




**TITLE IX/VAWA
ADJUDICATOR TRAINING**

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TELL US ABOUT YOURSELF 

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


1. Not applicable (I have a different role in the process)
2. None
3. 1 – 5
4. 6-10
5. More than 10

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AGENDA 

- Introduction and Legal Landscape
- Overview of the Process
- The Effects of Trauma and Culture
- The Decision-Making Process
- Weighing Evidence and Assessing Credibility
- Case Study
- Sanctions and Remedies
- Notice of Determination
- Appeals


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TERMINOLOGY 

- DOE = Department of Education
- DCL = Dear Colleague Letter
- 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
- Complainant/Reporting Party/accuser/victim/survivor
- Respondent/Responding Party/accused/alleged perpetrator





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COLOR CODE 


- Orange text indicates new OCR guidance released September 22, 2017
- ~~Struck through text indicates OCR guidance that has been withdrawn and overruled by new guidance~~
- Green text indicates withdrawn guidance, but that the action is still permissible and recommended


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SEXUAL VIOLENCE STATISTICS 



GRAY PLANT MOOTY 6

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 




GRAY PLANT MOOTY 8


SESSION OVERVIEW 

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

GRAY PLANT MOOTY 9

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
 - Sexual violence
 - Differential treatment
 - Gender-based harassment



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TITLE IX RESPONSIBILITIES


- If a school knows or reasonably should know about sexual harassment that creates a hostile environment, it must take immediate action to:
 - Eliminate it,
 - Prevent its recurrence, and
 - Address its effects



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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
 - Investigate complaints
 - Adopt and publish fair and equitable grievance procedures
 - End the harassment, prevent recurrence, and remedy its effects
 - 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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Clery Act

- other Clery crimes occurring on campus and reported to CSAs
- reporting to ensure timely action and information shared with current and prospective students and employees

criminal sexual misconduct

- sexual assault
- dating violence
- domestic violence
- stalking

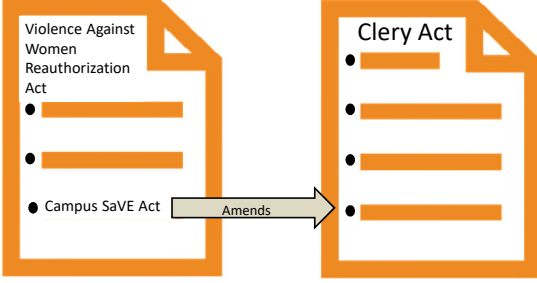

Title IX

- noncriminal sexual misconduct (sexual harassment that does not rise to level of sexual assault, dating violence, domestic violence, or stalking)
- policies to end harassment, prevent recurrence, and address its effects

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VAWA, CAMPUS SAVE, & CLERY



Violence Against Women Reauthorization Act


- _____
- _____
- Campus SaVE Act

Amends

Clery Act


- _____
- _____
- _____
- _____


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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
- Codifies parts of 2011 Dear Colleague Letter on Title IX

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DEFINING SEXUAL MISCONDUCT 



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SEXUAL HARASSMENT 

- Unwelcome conduct of a sexual nature or based on sex
- Quid pro quo
 - Individual in position of authority
 - Conditions a benefit
 - Sexual advance, sexual favors, other conduct of a sexual nature
- Hostile environment
 - (Student) Sufficiently serious that it denies or limits a student's ability to participate in or benefit from an education program or activity
 - (Employee) Severe or pervasive enough to create a work environment that a reasonable person would consider intimidating, hostile, or abusive


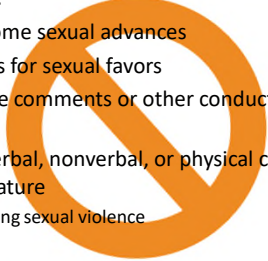


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SEXUAL HARASSMENT




- Examples:
 - Unwelcome sexual advances
 - Requests for sexual favors
 - Offensive comments or other conduct based on sex
 - Other verbal, nonverbal, or physical conduct of a sexual nature
 - Including sexual violence





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EXAMPLES




- 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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EXAMPLES




- 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
- Stalking
- 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
- Sexual assault





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HARASSMENT




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





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SEXUAL ASSAULT




- Definition in VAWA:
 - Rape
 - Fondling
 - Incest
 - Statutory Rape




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SEXUAL ASSAULT




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



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SEXUAL ASSAULT

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



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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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INTERACTION WITH OTHER LAWS


- Family Educational Rights and Privacy Act (FERPA):
 - Limits access/disclosure of student records
 - In cases involving sexual harassment (not sexual violence), exception permits school to disclose to victim the final results of any disciplinary proceedings against the alleged perpetrator and any sanctions that directly relate to the victim
 - In cases involving sexual assault/VAWA crime, exception permits school to disclose to victim 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
- Title VII and state anti-discrimination laws



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RISKS OF NON-COMPLIANCE 

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



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THE FUTURE OF TITLE IX 



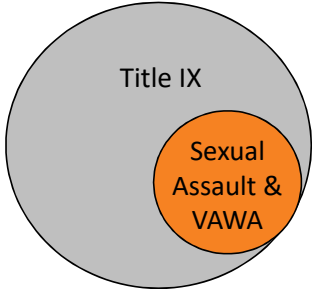
GRAY PLANT MOOTY 33

THE FUTURE OF TITLE IX

- OCR actions under new administration:
 - Issued internal instructions for OCR investigators re: scope of complaints
 - Public Statements:
 - Trust institutions
 - Guidance should not be used for enforcement
 - Concerned about due process
 - Conducted listening sessions
 - Withdrew 2011 DCL and 2014 Q & A
 - Issued 2017 Q & A Guidance
 - Proposed regulations released in November 2018
 - Note and comment period ends January 28, 2019

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2017 Q & A GUIDANCE




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2017 Q & A GUIDANCE


- “Title IX responsibilities concerning complaints of sexual misconduct, including peer-on-peer sexual harassment and sexual violence”
- More flexibility (standard of evidence, time frame, informal resolution process, appeals)
- New requirements for written notice to respondent
- “Should” create investigation report
- “Must” provide timely and equal access to the information used in the decision-making process

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PROPOSED REGULATIONS 

- When institutions must respond to sexual harassment
 - Recipient with actual knowledge of
 - Sexual harassment
 - In an education program or activity of the recipient
 - Against a person in the United States
- How institutions must respond to sexual harassment
 - May not be deliberately indifferent
 - Recipient is deliberately indifferent only if its response to sexual harassment is clearly unreasonable in light of the known circumstances


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PROPOSED REGULATIONS 

- New Procedural Requirements
 - Notice of allegations including:
 - Identities of the parties involved, if known, specific section of the recipient's policy allegedly violated, conduct allegedly constituting sexