to parties (Title IX only)
- **Stage Five:** Package investigation for decision-maker(s)

Lathrop GPM,  123

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STAGE ONE: REVIEW COMPLAINT AND OUTLINE INVESTIGATION 

- Review formal complaint
- Review notice provided to parties
 - Alert Title IX Coordinator if there are additional allegations
- Review institution’s policy and how it defines relevant terms
- Identify all known witnesses and gather information about them
- Begin to create chronology of events
- Strategize about the timing and location of interviews



Lathrop GPM 124

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STAGE ONE: REVIEW COMPLAINT AND OUTLINE INVESTIGATION 

- Prepare script of opening remarks
 - Explain your role in the grievance/complaint process
 - Provide general explanation of reason for interview—gathering facts
 - Explain possible uses of party’s/witness’s statements
 - If applicable, explain cross-examination
 - If applicable, inform party/witness of recording and its use
 - Advise party and advisor on advisor’s limited role
 - Explain the need to ask difficult, detailed questions
 - Ask party/witness not to read into questions
 - Tell party/witness he or she can ask for a break during the interview



Lathrop GPM 125

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STAGE ONE: REVIEW COMPLAINT AND OUTLINE INVESTIGATION 

- Prepare script of opening remarks (cont.)
 - Explain that timelines and order of events may not be clear
 - Tell the party/witness to feel free to ask why a question is asked (Investigators: be prepared to answer)
 - Instruct *witness* regarding confidentiality (gag orders on parties is not permissible)
 - Assure/warn party/witness regarding policy prohibiting retaliation
 - If applicable, advise party/witness on alcohol or other policy waiver
 - If video/phone interview, confirm no one else is in the room
 - Obtain commitment to tell the truth

Lathrop GPM 126

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STAGE ONE: REVIEW COMPLAINT AND OUTLINE INVESTIGATION 

- Prepare script of closing remarks
 - Ask if there is anything else the party/witness wants you to know
 - Ask if there is anything the party/witness thought you would ask about that you have not yet discussed
 - Give parties opportunity to suggest witnesses, evidence, and questions to ask the other party
 - Find out what information those witnesses/evidence/questions will provide
 - Give witnesses opportunity to suggest other witnesses and evidence
 - Find out what information those witnesses/evidence will provide
 - Remind party/witness regarding need to preserve evidence

Lathrop GPM,  127

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STAGE ONE: REVIEW COMPLAINT AND OUTLINE INVESTIGATION 

- Prepare script of closing remarks (cont.)
 - If applicable, explain that an additional interview may be necessary at a later date
 - Advise that party/witness may reach out to you with additional information
 - Reminder regarding policy prohibiting retaliation
 - Remind *witness* of instructions regarding confidentiality
 - Must not restrict the ability of either party to discuss the allegations under investigation
 - Explain to party that questions related to process or resources should be directed to the Title IX Coordinator or Deputy Coordinator

Lathrop GPM,  128

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STAGE ONE: REVIEW COMPLAINT AND OUTLINE INVESTIGATION 

- Identify ultimate questions that will need to be decided
- Develop checklist for key questions—examples:
 - Elements of each potential violation
 - Consent to each act
 - Impact of alcohol
 - Ask for written communications—texts, emails, etc.
- Create list of topics for witness interviews (not questions)
- Avoid investigative techniques and approaches that apply sex stereotypes or generalizations

Lathrop GPM,  129

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STAGE ONE: REVIEW COMPLAINT AND OUTLINE INVESTIGATION 

- Gather and review available evidence
- Know the setting(s) of the events
- Determine whether witness interviews will be recorded
- Stay flexible



Lathrop GPM,  130

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STAGE ONE: REVIEW COMPLAINT AND OUTLINE INVESTIGATION 

- Prepare for parties with advisors
 - Consider having advisors review and sign document outlining purpose and role of advisor
- Also be prepared for how to handle “private” investigations by the parties



Lathrop GPM,  131

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CASE STUDY

Lathrop GPM,  132

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CASE STUDY



- On April 28, 2021, Jacob Jacobson made a complaint of sexual misconduct against Olivia Olive.

Lathrop GPM,  133

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CASE STUDY



Sexual Misconduct Complaint Form

COMPLAINANT NAME: Jacob Jacobson
ADDRESS: 1234 Off-Campus Drive
DATE OF REPORT OF ALLEGED POLICY VIOLATION: April 28, 2021
RESPONDENT NAME: Olivia Olive
ADDRESS: 999 Dorm Room Lane

ALLEGATIONS:
 All semester, Olivia has been hitting on me and making me uncomfortable. I tried to tell her I have a girlfriend, but she just kept flirting and talking about us hooking up. Olivia sent me a Snapchat message with a picture of her in her underwear and asked me to send her something.
 On April 10, 2021, at a party off-campus, Olivia was getting handsy with me. I was not okay with that. I decided to go back to my place and Olivia came with me. I blacked out, but Olivia told me that she gave me a blow job. I was too drunk to consent.

Lathrop GPM,  134

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CASE STUDY



Excerpt from Notice of Allegations

On April 28, 2021, a formal complaint of alleged sexual misconduct was submitted by Jacob Jacobson to the Title IX Coordinator alleging conduct by Olivia Olive. In the formal complaint, Jacob alleged that:

- Throughout the Spring 2021 semester, in various locations, including her dorm room, Olivia engaged in unwelcome conduct on the basis of sex by making sexual propositions to Jacob.
- In February 2021, from her dorm room, Olivia engaged in unwelcome conduct on the basis of sex by sending Jacob sexually suggestive Snapchat messages.
- On April 10, 2021, at an off-campus apartment owned by the University on Third Street, Olivia engaged in unwelcome conduct on the basis of sex by touching Jacob.
- On April 10, 2021, at Jacob's off-campus apartment, Olivia engaged in non-consensual sexual penetration with Jacob.

Lathrop GPM,  135

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CASE STUDY – DEFINITION OF TITLE IX SEXUAL HARASSMENT 

Title IX Hostile Environment Harassment is 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 University's education program or activity.

For the purposes of the definition of Title IX Hostile Environment Harassment, reasonable person means a reasonable person in the shoes of the complainant, considering the ages, abilities, and relative positions of authority of the individuals involved in an incident.

Lathrop GPM,  136

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CASE STUDY – DEFINITION OF TITLE IX SEXUAL HARASSMENT 

For the purposes of the Title IX Sexual Harassment definition, conduct is unwelcome when the individual did not request or invite and regarded it as undesirable or offensive. The fact that an individual may have accepted the conduct does not mean that they welcomed it. On the other hand, if an individual actively participates in conduct and gives no indication that they object, then the evidence generally will not support a conclusion that the conduct was unwelcome. That a person welcomes some conduct does not necessarily mean that person welcomes other conduct. Similarly, that a person willingly participates in conduct on one occasion does not necessarily mean that the same conduct is welcome on a subsequent occasion. Whether conduct was unwelcome may be determined based on the context and circumstances of the encounter or incident.

Lathrop GPM,  137

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CASE STUDY – DEFINITION OF TITLE IX SEXUAL HARASSMENT 

The circumstances that may be considered when determining whether conduct was so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the College's education program or activity include, but are not limited to:

- The frequency of the conduct;
- The nature and severity of the conduct;
- Whether the conduct was physically threatening;
- The effect of the conduct on the victim's mental or emotional state;
- Whether the conduct was directed at more than one person;
- Whether the conduct arose in the context of other discriminatory conduct;
- Whether the conduct was merely a discourteous, rude, or insensitive statement;
- Whether the speech or conduct deserves the protection of academic freedom.

Lathrop GPM,  138

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CASE STUDY – DEFINITION OF NON-TITLE IX SEXUAL HARASSMENT 

As used in this Policy, Non-Title IX Sexual Harassment is unwelcome conduct of a sexual nature or based on sex, including sexual advances, requests for sexual favors, offensive comments or other conduct based on sex, sexually motivated physical contact, or other verbal, nonverbal, or physical conduct or communication of a sexual nature, when:

...

- such conduct has the purpose or effect of substantially and unreasonably interfering with an individual’s employment or education, or of creating an intimidating, hostile, or offensive employment or educational environment (“hostile environment” harassment).

Lathrop GPM, 139

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CASE STUDY – DEFINITION OF NON-TITLE IX SEXUAL HARASSMENT 

For the purposes of the Title IX Sexual Harassment definition, conduct is unwelcome when the individual did not request or invite and regarded it as undesirable or offensive. The fact that an individual may have accepted the conduct does not mean that they welcomed it. On the other hand, if an individual actively participates in conduct and gives no indication that they object, then the evidence generally will not support a conclusion that the conduct was unwelcome. That a person welcomes some conduct does not necessarily mean that person welcomes other conduct. Similarly, that a person willingly participates in conduct on one occasion does not necessarily mean that the same conduct is welcome on a subsequent occasion. Whether conduct was unwelcome may be determined based on the context and circumstances of the encounter or incident.

Non-Title IX Sexual Harassment does not include conduct covered under the definition of Title IX Sexual Harassment.

Lathrop GPM, 140

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CASE STUDY—DEFINITION OF SEXUAL ASSAULT 

Sexual assault is any actual or attempted sexual contact, including penetration, with another person without that person’s consent. Sexual contact includes intentional contact by the accused with the victim’s genital area, groin, inner thigh, buttocks, or breasts, whether clothed or unclothed; touching another with any of these body parts, whether clothed or unclothed; coerced touching by the victim of another’s genital area, groin, inner thigh, buttocks, or breasts, whether clothed or unclothed; or forcing another to touch him/herself with or on any of these body parts.

Lathrop GPM, 141

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CASE STUDY—DEFINITION OF CONSENT 

Consent means words or overt actions by a person clearly and affirmatively communicating a freely-given present agreement to perform a particular sexual act. Words or overt actions clearly communicate consent when a reasonable person in the circumstances would believe those words or actions indicate a willingness to participate in a mutually agreed-upon sexual activity. Although consent does not need to be verbal, verbal communication is the most reliable form of asking for and obtaining consent. It is the responsibility of the person initiating the specific sexual activity to obtain consent for that activity.

Lathrop GPM,  142

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CASE STUDY—DEFINITION OF CONSENT 

The definition of consent is subject to the following:

- Consent can only be given if one is of legal age. The legal age of consent in this state is 16.
- Consent is a mutually understood and freely given "yes," not the absence of "no."
- Consent to one form of sexual activity cannot imply consent to other forms of sexual activity
- Consent can be withdrawn at any time. When consent is withdrawn, the sexual activity for which consent was initially provided must stop.
- Silence or failing to resist does not imply consent.
- Previous relationships or previous consent does not imply consent to future sexual acts.
- An existing sexual, romantic, or marital relationship does not imply consent.
- Prior sexual activity with other individuals does not imply consent.
- Consent cannot be procured, expressly or implicitly, by use of force, intimidation, threats, or coercion, as that term is defined below.
- An individual known to be – or who should be known to be – incapacitated, as defined by the Policy, cannot consent to sexual activity initiated by another individual.
- Use of alcohol or other drugs will never function to excuse behavior that violates this Policy.

Lathrop GPM,  143

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CASE STUDY—DEFINITION OF INCAPACITATION 

A person who is incapacitated cannot give valid consent to sexual contact initiated by another individual. Incapacitation means the inability to understand the fact, nature, or extent of the sexual situation. Incapacitation may result from mental or physical disability, sleep, unconsciousness, involuntary physical restraint, or from the influence of drugs or alcohol. With respect to incapacitation due to the influence of drugs or alcohol, incapacitation requires more than being under the influence of drugs or alcohol; a person is not incapacitated just because they have been drinking or using drugs.

Lathrop GPM,  144

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CASE STUDY—DEFINITION OF INCAPACITATION 

Where drugs and/or alcohol are involved, incapacitation is determined based on the facts and circumstances of the particular situation looking at whether the individual was able to understand the fact, nature, or extent of the sexual situation, whether the individual was able to communicate decisions regarding consent, nonconsent, or the withdrawal of consent, and whether such condition was known or reasonably known to the respondent or a reasonable person in respondent's position. Use of drugs or alcohol by the respondent is not a defense against allegations of sexual misconduct.

Lathrop GPM,  145

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STAGE TWO: GATHER EVIDENCE 

- Types of evidence:
 - Witness interviews
 - Physical evidence
 - Text messages/emails/photos
 - Social media
 - Police report
 - Medical examination – *Caution!*
 - Student/personnel records
 - Surveillance video



Lathrop GPM,  146

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STATE TWO: GATHER EVIDENCE – NOTICE OF MEETINGS 

- Title IX: Written notice to the party whose participation is invited or expected of the
 - Date
 - Time
 - Location
 - Participants
 - Purpose



of all hearings, investigative interviews, or other meetings with a party, with sufficient time for the party to prepare to participate

- VAWA: Timely notice to the other party of meetings that are part of the disciplinary process

Lathrop GPM,  147

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STAGE TWO: GATHER EVIDENCE – INTERVIEW PARTIES & WITNESSES 

- Go through script of opening remarks
 - Explain your role in the grievance/complaint process
 - Provide general explanation of reason for interview—gathering facts
 - Explain possible uses of party’s/witness’s statements
 - If applicable, explain cross-examination
 - If applicable, inform party/witness of recording and its use
 - Advise party and advisor on advisor’s limited role
 - Explain the need to ask difficult, detailed questions
 - Ask party/witness not to read into questions
 - Tell party/witness he or she can ask for a break during the interview



Lathrop GPM,  148

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STAGE TWO: GATHER EVIDENCE – INTERVIEW PARTIES & WITNESSES 

- Go through script of opening remarks (cont.)
 - Explain that timelines and order of events may not be clear
 - Tell the party/witness to feel free to ask why a question is asked (Investigators: be prepared to answer)
 - Instruct *witness* regarding confidentiality (gag orders on parties is not permissible)
 - Assure/warn party/witness regarding policy prohibiting retaliation
 - If applicable, advise party/witness on alcohol or other policy waiver
 - If video/phone interview, confirm no one else is in the room
 - Obtain commitment to tell the truth

Lathrop GPM,  149

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STAGE TWO: GATHER EVIDENCE – INITIAL PARTY INTERVIEWS 

- Purpose is to provide each party with an opportunity to share their account
- Do not ask party to respond to or rebut other party’s or witness’s accounts
- Ask limited follow-up questions to clarify party’s own account
- When in doubt, don’t ask

Lathrop GPM,  150

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STAGE TWO: GATHER EVIDENCE – WITNESS INTERVIEWS 

- “Do you know why you were asked to come speak with me today?”
 - “Highway” or “Scenic Route” interview?
- If Scenic Route, use “funnel” approach
- If Highway interview, download everything they “know” about relevant events

Lathrop GPM,  151

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STAGE TWO: GATHER EVIDENCE – WITNESS INTERVIEWS 

- Scenic Route: Funnel Approach
 - Start broadly; avoid leading questions
 - “I understand you were at a party off-campus last Saturday; did anything unusual happen while you were there?”
 - “You take Professor Johnson’s architectural drafting course on Wednesday afternoons; did you observe anything out of the ordinary last week?”
 - Decide whether to ask more detailed questions
 - More reliable responses and less rumor mill



Lathrop GPM,  152

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STAGE TWO: GATHER EVIDENCE – INTERVIEW PARTIES & WITNESSES 

- Create chronology of events
- Identify the who, what, where, when, and how
 - If don’t know names, figure out other identifiable information
 - If helpful, consider drawing a map/diagram
 - If exact times aren’t known, what events were going on to help fix a time
 - Avoid “why” questions
- Close “chapters” by recapping events
- Distinguish between personal knowledge and hearsay





Lathrop GPM,  153

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STAGE TWO: GATHER EVIDENCE – INTERVIEW PARTIES & WITNESSES 

- Ask about evidence (text messages, photos, emails)
 - Expect that the parties and witnesses may be talking to each other during the complaint process—ask for these communications later in the process
 - Ask witnesses to forward information immediately
- Don't share information unless necessary
- Don't focus on writing exhaustive notes
- Let witness do most talking ("What happened next?")



Lathrop GPM,  154

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STAGE TWO: GATHER EVIDENCE – INTERVIEW PARTIES & WITNESSES 

- Don't avoid questions because answers seem too obvious or too personal
- Don't inquire into complainant's prior sexual history with anyone other than respondent
 - Unless respondent alleges someone else committed the conduct
- Do not ask or initiate discussion about privileged information, unless individual holding the privilege has waived it (e.g., doctor-patient privilege, attorney-client privilege)
- Do not ask for or otherwise access treatment records without the party's written consent
- Prepare a summary/draft report immediately following interview



Lathrop GPM,  155

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STAGE TWO: GATHER EVIDENCE – INTERVIEW PARTIES & WITNESSES 

- Go through script of closing remarks
 - Ask if there is anything else the party/witness wants you to know
 - Ask if there is anything the party/witness thought you would ask about that you have not yet discussed
 - Give parties opportunity to suggest witnesses, evidence, and questions to ask the other party
 - Find out what information those witnesses/evidence/questions will provide
 - Give witnesses opportunity to suggest other witnesses and evidence
 - Find out what information those witnesses/evidence will provide
 - Remind party/witness regarding need to preserve evidence

Lathrop GPM,  156

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STAGE TWO: GATHER EVIDENCE – INTERVIEW PARTIES & WITNESSES 

- Go through script of closing remarks (cont.)
 - If applicable, explain that an additional interview may be necessary at a later date
 - Advise that party/witness may reach out to you with additional information
 - Reminder regarding policy prohibiting retaliation
 - Remind *witness* of instructions regarding confidentiality
 - Must not restrict the ability of either party to discuss the allegations under investigation
 - Explain to party that questions related to process or resources should be directed to the Title IX Coordinator or Deputy Coordinator

Lathrop GPM  157

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CASE STUDY
Ask questions of Jacob

Lathrop GPM  158

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CASE STUDY 

- Jacob’s initial interview takes place over Zoom. During the interview, the video keeps freezing and you are not able to hear what Jacob is saying.
- What do you do?

Lathrop GPM  159

159

CASE STUDY 

- During his initial interview, Jacob raised multiple incidents of alleged conduct by Olivia that were not in his complaint or the notice of allegations.
- What do you do after the interview?

Lathrop GPM,  160

160

CASE STUDY 

- During the interview, Jacob mentioned that Olivia has made other people in their friend group uncomfortable.
- What do you do with this information?

Lathrop GPM,  161

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CASE STUDY 

- During the interview, Jacob said he thought that the off-campus apartment building where the April 10 party took place might have security cameras.
- What do you do after the interview?

Lathrop GPM,  162

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CASE STUDY



- The Title IX Coordinator issues an amended notice of allegations to the parties.

Lathrop GPM,  163

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CASE STUDY



Excerpt from amended notice of allegations

On April 28, 2021, a formal complaint of alleged sexual misconduct was submitted by Jacob Jacobson to the Title IX Coordinator alleging conduct by Olivia Olive. In the formal complaint, Jacob alleged that:

- Throughout the Spring 2021 semester, in various on-campus locations, including her dorm room and a coffee shop in February 2021, Olivia engaged in unwelcome conduct on the basis of sex by making sexual propositions to Jacob.
- In February 2021, in various on-campus locations, including her dorm room, Olivia engaged in unwelcome conduct on the basis of sex by touching Jacob.
- In late February 2021, from her dorm room, Olivia engaged in unwelcome conduct on the basis of sex by sending Jacob sexually suggestive Snapchat messages.
- On March 12, 2021, through text messages, Olivia engaged in unwelcome conduct on the basis of sex by making sexual propositions to Jacob.
- In late March 2021, from her dorm room, Olivia engaged in unwelcome conduct on the basis of sex by sending Jacob sexually suggestive Snapchat messages.
- In late March 2021, in a friend's dorm room, Olivia engaged in unwelcome conduct on the basis of sex by making a sexual proposition to Jacob and touching Jacob.
- In early April 2021, through Snapchat messages, Olivia engaged in unwelcome conduct on the basis of sex by making a sexual proposition to Jacob.
- On April 10, 2021, at an off-campus apartment owned by the University on Third Street, Olivia engaged in non-consensual sexual contact with Jacob.
- On April 10, 2021, at Jacob's off-campus apartment, Olivia engaged in non-consensual sexual penetration with Jacob.

Lathrop GPM,  164

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CASE STUDY



- You send an email to Olivia asking to schedule an interview. You let her know that in light of the amended notice of allegations she just received, you can schedule the interview for the next week so that she has sufficient time to prepare.
- You receive a response from Olivia's attorney advisor. The advisor states that the institution is in violation of federal law because it has not provided Olivia with notice of the conduct she is alleged to have engaged in.
- The advisor states that Olivia will not submit to an interview until this has been remedied.
- How do you respond?

Lathrop GPM,  165

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CASE STUDY 

- Several days later, the Title IX Coordinator informs you that Olivia has agreed to schedule an interview.
- You reach back out to Olivia and set a time for the meeting.

Lathrop GPM,  166

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CASE STUDY 



Ask questions of Olivia

Lathrop GPM,  167

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CASE STUDY 

- At the beginning of Olivia’s initial interview, Olivia’s advisor states: “Now that we are on the record, I want to be clear that Olivia objects to this interview taking place prior to Olivia being provided the notice to which she is entitled under federal law. Olivia has not been made aware of the conduct of which she has been accused, a clear violation of Olivia’s rights under the law and the institution’s policy.”
- How do you respond?

Lathrop GPM,  168

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CASE STUDY 

- Later during Olivia’s initial interview, her attorney advisor jumps in to ask you to clarify a question.
- How do you respond?

Lathrop GPM,  169

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CASE STUDY 

- After reminding Olivia that the interview will be between the two of you and reiterating the requirements for advisors, you continue the interview.
- Olivia’s advisor again interjects to ask why a particular question is relevant to the interview.
- How do you respond?

Lathrop GPM,  170

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CASE STUDY 

- Despite multiple reminders, Olivia’s advisor keeps addressing you directly and interrupting the interview.
- How do you respond?

Lathrop GPM,  171

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STAGE TWO: GATHER EVIDENCE – INTERVIEW PARTIES – ADVISORS



- VAWA requires:
 - Proceeding must “provide the accuser and the accused with the same opportunities to have others present during any institutional disciplinary proceeding, including the **opportunity to be accompanied to any related meeting** or proceeding by the advisor of their choice”
- Title IX requires:
 - Allow advisor of choice, who may be but is not required to be an attorney
 - May establish equal restrictions on advisors’ participation



Lathrop GPM  172

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STAGE TWO: GATHER EVIDENCE – INTERVIEW PARTIES – ADVISORS



- Advisors, particularly attorney advisors, have become increasingly common participants
- Tips for addressing disruptive advisors:
 - Signed advisor agreements
 - Be prepared to enforce the agreement parameters
 - Set the ground rules at the outset (e.g., “potted plant”)
 - Don’t engage with the advisor; only address the party (even in response to the advisor’s statements)
 - Hold the party responsible for the advisor’s actions
 - Don’t be afraid to consider pausing the process if the advisor continues to be disruptive
 - Be consistent

Lathrop GPM  173

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STAGE THREE: REVIEW/DRAFT/ CONDUCT ADDITIONAL INTERVIEWS



- Draft report
- Assess what more needs to be done
- Determine whether additional witnesses are necessary or merely duplicative
- Determine whether new facts/allegations require additional interviews
- Inform Title IX Coordinator of any new allegations (related or unrelated)
- Determine whether notice to the parties needs to be amended
- Be sure that each party has adequate notice of the other party’s allegations
- Inform parties in advance of close of evidence date



Lathrop GPM  174

174

CASE STUDY



- Olivia suggested that you interview Jacob's girlfriend to ask her about the pressure she put on Jacob to bring his complaint.
- During Jacob's initial interview, when the investigator asked if Jacob had talked to anyone about the incident on April 10, Jacob stated that after they got back together, he talked to his girlfriend about it. When asked if he and his girlfriend discussed anything else during that conversation, Jacob stated that they talked about whether he should go to Title IX.
- Do you interview Jacob's girlfriend?

Lathrop GPM,  175

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CASE STUDY



- You asked Jacob for his girlfriend's email address and sent her several requests to schedule an interview. She has not responded to your emails.
- What do you do next?

Lathrop GPM,  176

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CASE STUDY



- Jacob identified two of his roommates – Tom and Ethan – who have said that Olivia is always talking about sex. Jacob said that they sometimes don't hang out with the group because of this and asked Jacob not to have Olivia over to their place when they are going to be around. Jacob also says that Olivia gets very touchy with Tom and Ethan and it really bugs them. Finally, Jacob says that his friends often have a group chat going on Snapchat and both Tom and Ethan have left a chat previously when Olivia makes sexual comments as part of the chat.
- What do you do with this information?

Lathrop GPM,  177

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CASE STUDY 

- The Title IX Coordinator met with Tom and with Ethan and both declined to bring a formal complaint against Olivia. The Title IX Coordinator also considered whether to bring a complaint on their behalf, but decided not to do so.
- Do you interview Tom and Ethan as part of the investigation into Jacob’s complaint against Olivia?

Lathrop GPM,  178

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CASE STUDY 

- You reach out to Tom and Ethan to schedule interviews with them, but both decline to participate in the investigation.

Lathrop GPM,  179

179

**STAGE THREE: REVIEW/DRAFT/
CONDUCT ADDITIONAL INTERVIEWS** 

- Purpose of follow-up interviews with the parties
 - Gather any missing information from each party’s account
 - Provide each party an opportunity to respond to the other party’s factual account, including any specific allegations and defenses to those allegations
- Preparing for follow-up interviews with the parties
 - Complete draft report prior to conducting follow-up interviews
 - Identify gaps in each party’s account
 - Ensure that the accounts have addressed each allegation of a policy violation (including all elements of alleged policy violations)
 - Identify differences between the parties’ accounts and between each party’s account and witness accounts
 - Outline questions for follow-up interviews

Lathrop GPM,  180

180

CASE STUDY 

- You have conducted all of your witness interviews and a follow-up interview with Jacob. During your follow-up interview with Olivia, you ask her about Jacob's allegation that she sent him a picture of her in her underwear.
- Olivia responded that she sent Jacob a photo of her in a pair of shorts and a bralette. Olivia stated that she sent that message after another text message exchange. Olivia provided a copy of the following messages:
Olivia: Going to the party at Sig Pi tonight? I think I'm wearing that red skirt... 😊
Jacob: 🙄🙄🙄
Jacob: not sure I'll be off work till late. sry I'm missing out
- What next steps do you take in the investigation?

Lathrop GPM,  181

181

CASE STUDY 

- You decide to interview Jacob regarding these additional text messages.
- How do you address the messages in the interview?

Lathrop GPM,  182

182

CASE STUDY 

- You have completed your interviews and have prepared a draft of the investigation report.
- Now what do you do?

Lathrop GPM,  183

183

**STAGE THREE: REVIEW/DRAFT/
CONDUCT ADDITIONAL INTERVIEWS** 

- Finalize draft of investigation report
- Meet with coordinator
 - Ensure parties have received notice of all allegations
 - Confirm process and timing for sharing evidence (if any)
 - Title IX: Copy of directly related evidence
 - VAWA: Access to evidence that will be shared with the decision-maker
 - When in doubt, err on side of following Title IX process

Lathrop GPM,  184

184

**STAGE FOUR: PROVIDE EVIDENCE TO
PARTIES TO REVIEW AND RESPOND*** 

- *Prior to completion of investigation report, must provide equal opportunity to inspect and review any evidence obtained that is directly related to the allegations*
 - Includes evidence upon which the institution does not intend to rely in reaching a determination and inculpatory or exculpatory evidence whether obtained from a party or other source
 - Must send to party and party's advisor in hard copy or electronic format
 - Party must be given at least 10 days to submit a written response
- Investigator must consider that written response before completing investigation report
- Must make all that evidence available at any hearing

Lathrop GPM,  * Title IX Only 185

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**STAGE FOUR: PROVIDE EVIDENCE TO
PARTIES TO REVIEW AND RESPOND*** 

- Types of evidence that must be provided to parties:
 - Documents collected from the parties
 - Text messages
 - Emails
 - Social media posts and messages
 - Photos and videos
 - Other evidence
 - Police reports
 - Security footage
 - Wifi access point records
 - Party and witness interviews

Lathrop GPM,  * Title IX Only 186

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STAGE FOUR: PROVIDE EVIDENCE TO PARTIES TO REVIEW AND RESPOND* 

- Sexual history = include if directly related
 - Protections related to complainant’s prior sexual history do not apply at this stage
 - Still analyze whether such evidence is “directly related to the allegations”
- Privileged information = only with waiver of privilege
- Treatment records = only with written consent

Lathrop GPM,  * Title IX Only 187

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STAGE FOUR: PROVIDE EVIDENCE TO PARTIES TO REVIEW AND RESPOND* 

- May permit or require the investigator to redact information that is not directly related to the allegations (or that is otherwise barred from use under the final regulations)
 - Redactions are limited to information not directly related or that is otherwise specifically barred
 - May not redact other information, such as confidential, sensitive, or prejudicial information, if it is directly related to the allegations

Lathrop GPM,  * Title IX Only 188

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STAGE FOUR: PROVIDE EVIDENCE TO PARTIES TO REVIEW AND RESPOND* 

- Maintain records of any information withheld and the rationale for doing so
- Investigator and Title IX Coordinator should both be involved in determination of what is directly related

Lathrop GPM,  * Title IX Only 189

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STAGE FOUR: PROVIDE EVIDENCE TO PARTIES TO REVIEW AND RESPOND* 

- Ensuring privacy
 - May require parties and advisors to:
 - Use the evidence (and investigation report) only for purposes of the grievance process and
 - Require them not to further disseminate or disclose these materials
 - May use a non-disclosure agreement
 - May use digital encryption or other practices to address privacy concerns (e.g., watermarks)

Lathrop GPM,  * Title IX Only 190

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CASE STUDY 

“Directly Related” Evidence

Lathrop GPM,  191

191

CASE STUDY 

- Do you include the following in “directly related” evidence?
 - Jacob’s statements in his interview that his roommates would not hang out with their group of friends if Olivia was going to be there because she “doesn’t shut up about sex.”
 - Jacob says that Tom has a hard time expressing himself because he is autistic.

Lathrop GPM,  192

192

CASE STUDY 

- Do you include the following in “directly related” evidence?
 - Jacob provided text messages he exchanged with his girlfriend. He says the below text message exchange show that his girlfriend was aware that Olivia made him uncomfortable at times.

Charlotte: wud?
Jacob: I'm watching a movie in Olivia's room
Charlotte: with who?
Jacob: Just me and her
Charlotte: y are u alone w her. u said she was making things awk
Jacob: i know. Felt weird saying no, i'm gonna leave right after the movie

Lathrop GPM,  193

193

CASE STUDY 

- Do you include the following in “directly related” evidence?
 - During her interview, Olivia says that Jacob told her that he suffers from depression. Olivia says that Jacob told her that he is on medication and he generally handles it pretty well. Olivia says that knowing about Jacob’s depression led her to go back to his apartment with him on April 10 because his girlfriend had just broken up with him and Olivia was worried about him being alone.

Lathrop GPM,  194

194

CASE STUDY 

- You provide the parties and advisors with copies of the directly related evidence and give them 10 days to submit a written response.
- Both Jacob and Olivia submit responses to the directly related evidence.

Lathrop GPM,  195

195

CASE STUDY 

Excerpt from Jacob’s Response to the Directly Related Evidence:

I will let my statements in my interviews speak for themselves. I just want to say that Olivia submitted some text messages, but most of our messages were over Snapchat and we don’t have copies of those. The text messages don’t tell the whole story, which Olivia tries to take advantage of to act like I was into her when I wasn’t. I wish I had the Snapchat messages, but I of course didn’t know I’d need to save them for a Title IX in the future.

Lathrop GPM, 196

196

CASE STUDY 

Excerpt from Olivia’s Response to the Directly Related Evidence:

Jacob submitted some text messages that he sent to his girlfriend. Those messages show that Charlotte was jealous of me and my friendship with Jacob. He never said things were awkward to me, that was just Charlotte trying to get him to stop hanging out with me.

In Jacob’s transcript, Jacob said that he does not hook up with people he is not in a relationship with, but I know that he messed around with Taylor Tayson last year when he and his girlfriend were on a break even though he wasn’t dating Taylor.

Lathrop GPM, 197

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CASE STUDY 

- In Olivia’s response, she states:
 - “In Jacob’s transcript, Jacob said that he does not hook up with people he is not in a relationship with, but I know that he messed around with Taylor Tayson last year when he and his girlfriend were on a break even though he wasn’t dating Taylor.”
- What do you do?

Lathrop GPM, 198

198

PRIOR SEXUAL HISTORY 

- Complainant’s sexual behavior or predisposition are not relevant unless:
 - Such questions and evidence are offered to prove someone other than respondent committed the alleged conduct or
 - The questions and evidence concern specific incidents of the complainant’s prior sexual behavior with respect to the respondent and are offered to prove consent

Lathrop GPM,  199

199

CASE STUDY 

- Both parties submitted additional substantive information clarifying their own accounts and responding to the other party’s account.
- What do you do with the written responses?

Lathrop GPM,  200

200

STAGE FOUR: PROVIDE EVIDENCE TO PARTIES TO REVIEW AND RESPOND* 

- Steps following parties’ review
 - Review parties’ responses
 - Consult with Title IX Coordinator to decide whether any additional action is needed
 - Investigator should consider parties’ viewpoints about whether the evidence directly related to the allegations is relevant and therefore whether to include it in the investigation report
 - May provide a copy of each party’s written response to the other party, but that is not required

Lathrop GPM,  * Title IX Only 201

201

STAGE FIVE: PACKAGE INVESTIGATION FOR DECISION-MAKERS



- Complete investigation report
- Provide access (VAWA) or copy (Title IX) to parties, and parties' advisors
 - At least 10 days prior to hearing (Title IX)
 - Allow parties to supplement with written responses (Title IX)
- Review parties' responses
- Consult with Title IX Coordinator to decide whether any additional action is needed
- Provide report, attachments/evidence, and if applicable, parties' written responses to adjudicator(s)



Lathrop GPM,  202

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Q & A



Lathrop GPM,  203

203



DRAFTING AN INVESTIGATION REPORT



Lathrop GPM,  204

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SESSION OVERVIEW 

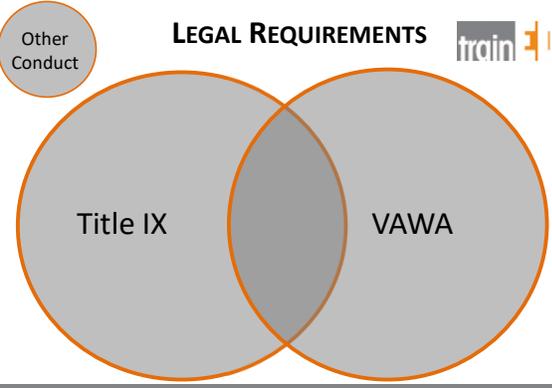
- Legal Requirements
- Relevancy Issues
- Purpose
- Preparation
- Elements of the Report
- Role of the Title IX Coordinator
- Case Study



Lathrop GPM,  205

205

LEGAL REQUIREMENTS 



Other Conduct

Title IX

VAWA

Lathrop GPM,  206

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LEGAL REQUIREMENTS 

- Must create investigative report that fairly summarizes **relevant** evidence (Title IX)
- Investigator cannot adjudicate (Title IX)
- Parties must be provided:
 - VAWA: information used in the decision-making process – access required
 - Title IX:
 - any evidence obtained that is **directly related** to the allegations – copy for parties and advisors required
 - Investigation report – copy to parties and advisors required
 - Opportunity to submit written response to each



Lathrop GPM,  207

207

TITLE IX RELEVANCY ISSUES 

- Complainant's sexual behavior or predisposition are **not relevant** *unless*:
 - Such questions and evidence are offered to prove someone other than respondent committed the alleged conduct or
 - The questions and evidence concern specific incidents of the complainant's prior sexual behavior with respect to the respondent and are offered to prove consent
- The investigation report should not include any information about the complainant's sexual history that is not relevant

Lathrop GPM,  208

208

RELEVANCY ISSUES 

- Always consider relevance:
 - Expert reports?
 - Character evidence?
 - Lie detector test results?
 - Prior violation by respondent?
 - Allegations of similar misconduct?



Lathrop GPM,  209

209

PURPOSE 

- Know the purpose of your investigation and report under your institution's policies
 - Provide a summary of your investigation
 - Allow parties to submit a response (Title IX)
 - Allow adjudicators to prepare for hearing and/or make a decision
 - Determine whether you are weighing in on credibility
 - Determine whether the adjudicator(s) want you to provide a recommendation



Lathrop GPM,  210

210

PREPARATION 

- Prepare for report drafting during your investigation by—
 - Staying organized
 - Taking good notes and/or recording interviews
 - Review recordings, notes, and evidence to assess whether you need more information
 - Think about how you will summarize the facts in your report to help assess whether you've gathered all of the evidence you need
 - Drafting the report as you conduct your investigation
 - Identify information that is not directly related
 - Identify information that is directly related but not relevant

Lathrop GPM,  211

211

ELEMENTS OF THE REPORT 

- Introduction
- Summary of allegations/complaint(s)
- Documents/evidence reviewed
- Witnesses interviewed
- Interview methodology
- Summary of facts by allegation OR witness summaries



Lathrop GPM,  212

212

ELEMENTS OF THE REPORT 

- Introduction
 - State the reason for your investigation
 - Date of complaint(s)
 - Date of notice(s) of allegations
 - Your appointment as investigator
 - Refer to policy/procedures
 - Purpose of report
 - Scope of your role (e.g., credibility, recommendation)
 - Date of close of evidence
 - Date parties were provided with copies of directly related evidence (Title IX)
 - Date parties submitted responses (if any) to directly related evidence (Title IX)



Lathrop GPM,  213

213

ELEMENTS OF THE REPORT 

- Summary of allegations/complaint(s)
 - Include allegations from original complaint and those gathered during interviews; consider whether to differentiate between the two
 - Check notice(s) of allegations for consistency



Lathrop GPM  214

214

ELEMENTS OF THE REPORT 

- Include a list of documents and evidence reviewed
 - Policies
 - Written complaints
 - Text messages
 - Social media screen shots
 - Letters from institution to parties
 - Emails from witnesses to investigator
 - Other written documentation
 - Physical evidence
 - Parties' responses to "directly related evidence" (Title IX)



Lathrop GPM  215

215

ELEMENTS OF THE REPORT 

- Interview methodology
 - List of witnesses
 - Dates of interviews
 - Location
 - Individuals present—e.g., advisors
 - Recorded or not recorded
 - Reasoning for choice of whom to interview (and not interview)



Lathrop GPM  216

216

ELEMENTS OF THE REPORT 

- Interview methodology (cont.)
 - General questions asked by investigator
 - General approach used in interviews
 - Statements made by investigator
 - Information shared with or withheld from witnesses



Lathrop GPM,  217

217

ELEMENTS OF THE REPORT 

- Summary of the facts—two approaches:
 - Summary of facts by allegation
 - Separate out each allegation
 - Give account from each party/witness
 - Describe other evidence supporting or refuting allegation
 - Witness summaries
 - Recap account from each party/witness
 - Describe other evidence offered by or gathered from witness



Lathrop GPM,  218

218

ELEMENTS OF THE REPORT 

- Summary of the facts
 - Include facts that may impact a credibility finding
 - Weigh in on credibility if that's part of your role
 - Adjudicator must make the ultimate determination (Title IX)
 - Exclude facts that are not relevant
 - No longer a prejudicial vs. probative evaluation (Title IX)



Lathrop GPM,  219

219

ROLE OF TITLE IX COORDINATOR DURING INVESTIGATION PHASE 

- Determine who will provide ongoing communication with the parties throughout the complaint process
 - Notify parties of delays and reason for delays
 - Notify parties of their own and other party's meetings
- Ensure that parties receive adequate notice of any new allegations
- Oversee process to ensure compliance with policy and designated timeframes
- Determine which process applies (if multiple)
- Review investigation report, party responses, and rebuttals
 - Redact impermissible content
 - Evaluate whether further investigation is necessary
- Intake and investigate?
 - Beware of conflicts when filling multiple roles
- Cannot adjudicate or decide appeal (Title IX)

Lathrop GPM,  220

220

CASE STUDY 



CASE STUDY

Relevant Evidence to Include in the Investigation Report

Lathrop GPM,  221

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CASE STUDY 

- If you included the following in “directly related” evidence, do you include it in your investigation report?
 - Jacob’s statements in his interview that his roommates would not hang out with their group of friends if Olivia was going to be there because she “doesn’t shut up about sex.”

Lathrop GPM,  222

222

CASE STUDY 

▪ If you included the following in “directly related” evidence, do you include it in your investigation report?

- Jacob provided text messages he exchanged with his girlfriend. He says the below text message exchange show that his girlfriend was aware that Olivia made him uncomfortable at times.

Charlotte: wud?
Jacob: I'm watching a movie in Olivia's room
Charlotte: with who?
Jacob: Just me and her
Charlotte: y are u alone w her. u said she was making things awk
Jacob: i know. Felt weird saying no, I'm gonna leave right after the movie

Lathrop GPM,  223

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CASE STUDY 

▪ If you included the following in “directly related” evidence, do you include it in your investigation report?

- During her interview, Olivia says that Jacob told her that he suffers from depression. Olivia says that Jacob told her that he is on medication and he generally handles it pretty well. Olivia says that knowing about Jacob’s depression led her to go back to his apartment with him on April 10 because his girlfriend had just broken up with him and Olivia was worried about him being alone.

Lathrop GPM,  224

224

CASE STUDY 



Investigation Report:
Summary of Facts Gathered

Lathrop GPM,  225

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**PROVIDING THE PARTIES
ACCESS TO REPORT**



- Title IX:
 - Prior to finalizing the report, parties and advisors must have received copies of all directly related evidence
 - At this stage, parties and advisors must receive electronic or hard copy of investigative report (and attachments) at least 10 days prior to hearing
 - Parties must have opportunity to submit a written response to the report
 - Allow for rebuttal?
 - Use confidentiality protections listed in Stage Four, including:
 - Use of watermark
 - Prohibition of dissemination
 - Non-disclosure agreement

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**PROVIDING THE PARTIES
ACCESS TO REPORT**



- VAWA cases that are not Title IX:
 - Access to whatever information is provided to the decision-maker(s)
 - Access to review information; not copies
 - Use of watermarks
 - Prohibit photographs, copying, downloading (check smart phones at the door)
 - Supervise access
 - Out of town access
 - secure site with ability to prohibit downloading AND
 - skype session during review
 - access by advisor – must be with party
 - Require confidentiality/prohibit dissemination?
 - Allow parties to submit written response?
 - Allow parties to submit rebuttal?

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CASE STUDY



Parties Review and Respond to
the Investigation Report



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CASE STUDY 

- Jacob and Olivia are given the opportunity to respond to the final investigation report.

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CASE STUDY 

Excerpt from Jacob's Response to the Investigation Report:

The report is missing key information about Olivia's behavior. It does not even mention my roommates, Tom and Ethan, who can't stand Olivia because she talks about sex so much. They don't hang out with us sometimes because of it and don't want her around our apartment. I told the investigator that, but the investigator chose to leave it out of the report.

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CASE STUDY 

Excerpt from Olivia's Response to the Investigation Report:

It is telling that Jacob's girlfriend would not respond to the investigator. This whole case is about her and her jealousy, so she doesn't want to face that.

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THE DECISION-MAKING PROCESS



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SESSION OVERVIEW

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- Decision-Making Process
- Weighing Evidence and Assessing Credibility
- Determination
- Case Study
- Sanctions and Remedies
- Notice of Determination
- Appeals



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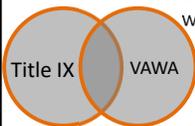
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DECISION-MAKING PROCESS

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- Must be prompt, fair and impartial
 - Timely completion
 - Timely notice of meetings
 - Consistent with policies
 - Conducted by officials with training and without conflict/bias



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DECISION-MAKING PROCESS 

- Objective evaluation of all relevant evidence
 - Inculpatory and exculpatory evidence
 - Credibility determinations may not be based on status as complainant, respondent, or witness
- Presumption of non-responsibility

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DECISION-MAKING PROCESS 

- What evidence will the decision-maker(s) consider?
 - Investigation report
 - Parties' response statements
 - Recordings
 - Live hearing (required under Title IX)
- NOTE: Whatever information is provided to the decision-maker(s) for adjudications or hearings must be shared with the parties
 - Title IX or VAWA

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LIVE HEARING 

- General requirements under Title IX
 - Must provide live hearing
 - Permit each party's advisor to ask the other party and witnesses "all relevant questions and follow-up questions"
 - If party does not have advisor, institution must provide one for cross-examination

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HEARING—RELEVANCY DETERMINATIONS 

- Decision-maker may hear arguments regarding relevancy of a question on the spot or may tell parties to reserve arguments for appeal (incorrect relevancy determination could be an alleged procedural error on appeal)
- Must allow question if relevant, even if misleading or assumes facts not in evidence
- Can establish rule that duplicative questions are not relevant
- Exclude questions with caution

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HEARING—CROSS-EXAMINATION 

- Party or witness who does not appear at the hearing
 - Cannot rely on any statements from a party or witness who does not submit to cross-examination
 - Failure to answer one question constitutes a failure to submit to cross-examination (unless question came from decision-maker)
 - Still applies even if disability or death is the reason the person did not submit to cross-examination
 - Statements that cannot be considered include statements in investigation report or any other source (police report, medical exam, text messages, witness accounts, etc.)

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HEARING—CROSS-EXAMINATION 

- School also cannot coerce unwilling participant
 - Be careful with any requirement that a student or employee cooperate with grievance process
 - Discipline for not attending hearing may constitute retaliation

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HEARING—OTHER PROCEDURAL RULES 

- May establish additional rules that apply equally to both parties
 - Cross-examination must be respectful, non-abusive, not intimidating
 - Limit evidence at hearing to evidence that was gathered or presented as part of the investigation (or otherwise prior to the hearing)
 - Whether investigator may be called as a witness
 - Process for making objections to the relevance of questions and evidence
 - Other procedures at the hearing
 - Opening statements by parties or advisors
 - Closing statements by parties or advisors
 - Reasonable time limitations on hearings

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HEARING—OTHER PROCEDURAL RULES 

- Some procedural rules are prohibited
 - Cannot prohibit a party from conferring with his or her advisor during the hearing
 - Cannot prohibit character evidence, lie detector test results, evidence that is unduly prejudicial, or evidence of prior bad acts
 - Decision-maker may determine how much weight to give such evidence

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INVESTIGATOR ROLE IN DECISION-MAKING PROCESS 

- If role is investigator (and not adjudicator), role in adjudication should be limited
 - May be asked to review parties' responses to investigation report
 - Avoid communication with adjudicators, if at all possible (outside of the hearing process)
 - If communication with adjudicators outside the hearing process is necessary, work with Title IX Coordinator to provide the parties with access to additional information
 - May be called as witness at hearing?



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CASE STUDY

Live Hearing

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CASE STUDY

- At the hearing:
 - Charlotte, Tom, and Ethan did not participate in the hearing.
 - The hearing panel heard from the parties and all of the witnesses in the investigation report. Their testimony was generally consistent with the accounts they provided to the investigator and no additional information was provided, except for the following:
 - When asked at the hearing if it is possible that Olivia was wearing shorts and a bralette in the picture she sent to Jacob in late February, as she reported to the investigator, Jacob responded, "Yeah, I guess that's possible. It looked like a bra and I suppose it could have been really short shorts. I mean, don't like know the names of different types of women's undergarments. I just know she wasn't wearing much."
 - When asked at the hearing how he and Olivia ended up having dinner together with friends and being at the party together on April 10, Jacob stated that he didn't think Olivia was coming to the dinner and once they were all together they "just continued on to the party."

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WEIGHING EVIDENCE AND ASSESSING CREDIBILITY



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EVIDENTIARY ISSUES



- Always consider relevance and weight of evidence
- Types of evidence
 - Statements from parties and witnesses contained in investigation report
 - Live testimony and cross-examination
 - Character evidence
 - Physical evidence (texts, video, security access information, etc.)
 - Medical information (including mental health records)
 - Only with waiver/consent
 - Consider need for expert guidance in understanding and interpreting information
 - Polygraph/lie detector test results



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EVIDENTIARY ISSUES



- Complainant's sexual behavior or predisposition are not relevant unless:
 - Such questions and evidence are offered to prove someone other than respondent committed the alleged conduct or
 - The questions and evidence concern specific incidents of the complainant's prior sexual behavior with respect to the respondent and are offered to prove consent
 - The mere fact of a current or previous consensual dating or sexual relationship between the two parties does not itself imply consent or preclude a finding of sexual violence



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EVIDENTIARY ISSUES



- Prior bad acts/pattern evidence:
 - Allegation v. policy violation
 - Determine relevance and weight of evidence
 - May be relevant in fact-finding *and/or* sanction determination
 - Consider timing and process for requesting and providing access to the adjudicators and the parties (Title IX vs. VAWA)



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EVIDENTIARY ISSUES



Weighing Evidence / Assessing Credibility:

- Is information the witness provided accurate based on other evidence?
- How did the witness learn the facts?
- How well did he or she recall facts?
- How forthcoming was the witness?
- Did the witness seem honest and sincere? (*caution*)
- What are the possible motives for being less than truthful?
- What is the witness's relationship to the complainant and respondent?
- Are there other factors that bear on the believability of the witness?



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DEALING WITH INCULPATORY & EXCULPATORY EVIDENCE



- Consider all relevant evidence provided
 - Do not cherry-pick evidence that supports your conclusion
 - Do not ignore contrary evidence
- If evidence supporting both conclusions exists:
 - Is some evidence stronger than other evidence? If so, why?
 - Do you find one party more credible than the other party? If so, why?
 - If a witness's statement is contrary to your conclusion, why do you not believe the witness?

Lathrop GPM,  251

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DETERMINATION





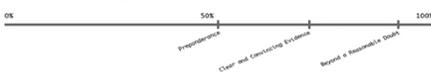
- Finding re: policy violation
 - Sexual contact/harassment
 - Consent/unwelcomed
- Sanctions
- Remedies
- Written Notice

Lathrop GPM,  252

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DETERMINATION—FINDING 

- Standard of proof
 - “Preponderance of the evidence” or “clear and convincing” (not “beyond a reasonable doubt”)
 - Use same standard of proof for all formal complaints of sexual harassment
 - Burden is on the school to gather sufficient evidence to reach a fair, impartial determination
 - Presumption of non-responsibility that would need to be overcome
 - Decision-maker(s) must ultimately decide whether it was more likely than not that a policy violation has occurred (preponderance) or whether it is highly probable that a policy violation has occurred



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DETERMINATION—FINDING 

- Preponderance:
 - Must decide either that:
 - It was “more likely than not” that the Respondent violated the institution’s sexual misconduct policy OR
 - That there was insufficient evidence to establish that it was “more likely than not” that the Respondent violated the institution’s sexual misconduct policy
- Clear and convincing:
 - Must decide either that:
 - It was “highly probable” that the Respondent violated the institution’s misconduct policy OR
 - That there was insufficient evidence to establish that it was “highly probable” that the Respondent violated the institution’s sexual misconduct policy



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CASE STUDY 



Relevant Definitions

Lathrop GPM  255

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CASE STUDY – DEFINITION OF TITLE IX SEXUAL HARASSMENT 

Title IX Hostile Environment Harassment is 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 University's education program or activity.

For the purposes of the definition of Title IX Hostile Environment Harassment, reasonable person means a reasonable person in the shoes of the complainant, considering the ages, abilities, and relative positions of authority of the individuals involved in an incident.

Lathrop GPM,  256

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CASE STUDY – DEFINITION OF TITLE IX SEXUAL HARASSMENT 

For the purposes of the Title IX Sexual Harassment definition, conduct is unwelcome when the individual did not request or invite and regarded it as undesirable or offensive. The fact that an individual may have accepted the conduct does not mean that they welcomed it. On the other hand, if an individual actively participates in conduct and gives no indication that they object, then the evidence generally will not support a conclusion that the conduct was unwelcome. That a person welcomes some conduct does not necessarily mean that person welcomes other conduct. Similarly, that a person willingly participates in conduct on one occasion does not necessarily mean that the same conduct is welcome on a subsequent occasion. Whether conduct was unwelcome may be determined based on the context and circumstances of the encounter or incident.

Lathrop GPM,  257

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CASE STUDY – DEFINITION OF TITLE IX SEXUAL HARASSMENT 

The circumstances that may be considered when determining whether conduct was so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the College's education program or activity include, but are not limited to:

- The frequency of the conduct;
- The nature and severity of the conduct;
- Whether the conduct was physically threatening;
- The effect of the conduct on the victim's mental or emotional state;
- Whether the conduct was directed at more than one person;
- Whether the conduct arose in the context of other discriminatory conduct;
- Whether the conduct was merely a discourteous, rude, or insensitive statement;
- Whether the speech or conduct deserves the protection of academic freedom.

Lathrop GPM,  258

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CASE STUDY – DEFINITION OF NON-TITLE IX SEXUAL HARASSMENT 

As used in this Policy, Non-Title IX Sexual Harassment is unwelcome conduct of a sexual nature or based on sex, including sexual advances, requests for sexual favors, offensive comments or other conduct based on sex, sexually motivated physical contact, or other verbal, nonverbal, or physical conduct or communication of a sexual nature, when:

...

- such conduct has the purpose or effect of substantially and unreasonably interfering with an individual’s employment or education, or of creating an intimidating, hostile, or offensive employment or educational environment (“hostile environment” harassment).

Lathrop GPM, 259

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CASE STUDY – DEFINITION OF NON-TITLE IX SEXUAL HARASSMENT 

For the purposes of the Title IX Sexual Harassment definition, conduct is unwelcome when the individual did not request or invite and regarded it as undesirable or offensive. The fact that an individual may have accepted the conduct does not mean that they welcomed it. On the other hand, if an individual actively participates in conduct and gives no indication that they object, then the evidence generally will not support a conclusion that the conduct was unwelcome. That a person welcomes some conduct does not necessarily mean that person welcomes other conduct. Similarly, that a person willingly participates in conduct on one occasion does not necessarily mean that the same conduct is welcome on a subsequent occasion. Whether conduct was unwelcome may be determined based on the context and circumstances of the encounter or incident.

Non-Title IX Sexual Harassment does not include conduct covered under the definition of Title IX Sexual Harassment.

Lathrop GPM, 260

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CASE STUDY—DEFINITION OF SEXUAL ASSAULT 

Sexual assault is any actual or attempted sexual contact, including penetration, with another person without that person’s consent. Sexual contact includes intentional contact by the accused with the victim’s genital area, groin, inner thigh, buttocks, or breasts, whether clothed or unclothed; touching another with any of these body parts, whether clothed or unclothed; coerced touching by the victim of another’s genital area, groin, inner thigh, buttocks, or breasts, whether clothed or unclothed; or forcing another to touch him/herself with or on any of these body parts.

Lathrop GPM, 261

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CASE STUDY—DEFINITION OF CONSENT 

Consent means words or overt actions by a person clearly and affirmatively communicating a freely-given present agreement to perform a particular sexual act. Words or overt actions clearly communicate consent when a reasonable person in the circumstances would believe those words or actions indicate a willingness to participate in a mutually agreed-upon sexual activity. Although consent does not need to be verbal, verbal communication is the most reliable form of asking for and obtaining consent. It is the responsibility of the person initiating the specific sexual activity to obtain consent for that activity.

Lathrop GPM,  262

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CASE STUDY—DEFINITION OF CONSENT 

The definition of consent is subject to the following:

- Consent can only be given if one is of legal age. The legal age of consent in this state is 16.
- Consent is a mutually understood and freely given "yes," not the absence of "no."
- Consent to one form of sexual activity cannot imply consent to other forms of sexual activity
- Consent can be withdrawn at any time. When consent is withdrawn, the sexual activity for which consent was initially provided must stop.
- Silence or failing to resist does not imply consent.
- Previous relationships or previous consent does not imply consent to future sexual acts.
- An existing sexual, romantic, or marital relationship does not imply consent.
- Prior sexual activity with other individuals does not imply consent.
- Consent cannot be procured, expressly or implicitly, by use of force, intimidation, threats, or coercion, as that term is defined below.
- An individual known to be – or who should be known to be – incapacitated, as defined by the Policy, cannot consent to sexual activity initiated by another individual.
- Use of alcohol or other drugs will never function to excuse behavior that violates this Policy.

Lathrop GPM,  263

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CASE STUDY—DEFINITION OF INCAPACITATION 

A person who is incapacitated cannot give valid consent to sexual contact initiated by another individual. Incapacitation means the inability to understand the fact, nature, or extent of the sexual situation. Incapacitation may result from mental or physical disability, sleep, unconsciousness, involuntary physical restraint, or from the influence of drugs or alcohol. With respect to incapacitation due to the influence of drugs or alcohol, incapacitation requires more than being under the influence of drugs or alcohol; a person is not incapacitated just because they have been drinking or using drugs.

Lathrop GPM,  264

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CASE STUDY—DEFINITION OF INCAPACITATION 

Where drugs and/or alcohol are involved, incapacitation is determined based on the facts and circumstances of the particular situation looking at whether the individual was able to understand the fact, nature, or extent of the sexual situation, whether the individual was able to communicate decisions regarding consent, nonconsent, or the withdrawal of consent, and whether such condition was known or reasonably known to the respondent or a reasonable person in respondent’s position. Use of drugs or alcohol by the respondent is not a defense against allegations of sexual misconduct.

Lathrop GPM,  265

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CASE STUDY 



Determine Whether a Policy Violation Occurred and Rationale for your Decision

Lathrop GPM,  266

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DETERMINATION—SANCTIONS AND REMEDIES 

- Consider who will decide the sanctions and how
 - Consider limited role of Title IX Coordinator
- Any information provided to individual(s) who determine sanctions must also be provided to the parties
- Policy must list *all* possible sanctions and describe the range of remedies
- The list of sanctions must be specific, including the type and length of suspensions and any requirements that must be met for reinstatement



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**DETERMINATION—
SANCTIONS AND REMEDIES**



- Must treat complainants and respondents equitably by
 - Providing remedies to a complainant where a determination of responsibility for sexual harassment has been made
 - Remedies must be designed to restore or preserve equal access to the institution's education program or activity
 - May include the same individualized services as "supportive measures"
 - Do not need to be "non-disciplinary" or "non-punitive" and do not need to avoid burdening the respondent
 - Following grievance process that complies with regulations before imposing disciplinary sanctions or other actions that are not supportive measures
- Consider remedies for broader student population

Lathrop GPM,  268

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NOTICE OF DETERMINATION



- Identification of the allegations potentially constituting sexual harassment
- Procedural steps since complaint
 - Notices to the parties, interviews with parties and witnesses, site visits, methods used to gather other evidence, hearings held
- Findings of fact
- Conclusion regarding application of code of conduct to the facts
- Statement of and rationale for the result as to each allegation
 - Determination of responsibility
 - Any disciplinary sanctions imposed on respondent
 - Whether remedies will be provided to complainant
- Appeal information
- Simultaneous delivery to the parties
- Becomes final either the date the parties receive the written determination of the appeal or the date on which an appeal would no longer be timely

Lathrop GPM,  269

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APPEALS UNDER TITLE IX



- Must be offered to both parties
 - From a determination regarding responsibility
 - From a recipient's dismissal of a formal complaint or any allegations therein
- Required 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;
 - The Title IX Coordinator, investigator, or decision-maker had a conflict of interest or bias for or against complainants or respondents generally or the individual complainant or respondent that affected the outcome of the matter;
 - May offer an appeal equally to both parties on additional bases

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APPEALS UNDER TITLE IX 

- Requirements
 - Notify other party in writing when an appeal is filed
 - Appeal officer is different than Title IX Coordinator, investigator and decision-maker at hearing
 - No conflict of interest or bias
 - Give both parties reasonable, equal opportunity to submit written statement in support of, or challenging, the outcome
 - Written decision describing result of appeal and rationale
 - Simultaneous delivery of result to parties

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APPEALS UNDER VAWA 

- Not required, but if offered, must do so equally
- Transparency, equality, notice requirements from main process will apply to appeals
- Examples include:
 - Right to advisor
 - Notice of meetings
 - Access to information used by appeals panel/individual
 - Simultaneous notice of outcome

Lathrop GPM,  272

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Q & A 



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UPCOMING TRAININGS 

- 8/2/21: Annual Training for New Title IX Coordinators and Deputy Coordinators
- 8/3/21: Annual Training for Advanced Title IX Coordinators and Deputy Coordinators
- 8/4/21: Annual Title IX/VAWA Investigator Training

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ON DEMAND TRAININGS 

■ **Available on-demand:**

- Annual Training for New Title IX Coordinators and Deputy Coordinators
- Title IX/VAWA Investigator Training
- Annual Training for Advanced Title IX Coordinators and Deputy Coordinators
- Title IX/VAWA Hearing Panel Training
- Trauma-Informed Training for First Responders, Confidential Resources, and Campus Security
- Title IX/VAWA Appeal Officer Training
- VAWA Adjudicator Training
- Conducting a Grievance Process Under the New Title IX Regulations
- Title IX Update: Final Regulations

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2021 Title IX/VAWA Investigator Training

Handout 1

Complaint

On April 28, 2021, Jacob Jacobson made a complaint of sexual misconduct against Olivia Olive.

Sexual Misconduct Complaint Form

COMPLAINANT NAME: Jacob Jacobson

ADDRESS: 1234 Off-Campus Drive

DATE OF REPORT OF ALLEGED POLICY VIOLATION: April 28, 2021

RESPONDENT NAME: Olivia Olive

ADDRESS: 999 Dorm Room Lane

ALLEGATIONS:

All semester, Olivia has been hitting on me and making me uncomfortable. I tried to tell her I have a girlfriend, but she just kept flirting and talking about us hooking up.

Olivia sent me a Snapchat message with a picture of her in her underwear and asked me to send her something.

On April 10, 2021, at a party off-campus, Olivia was getting handsy with me. I was not okay with that. I decided to go back to my place and Olivia came with me. I blacked out, but Olivia told me that she gave me a blow job. I was too drunk to consent.

2021 Title IX/VAWA Investigator Training

Handout 2

Excerpt of Notice of Allegations

On April 28, 2021, a formal complaint of alleged sexual misconduct was submitted by Jacob Jacobson to the Title IX Coordinator alleging conduct by Olivia Olive. In the formal complaint, Jacob alleged that:

- Throughout the Spring 2021 semester, in various locations, including her dorm room, Olivia engaged in unwelcome conduct on the basis of sex by making sexual propositions to Jacob.
- In February 2021, from her dorm room, Olivia engaged in unwelcome conduct on the basis of sex by sending Jacob sexually suggestive Snapchat messages.
- On April 10, 2021, at an off-campus apartment owned by the University on Third Street, Olivia engaged in unwelcome conduct on the basis of sex by touching Jacob.
- On April 10, 2021, at Jacob's off-campus apartment, Olivia engaged in non-consensual sexual penetration with Jacob.

2021 Title IX/VAWA Investigator Training

Handout 3

Excerpt of Amended Notice of Allegations

On April 28, 2021, a formal complaint of alleged sexual misconduct was submitted by Jacob Jacobson to the Title IX Coordinator alleging conduct by Olivia Olive. In the formal complaint, Jacob alleged that:

- Throughout the Spring 2021 semester, in various on-campus locations, including her dorm room and a coffee shop in February 2021, Olivia engaged in unwelcome conduct on the basis of sex by making sexual propositions to Jacob.
- In February 2021, in various on-campus locations, including her dorm room, Olivia engaged in unwelcome conduct on the basis of sex by touching Jacob.
- In late February 2021, from her dorm room, Olivia engaged in unwelcome conduct on the basis of sex by sending Jacob sexually suggestive Snapchat messages.
- On March 12, 2021, through text messages, Olivia engaged in unwelcome conduct on the basis of sex by making sexual propositions to Jacob.
- In late March 2021, from her dorm room, Olivia engaged in unwelcome conduct on the basis of sex by sending Jacob sexually suggestive Snapchat messages.
- In late March 2021, in a friend's dorm room, Olivia engaged in unwelcome conduct on the basis of sex by making a sexual proposition to Jacob and touching Jacob.
- In early April 2021, through Snapchat messages, Olivia engaged in unwelcome conduct on the basis of sex by making a sexual proposition to Jacob.
- On April 10, 2021, at an off-campus apartment owned by the University on Third Street, Olivia engaged in non-consensual sexual contact with Jacob.
- On April 10, 2021, at Jacob's off-campus apartment, Olivia engaged in non-consensual sexual penetration with Jacob.

2021 Title IX/VAWA Investigator Training

Handout 4

Definition of Title IX Hostile Environment Sexual Harassment

Title IX Hostile Environment Harassment is 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 University's education program or activity.

For the purposes of the definition of Title IX Hostile Environment Harassment, reasonable person means a reasonable person in the shoes of the complainant, considering the ages, abilities, and relative positions of authority of the individuals involved in an incident.

For the purposes of the Title IX Sexual Harassment definition, conduct is unwelcome when the individual did not request or invite and regarded it as undesirable or offensive. The fact that an individual may have accepted the conduct does not mean that they welcomed it. On the other hand, if an individual actively participates in conduct and gives no indication that they object, then the evidence generally will not support a conclusion that the conduct was unwelcome. That a person welcomes some conduct does not necessarily mean that person welcomes other conduct. Similarly, that a person willingly participates in conduct on one occasion does not necessarily mean that the same conduct is welcome on a subsequent occasion. Whether conduct was unwelcome may be determined based on the context and circumstances of the encounter or incident.

The circumstances that may be considered when determining whether conduct was so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the College's education program or activity include, but are not limited to:

- The frequency of the conduct;
- The nature and severity of the conduct;
- Whether the conduct was physically threatening;
- The effect of the conduct on the victim's mental or emotional state;
- Whether the conduct was directed at more than one person;
- Whether the conduct arose in the context of other discriminatory conduct;
- Whether the conduct was merely a discourteous, rude, or insensitive statement;
- Whether the speech or conduct deserves the protection of academic freedom.

Definition of Non-Title IX Sexual Harassment

As used in this Policy, Non-Title IX Sexual Harassment is unwelcome conduct of a sexual nature or based on sex, including sexual advances, requests for sexual favors, offensive comments or other conduct based on sex, sexually motivated physical contact, or other verbal, nonverbal, or physical conduct or communication of a sexual nature, when:

...

- such conduct has the purpose or effect of substantially and unreasonably interfering with an individual's employment or education, or of creating an intimidating, hostile, or offensive employment or educational environment (“hostile environment” harassment).

For the purposes of the Title IX Sexual Harassment definition, conduct is unwelcome when the individual did not request or invite and regarded it as undesirable or offensive. The fact that an individual may have accepted the conduct does not mean that they welcomed it. On the other hand, if an individual actively participates in conduct and gives no indication that they object, then the evidence generally will not support a conclusion that the conduct was unwelcome. That a person welcomes some conduct does not necessarily mean that person welcomes other conduct. Similarly, that a person willingly participates in conduct on one occasion does not necessarily mean that the same conduct is welcome on a subsequent occasion. Whether conduct was unwelcome may be determined based on the context and circumstances of the encounter or incident.

Non-Title IX Sexual Harassment does not include conduct covered under the definition of Title IX Sexual Harassment.

Definition of Sexual Assault

Sexual assault is any actual or attempted sexual contact, including penetration, with another person without that person’s consent. Sexual contact includes intentional contact by the accused with the victim’s genital area, groin, inner thigh, buttocks, or breasts, whether clothed or unclothed; touching another with any of these body parts, whether clothed or unclothed; coerced touching by the victim of another’s genital area, groin, inner thigh, buttocks, or breasts, whether clothed or unclothed; or forcing another to touch him/herself with or on any of these body parts.

Definition of Consent

Consent means words or overt actions by a person clearly and affirmatively communicating a freely given present agreement to perform a particular sexual act. Words or overt actions clearly communicate consent when a reasonable person in the circumstances would believe those words or actions indicate a willingness to participate in a mutually agreed-upon sexual activity.

Although consent does not need to be verbal, verbal communication is the most reliable form of asking for and obtaining consent. It is the responsibility of the person initiating the specific sexual activity to obtain consent for that activity.

The definition of consent is subject to the following:

- Consent can only be given if one is of legal age. The legal age of consent in this state is 16.
- Consent is a mutually understood and freely given “yes,” not the absence of “no.”
- Consent to one form of sexual activity cannot imply consent to other forms of sexual activity
- Consent can be withdrawn at any time. When consent is withdrawn, the sexual activity for which consent was initially provided must stop.
- Silence or failing to resist does not imply consent.
- Previous relationships or previous consent does not imply consent to future sexual acts.
- An existing sexual, romantic, or marital relationship does not imply consent.
- Prior sexual activity with other individuals does not imply consent.
- Consent cannot be procured, expressly or implicitly, by use of force, intimidation, threats, or **coercion**, as that term is defined below.
- An individual known to be – or who should be known to be – **incapacitated**, as defined by the Policy, cannot consent to sexual activity initiated by another individual.
- Use of alcohol or other drugs will never function to excuse behavior that violates this Policy.

Definition of Incapacitation

A person who is **incapacitated** cannot give valid consent to sexual contact initiated by another individual. Incapacitation means the inability to understand the fact, nature, or extent of the sexual situation. Incapacitation may result from mental or physical disability, sleep, unconsciousness, involuntary physical restraint, or from the influence of drugs or alcohol. With respect to incapacitation due to the influence of drugs or alcohol, incapacitation requires more than being under the influence of drugs or alcohol; a person is not incapacitated just because they have been drinking or using drugs.

Where drugs and/or alcohol are involved, incapacitation is determined based on the facts and circumstances of the particular situation looking at whether the individual was able to understand the fact, nature, or extent of the sexual situation, whether the individual was able to communicate decisions regarding consent, nonconsent, or the withdrawal of consent, and whether such condition was known or reasonably known to the respondent or a reasonable person in respondent’s position. Use of drugs or alcohol by the respondent is not a defense against allegations of sexual misconduct.

2021 Title IX/VAWA Investigator Training

Handout 5

Excerpts from Party Statements in Response to the Directly Related Evidence

Excerpt from Jacob's Response to the Directly Related Evidence

I will let my statements in my interviews speak for themselves. I just want to say that Olivia submitted some text messages, but most of our messages were over Snapchat and we don't have copies of those. The text messages don't tell the whole story, which Olivia tries to take advantage of to act like I was into her when I wasn't. I wish I had the Snapchat messages, but I of course didn't know I'd need to save them for a Title IX in the future.

Excerpt from Olivia's Response to the Directly Related Evidence

Jacob submitted some text messages that he sent to his girlfriend. Those messages show that Charlotte was jealous of me and my friendship with Jacob. He never said things were awkward to me, that was just Charlotte trying to get him to stop hanging out with me.

In Jacob's transcript, Jacob said that he does not hook up with people he is not in a relationship with, but I know that he messed around with Taylor Tayson last year when he and his girlfriend were on a break even though he wasn't dating Taylor.

2021 Title IX/VAWA Investigator Training

Handout 6

Investigation Report Excerpt:

Background

The parties are both in their junior year at the University.

Jacob's Account

Jacob stated that he and Olivia are part of the same group of friends. When asked how frequently they spend time together, Jacob stated that during fall 2020, they would hang out as part of a group probably two to three times a week. Jacob stated that after winter break, they continued to hang out in a group and also sometimes hung out just the two of them.

Jacob stated that he has a girlfriend that he started dating his junior year of high school. Jacob stated that she goes to school out of state, and they have been dating long distance the past several years. Jacob stated that he and his girlfriend broke up on April 10, 2021 but got back together about a week later.

Olivia's Account

Olivia stated that she and Jacob have a lot of mutual friends and they would often hang out in the same group. Olivia stated that in spring 2021, they still hung out as a group, but also spent time just the two of them.

Alleged Sexual Harassment During Spring 2021

Jacob's Account

Jacob stated that he and Olivia were just friends but starting when they came back to campus in January 2021, Olivia started hitting on him and suggesting that they hook up. When asked for more details of these conversations, Jacob stated that Olivia would bring up his long-distance girlfriend and talk about how that must be tough and that he “has needs” and she “could help [him] out if [he] wanted.” Jacob stated that it was “weird” and made him “uncomfortable.”

Jacob also stated that Olivia would send him sexual messages. Jacob stated that they started in January 2021 and continued throughout spring 2021 until he brought his complaint. When asked for more details about the messages, Jacob stated that sometimes it was photos. Jacob provided several examples (discussed later in this report). Jacob also stated “I can’t remember too many other specifics. It was mostly over Snapchat and I never saved any of them. I tried to just ignore it, I mean, I have a girlfriend and I just didn’t want to encourage that kind of thing from Olivia.”

Jacob stated that Olivia is “a really sexual person” and she often talks about sex with their friends. Jacob stated that sometimes she can be “too much.”

Olivia’s Account

When asked about her relationship with Jacob in spring 2021, Olivia stated that they were both flirty with each other. Olivia stated that she knew that Jacob had a girlfriend, but it seemed like he liked having someone around that he could flirt with while his girlfriend was away at school. Olivia stated that Jacob was often not happy in his relationship and she provided him with support. Olivia stated, “we liked each other and we flirted, but it wasn’t like a real thing when he had a girlfriend.” Olivia stated that Jacob never told her that the flirting made him uncomfortable.

When asked for examples of flirting, Olivia stated that at one point “we were just chatting and I asked what kind of stuff he liked in bed. And like that wasn’t unusual for us, we had a pretty open relationship and talked about a lot of stuff.” Olivia stated that Jacob told her some things he liked, and she said that it must be hard dealing with the distance from his girlfriend. Olivia stated that Jacob responded that “it didn’t matter for some stuff, like oral, because his girlfriend wasn’t into that anyway.” Olivia stated that she joked that she could help Jacob out with that one and they both laughed. When asked how Jacob responded, Olivia stated “I think he said something like, ‘if it weren’t for my girlfriend, might take you up on that one.’”¹

When asked about Jacob’s account that Olivia would talk about her and Jacob hooking up, Olivia stated “again, I knew he had a girlfriend, and we just talked about it sometimes. It was mostly a joke.”

When asked whether any of the flirting between her and Jacob took place over Snapchat, Olivia stated “yeah, and text message too.” Olivia stated that the messages were “both of us, he would message me too, sometimes he started it.”² When asked for examples of the messages, Olivia

¹ When asked about Olivia’s account of the conversation about his preferences in bed, Jacob stated “yeah, she asked me one time” and that this was one of the times that Olivia talked about helping him out with his needs. Jacob stated that he thought it was a little weird for her to ask, but he responded, “typical stuff, you know.” Jacob stated that Olivia asked, “do you like getting head?” Jacob stated that he responded, “yeah, I don’t really get that though, my girlfriend is not into that.” Jacob stated that Olivia then said something about being able to help him out. When asked about Olivia’s account that he said that if it weren’t for his girlfriend, he might take her up on the offer to help him out with that, Jacob stated “no, I think I sort of laughed and then tried to change the subject. I would not have said that.”

² When asked about Olivia’s account that Jacob would flirt with her over Snapchat and text message and would sometimes initiate the flirting, Jacob stated “that’s pretty general, I mean, without like specific messages. I don’t think I ever started it and I would just try to be friendly when I responded, trying to like move the conversation away from sex or whatever she was talking about.”

stated that in January or February, she was updating her Tinder profile and Jacob helped her pick out a profile picture. Olivia stated that Jacob “told me to use a picture that showed off my body.”³ When asked if she had copies of those messages, Olivia stated that she did not, and she thought it took place over Snapchat. When asked if she had any other examples, Olivia stated “I’d have to think, nothing is coming to mind, but, like, it was pretty common for us to flirt.”

When asked how often she talks about sex with her friends, Olivia stated “pretty frequently, I guess. I’m a pretty open person and our friends talk about sex and make jokes sometimes. But no one is ever uncomfortable – we would stop if that happened.”

a. February Coffee Shop Comments

Jacob’s Account

Jacob stated that while he and Olivia were at a coffee shop on campus in February 2021, Olivia asked him how he was doing being away from his girlfriend. Jacob stated that he said something like “it sucks, but I’m pretty used to it.” Jacob stated that Olivia then brought up him and Olivia “hooking up” again. Jacob stated that Olivia told him that she wasn’t looking for anything serious, but that she could be an occasional hookup for him while he was in a long-distance relationship. Jacob stated that he did not want that type of relationship with Olivia. Jacob also stated “I wouldn’t cheat on my girlfriend and it just made me feel weird. Like, I didn’t understand why she would say stuff like that.” When asked how he responded to Olivia, Jacob stated that he “sort of laughed it off.” Jacob also stated that he told her that he’s found other ways to survive the long distance.

Olivia’s Account

When asked if she recalled a conversation with Jacob in February 2021 in an on-campus coffee shop, Olivia stated “not sure, we hung out in a coffee shop a lot, doing homework and stuff. I don’t know what specifically he is talking about.” When told of Jacob’s account of the February 2021 coffee shop conversation, Olivia stated that she did not recall that specific discussion, but she and Jacob did sometimes joke about how she could help him survive the long-distance relationship. When asked what she meant by ways she can help him, Olivia stated “Like, we joked I could sub-in for his girlfriend.” When asked how Jacob responded, Olivia stated that Jacob would laugh during the conversations and he never told her it made him uncomfortable or asked her to stop.

³ When asked about Olivia’s account that he encouraged her to pick a Tinder picture that showed off her body, Jacob stated “yeah, she was asking for a guy’s perspective and like, that’s what a guy is looking for on Tinder.”

b. February Physical Conduct

Jacob's Account

Jacob stated that following the coffee shop conversation, Olivia got more and more touchy over the next several weeks. When asked what he meant by touchy, Jacob stated Olivia would touch his arm or his back. Jacob also stated that Olivia frequently gave him hugs or put her arm around him. Jacob stated that this occurred when they hung out in Olivia's dorm room together and when they hung out around campus with their mutual friends. When asked how he would react when Olivia would touch his arm or back or give him a hug, Jacob stated that he never reciprocated, but he "sort of just let her do it."

Jacob provided the following text message exchange with his girlfriend, Charlotte, dated February 11, which he stated show that his girlfriend was aware that Olivia made him uncomfortable at times.

Charlotte: wud?
Jacob: I'm watching a movie in Olivia's room
Charlotte: with who?
Jacob: Just me and her
Charlotte: y are u alone w her. u said she was making things awk
Jacob: i know. Felt weird saying no, I'm gonna leave right after the movie

Olivia's Account

When asked if she ever had physical contact with Jacob, Olivia stated that she is a "touchy person" and she does like to touch and hug her friends pretty frequently. When asked if she would include Jacob as one of those friends, Olivia stated "yes." When asked if Jacob ever initiated that sort of contact, Olivia stated "probably at some point, yes. But I think it was more me initiating. He would always like hug back or whatever and he never like avoided it or was uncomfortable."

In her written response to the directly-related evidence, Olivia stated that the above text messages between Jacob and Charlotte show that Charlotte was jealous of her and the friendship she had with Jacob. Olivia stated, "he never said things were awkward to me, that was just Charlotte trying to get him to stop hanging out with me."

Callie's Account⁴

When asked if she observed physical contact between Olivia and Jacob, Callie stated “yeah.” When asked to describe the contact, Callie stated that Olivia would put her arm around Jacob or sit really close to Jacob. When asked who initiated the contact, Callie stated “I think it was more Olivia.” When asked how Jacob would react to such contact, Callie stated Jacob would not really react much, “but he didn’t look uncomfortable.” Callie stated, “I never like saw him push Olivia away or try to stop it. I don’t really think it bothered him, I mean, they were friends.”

c. Late February Undergarment Photo

Jacob's Account

Jacob stated that in late February, Olivia sent him a picture over Snapchat of herself in her underwear getting ready to meet up with their friends for dinner. Jacob stated that the photo had the caption “hbu?” When asked what that meant, Jacob stated “how about you?” Jacob stated that Olivia was asking him to send a similar photo. Jacob stated that he responded with an emoji of a person with their arms crossed in an X formation in front of them. Jacob sent the investigator the following image of the emoji: 🙄 When asked what he meant by that response, Jacob stated, “I wanted her to get the message that she had like, crossed a line and that I wanted her to stop, but I wanted to do it without making things awkward between us.” Jacob stated that Olivia followed up several times about him sending her a photo, but he never did.

Olivia's Account

When asked about Jacob’s account that she sent him a photo of her in her underwear in February, Olivia stated “not my underwear, but I did send him one of me in a new bralette I just bought and like, a pair of shorts. But that was after he had been like, telling me I looked hot in some outfits, so that’s why I sent him that.” When asked for more details about Jacob telling her she looked hot, Olivia provided a copy of the following text message exchange:

Olivia: Going to the party at Sig Pi tonight? I think I’m wearing that red skirt... 😊
Jacob: 👉👉👉👉
Jacob: not sure I’ll be off work till late. sry I’m missing out

When asked to explain how she interpreted Jacob’s message, Olivia stated that Jacob was saying that she looked hot in that outfit and he was sorry to miss out. Olivia stated, “So that’s not like,

⁴ Callie stated that she is friends with both Olivia and Jacob and frequently spends time with both of them in a group.

telling me to stop, telling me he doesn't like it."⁵ Olivia stated that a few days after that, she sent the picture of her in her bralette and shorts. When asked about Jacob's account that she asked for a photo in return multiple times, Olivia stated "I think I asked once. I don't remember asking more than once." When asked how Jacob responded, Olivia stated "I think he just sent an emoji or GIF." When Olivia was shown the picture of the emoji that Jacob said he sent in response to the photo, Olivia said, "Yeah, I think that looks right." When asked how she interpreted Jacob's response, Olivia stated, "I interpreted that he was just saying that he wasn't going to send a picture in response."

d. March 12 Hookup Messages

Jacob's Account

Jacob stated that he received text messages on March 12 from Olivia "talking about how [his] girlfriend would never find out" if they "hooked up." Jacob provided screenshots of the following text messages:

Jacob: Today sux
Olivia: y?
Jacob: stressed af
Olivia: if only there was a way i could help with that 😊
Jacob: lol we still have that gf issue 😊
Olivia: meh she'd never find out
you'd be less cranky if you got some once in a while 🤔
Jacob: yeah until she finds out and shit hits the fan
Olivia: you say that but how would she even find out???
Jacob: Lol. too risky
and it would be super weird cuz we're friends 🤔🤔
Olivia: 🙄
Jacob: haha yeah it's not gonna happen

Jacob stated that he tried to be clear with Olivia in this exchange that he was not interested in doing anything to cheat on his girlfriend, but also wanted to stay friends with Olivia, "so I was trying to keep it funny, like joking, but also like, nope, not happening."

⁵ When asked about sending Olivia these text messages, Jacob stated "she's comparing telling a friend they look hot in a skirt with like, sending a picture where she's half-naked. We were friends, sometimes I complimented her looks, but it's insane to say that meant that I wanted her to send me pictures of her in her underwear."

Olivia's Account

When asked about the March 12 text messages about Jacob's girlfriend finding out, Olivia stated that over time they kept flirting and "it started to seem like maybe Jacob might actually want to hook up, but he was worried about his girlfriend." When asked what led her to the conclusion that Jacob might want to hook up, Olivia stated, "we'd just been flirting and joking about it for so long and all he ever said was 'my girlfriend, my girlfriend, my girlfriend,' but like, he still flirted, still sent me stuff like, saying I was hot and stuff." Olivia also stated "I know it sounds bad that like, I joked about getting with a guy with a girlfriend, but they [Jacob and his girlfriend] really weren't happy and it seemed like Jacob was looking for a way out. So I just tried to help him feel like it was okay if he wanted to."⁶ Olivia stated, "I never ever would have sent him any of this stuff if I thought he wasn't into it."

e. Late March Shoulders and Legs Photos

Jacob's Account

When asked if he recalled any other Snapchat messages, Jacob stated that another time in late March, he walked Olivia home after a party. Jacob stated that as he was walking from Olivia's room to his apartment, she sent him two pictures. Jacob stated that the first was a picture of Olivia's face and shoulders and "you couldn't see any clothes, so like, the idea was that she was naked." Jacob stated that the next photo was a picture of her legs "again, I think, trying to like show that she was naked, or wanted me to think she was naked." When asked if he responded, Jacob stated "no."

Olivia's Account

When asked about Jacob's account of sending him the picture of her face and shoulders and the picture of her legs, Olivia stated "I don't remember that, I might have, like as a joke. I don't have a specific memory of doing that."

f. Lap Sitting Incident

Jacob's Account

Jacob stated that one time in late March, they were in their friend Callie's dorm room. Jacob stated that he was sitting on a futon with one of their friends, Liam, and Callie. Jacob stated that Olivia had been sitting on Callie's bed, but she eventually got up and came over to the futon.

⁶ When asked about Olivia's account that Jacob always responded that he had a girlfriend and did not ever tell Olivia to stop, Jacob stated "again, I was trying not to make an awkward situation. We were friends, we had a lot of the same friends, telling her I had a girlfriend should be enough for her to get the message that I didn't want her. And I told her it would be weird since we were friends."

Jacob stated that “Olivia said something like “you seem tense.” Jacob stated that Olivia then “sat in my lap” and “kinda whispered in my ear, like, ‘don’t forget about my offer.’” When asked to describe her position in his lap, Jacob stated that Olivia sat “sort of sideways across [his] lap” and had her arms around his shoulders. When asked what happened next, Jacob stated that he said he needed to get up and then made an excuse to leave the dorm not long after that.

Olivia’s Account

When asked about Jacob’s account of her sitting in his lap in Callie’s dorm room and whispering in her ear “don’t forget about my offer,” Olivia stated “I might have, I don’t remember that, but it sounds like something I might have done, just, you know, joking around”

Liam’s Account⁷

When asked if he ever observed physical contact between Olivia and Jacob, Liam stated yes and that Olivia was often touchy with Jacob, as well as other people in the friend group. Liam stated that one time, they were in their friend Callie’s dorm room and Olivia “just randomly sat in Jacob’s lap.” Liam stated, “Jacob’s eyes got kind of big and then he sort of made an excuse to get up right away, like he needed to go to the bathroom or something, and then he did not sit back down after that.”

Callie’s Account

When asked if she recalled Olivia sitting in Jacob’s lap in Callie’s dorm room, Callie stated “I don’t think so, I don’t remember that.”

g. Bridgerton Message

Jacob’s Account

Jacob stated that one time, probably in early April, Olivia sent him a message asking if he had been watching the show Bridgerton. Jacob stated that he replied that he had watched it while video chatting with his girlfriend. Jacob stated that Olivia then sent him a message saying something like “The wedding night scene in episode 5, so hot. I was imagining that was us lol.” Jacob stated that there is a sex scene during that episode that Olivia was referring to. Jacob stated that Olivia’s message took things too far. When asked what he meant by taking things too far, Jacob stated “like I said before, she had been hitting on me and stuff, like joking about hooking up, but this was a new level. Like actually saying she was imagining us having sex.” Jacob stated that he responded to Olivia’s message saying something like “AWK” and did not

⁷ Liam stated that he is friends with both Olivia and Jacob. Liam stated he is “probably a bit closer to Jacob,” but he spends time frequently with both Olivia and Jacob.

message her again for several days after that. When asked what that message meant, Jacob stated “it means awkward.”

Olivia’s Account

When asked about Jacob’s account of the Snapchat messages about Bridgerton, including Jacob’s account that Olivia said she imagined that they were having sex, Olivia stated “I don’t remember, I might have said that. Like, still in the like joking sense that look what we could do, you know, not like serious.” When asked about Jacob’s account that he responded to the message by saying it was awkward, Olivia stated “he did message me at one point saying something about things being weird or awkward cause we were friends, but I don’t remember what it was about.” When asked about Jacob’s account that he did not message her for several days after that, Olivia stated “I don’t know, sometimes we would go a few days without talking. It wasn’t because we were mad or anything, just like, when we were busy.”⁸

Party on April 10, 2021

Jacob’s Account

Jacob stated that on April 10, his girlfriend broke up with him. Jacob stated that he was upset and decided to go to a party to take his mind off things. Jacob stated that the party was at a University apartment building off-campus.

Jacob stated that when he arrived around 10:00 pm, he played drinking games with some friends, including his roommate Ethan, and friend Henry. Jacob stated that he had more to drink than he meant to during the games and he started to feel really drunk. When asked how much he had to drink while playing drinking games, Jacob stated “I’m really not sure, probably at least 4 or 5 cups of beer, but I wasn’t keeping track.” When asked how long he played drinking games, Jacob stated, “about an hour, maybe an hour and a half.”

Jacob stated that at some point while he was playing drinking games, Olivia came into the room, came up to him, and asked him how he was doing. Jacob stated that while they were talking, she put her arm around him and put her hand in his far back pocket, touching his butt. When asked how he responded to Olivia putting her hand in his back pocket, Jacob stated, “Well, thankfully, my turn came up after a few seconds, so I just walked away.” When asked who else was in the room when Olivia put her hand in his back pocket, Jacob stated “I don’t remember, I didn’t really know them. I’m pretty sure Henry had left by that point and I’m not sure where Ethan was.” When asked if Olivia knew about the break-up between him and his girlfriend at this

⁸ When asked about Olivia’s account that they would sometimes go a few days without exchanging messages, Jacob stated “that’s true, but usually if we’re like in a conversation, like we were about Bridgerton, I wouldn’t just drop out. I’d say something before I stopped responding. And the last thing I said was that it was awkward.”

point, Jacob stated, “yeah, I told a group of friends at dinner that night before we went to the party and Olivia was there.”

When asked if he continued to drink after playing drinking games, Jacob stated that he stopped drinking for “an hour or so” and felt like he was “starting to sober up.” Jacob stated that he then took a few shots “at some point.” When asked what was in the shots, Jacob stated that he didn’t remember. When asked how many shots he thought he took, Jacob stated, “I couldn’t tell you.” When asked how he felt after he took the shots, Jacob stated, “At first I hardly felt anything, but like a half hour later, I started to like feel sick and by the time I left the party I was pretty much out of it and was starting to black out.”

Jacob stated that when he started to feel sick, he told Olivia he was going to go home and go to bed. Jacob stated that Olivia told him that he should not walk alone and offered to walk him back.

Jacob stated that he and Olivia left the party together. When asked what time it was when they left, Jacob stated “no idea, probably after midnight at least, maybe later.”

When asked to describe how he was feeling when he left the party with Olivia, Jacob stated that he was “out of it.” When asked to put himself on a scale of 1 (sober) to 10 (passed out) when he left the party, Jacob stated he was a 7 or 8.⁹ When asked why he said 7 or 8, Jacob stated that he was starting to black out. When asked if Olivia was drinking, Jacob stated that he assumed she was, but he did not recall. Jacob stated that Olivia did not seem drunk. When asked to put Olivia on the 1 (sober) to 10 (passed out) scale when they left the party, Jacob stated that Olivia was maybe a 2.

Jacob stated that he and Olivia walked to his off-campus apartment, but he does not remember much of the walk.¹⁰

Olivia’s Account

Olivia agreed that she was at a party with Jacob on April 10. Olivia stated that before they went to the party, she, Jacob, and some other friends went to dinner and Jacob told them his girlfriend had dumped him. Olivia stated that Jacob “was pretty upset about it.”

⁹ The intoxication scale is asked by the investigator to assist in understanding how an individual views their own intoxication level and how that compares to reports from others about an individual’s level of intoxication and its impact on them. How an individual ranks themselves or others on the intoxication scale is not determinative of whether that individual or someone else was incapacitated.

¹⁰ The investigator requested security footage from the building where the party was held on April 10. Campus Security informed the investigator that footage is deleted after 21 days and accordingly was no longer available.

Olivia stated that when they arrived at the party, she and Jacob separated for most of the night but she would “check on him from time-to-time” because she was “worried about him because of the whole break-up thing.” When asked if she had physical contact with Jacob at the party, Olivia stated “I think I put my arm around him, that was normal for us and he was having a bad day.” When asked if she recalled anything else, Olivia stated “not that I recall, but I may have.” When told of Jacob’s account that she came up to him at one point, asked him how he was doing, put her arm around him, and eventually put her hand in his back pocket, Olivia stated, “Yeah, I think I did that, but it was just a joke meant to cheer him up. He was having a rough day.” When asked how Jacob responded, Olivia stated, “I don’t remember specifically. Eventually he just kept playing beer pong and I left the room to go get a drink.”

Olivia stated that around 1:00 a.m., Jacob said that he was going to go home. Olivia stated that Jacob was still really upset and she was worried about him. Olivia stated that Jacob previously told her that he suffers from depression and because of that, she did not want him to be alone when he was upset, so she offered to walk with him.

When asked if she was drinking at the party, Olivia stated that she was drinking socially, but did not recall how much she had to drink. Olivia stated, “I really don’t think it was much, I felt fine.” When asked to put herself on the scale of 1 (sober) to 10 (passed out) when she and Jacob left the party, Olivia stated that she was a 3. When asked why she said 3, Olivia stated that she could tell she had been drinking, but really was not affected much.

When asked if Jacob had been drinking, Olivia stated yes. When asked if she noticed any impact from him drinking, Olivia stated he seemed “drunk, but not like super drunk or anything.” When asked to put him on the scale of 1 (sober) to 10 (passed out) when they left the party, Olivia stated that Jacob was a 6. Olivia stated, “I could tell he was upset and had been drinking, but he was still with it.”

Callie’s Account

Callie stated that she was also at the party on April 10. Callie stated that Jacob had “kind of a lot” to drink and was one of the drunker people at the party. Callie stated that when Jacob and Olivia passed her on the way out, Olivia told her that Jacob was “really wasted” so she was going to walk him home.¹¹ When asked where Jacob was on a scale of 1 (sober) to 10 (passed out) when he left the party, Callie stated a 9. When asked why she said 9, Callie stated “he was for sure drunk, like, being loud, laughing a lot, that kind of thing.” When asked whether he had trouble walking, Callie stated she didn’t think he was having trouble walking, but she didn’t

¹¹ When asked about the witness account that Olivia said that Jacob was “really wasted” and that is why she was walking him home, Olivia stated, “No, it was because he was upset about the breakup and I didn’t want him to be alone.”

know for sure because Olivia was walking arm in arm with him when they left.¹² When asked if she knew whether Olivia was drinking, Callie stated that she did not notice and did not remember seeing Olivia acting drunk during the party.

*Henry's Account*¹³

Henry stated that he was also at the party with Jacob and Olivia on April 10. Henry stated that he played a few drinking games with Jacob and that Jacob “drank a lot.” When asked what he meant by “a lot,” Henry stated, “I mean, Jacob usually holds his liquor pretty well, but during the drinking games he put down a ton of beer.” When asked when he last saw Jacob at the party, Henry stated, “I left really early that night...probably around 11, so that would be the last time I saw him. He was still playing games when I left.” When asked where Jacob was on a scale of 1 (sober) to 10 (passed out) when he last saw him at the party, Henry stated Jacob was a 7. When asked why he said 7, Henry stated, “well, he was still functioning, but he’d had quite a bit.” When asked what he meant by “functioning,” Henry stated, “you know, like, able to walk, talk, play games.”¹⁴ Henry stated that Olivia was also drinking, but he saw less of Olivia at the party and was not sure how much she drank. When asked to put Olivia on the intoxication scale when he last saw her at the party, Henry stated that she was probably a 2.

Jacob's Apartment – The Night of April 10

Jacob's Account

Jacob stated that when they arrived at his apartment, Olivia came in with him.¹⁵ When asked how that occurred, Jacob stated that he did not recall whether there was a discussion, or she just came in with him.

Jacob stated that he does not remember much before waking up the next morning. Jacob stated that he has vague memories of kissing Olivia in his living room as well as sitting in his bed. Jacob also stated that he had a flash of memory of Olivia possibly performing oral sex on him, but the memory is not clear. Jacob stated that when he woke up, he and Olivia were in his bed

¹² When asked about the witness account that she was arm in arm with Jacob when they left, Olivia stated, “maybe, I don’t remember.”

¹³ Henry stated that he is good friends with Jacob. Henry stated that he knows Olivia through Jacob, but he would consider her more of an acquaintance than a friend.

¹⁴ When told of Henry’s account concerning Jacob’s level of intoxication, Olivia stated, “yes, Jacob was drunk earlier in the night, but I think he stopped drinking and he had sobered up by the time we were at his apartment.” When asked whether she saw Jacob take shots later on at the party, Olivia stated, “No, I never saw that. Besides, I feel like Jacob is more of a beer guy.”

¹⁵ Jacob stated that his roommate Ethan was not home from the party yet and his roommate Tom was out of town that weekend, so no one else was home when they arrived.

and he was naked. Jacob stated that he did not remember taking off his pants or boxers or how they were removed.

Jacob stated that when Olivia woke up, he told her he did not remember much after the party and asked her what happened. Jacob stated that Olivia told him that they came back to his apartment together. Jacob stated that Olivia then said that they “kissed a little bit” and she “gave [him] head.”

Jacob stated that he was too drunk to consent.

Olivia's Account

Olivia stated that when they arrived at Jacob's apartment, she came inside with him. When asked how that occurred, Olivia stated that she didn't remember whether they discussed it, but they were in the middle of a conversation and it wasn't unusual for her to hang out with Jacob at his apartment.

Olivia stated that when they got inside, Jacob started talking about “being free of his girlfriend and how it was probably a good thing.” Olivia stated that Jacob then kissed her. Olivia stated that she was a little surprised, but she kissed him back and then Jacob took her hand and brought her to his bedroom. Olivia stated that they sat down on Jacob's bed and continued kissing. When asked who initiated the kissing in the bedroom, Olivia stated that it was both of them.

Olivia stated that Jacob then stood up and took off his pants and then his boxers. Olivia stated that Jacob sat down next to her and said, “I'll take you up on your offer.” Olivia stated that she then performed oral sex on Jacob in his bed. When asked how the oral sex began, Olivia stated that after Jacob said he would take her up on her offer, she leaned forward and started. Olivia also stated that after she leaned forward, Jacob started rubbing her back and after she started the oral sex, Jacob moved his hand from her back to her head and he kept it there until she stopped. Olivia stated that after a few minutes, she stopped and Jacob got up and went into the bathroom. Olivia stated that she thought that Jacob “finished himself” in the bathroom, before coming back to the bed and falling asleep.

When asked what words or actions Jacob engaged in to indicate he consented to the oral sex, Olivia stated that they had previously talked about him liking oral sex, that they had been kissing for a while, and that Jacob took off his pants and boxers. Olivia stated, “and then he asked me to by talking about my offer from before.” When asked if there was any conversation specifically about the oral sex, Olivia stated “just him talking about wanting me to make good on the offer.”

Olivia stated that the next morning, Jacob asked her what happened the night before. Olivia stated that she told him that he had kissed her and that she gave him oral sex. Olivia stated that she thought it was weird that Jacob asked, because he had seemed totally with it once they were back in his apartment. When asked to put Jacob on the scale of 1 (sober) to 10 (passed out)

when they were in Jacob's apartment the night of April 10, Olivia stated, "maybe a 4, he was sobering up for sure."

Olivia stated that about a week after April 10, she learned that Jacob got back together with his girlfriend. Olivia stated that Jacob told his girlfriend about the night he spent with Olivia and his girlfriend pressured him to bring a complaint against Olivia.¹⁶

Impact on Jacob

Jacob's Account

Jacob stated that Olivia's conduct throughout spring 2021 made him uncomfortable. Jacob stated, "we were friends and shared a lot of friends and it's like, she just kept doing this awkward, weird stuff, even as I tried to get her to stop." Jacob stated that starting sometime in March, he avoided being alone with Olivia. Jacob stated that they frequently met for lunch just the two of them before that and he started eating at his apartment instead. Jacob also stated that he shared a class with Olivia and started arriving a few minutes late so that he could sit in the back after Olivia had already sat down somewhere else in the room. Jacob also stated that as Olivia's conduct continued, he stopped hanging out with their mutual friend group and avoided going places on campus where he thought he might run into her.

Olivia's Account

When asked if she noticed any changes in her relationship with Jacob beginning around March, Olivia stated, "once he got back together with his girlfriend, that was in April I think, then I saw less of him, cause, you know, she was like jealous and then we stopped talking cause of this case." When asked if she noticed any other changes, Olivia stated "no." When told of Jacob's account that he started to avoid being alone with Olivia, including not meeting up with her for lunch, Olivia stated "we just did that sometimes, we didn't like have lunch together all the time." When asked if she remembered having lunch with Jacob in April, Olivia stated "no." When told of Jacob's account that he eventually stopped hanging out their friend group and avoided places she might be, Olivia stated, "well, I still saw him places, I mean, we were at dinner together and at the party together."

¹⁶ When asked about Olivia's account that he got back together with his girlfriend and she pressured him to bring a complaint against Olivia, Jacob said "I wouldn't say pressured. I did get back together with my girlfriend and we talked about what happened with Olivia after the party. I wasn't sure what I was going to do and so my girlfriend helped me through it as I was deciding whether to go to Title IX." When asked what he meant by talked about what happened with Olivia, Jacob stated "I told her that I blacked out and that Olivia performed oral sex on me."

2021 Title IX/VAWA Investigator Training

Handout 7

Excerpts from Party Statements in Response to the Investigation Report

Excerpt from Jacob's Response to the Investigation Report

The report is missing key information about Olivia's behavior. It does not even mention my roommates, Tom and Ethan, who can't stand Olivia because she talks about sex so much. They don't hang out with us sometimes because of it and don't want her around our apartment. I told the investigator that, but the investigator chose to leave it out of the report.

Excerpt from Olivia's Response to the Investigation Report

It is telling that Jacob's girlfriend would not respond to the investigator. This whole case is about her and her jealousy, so she doesn't want to face that.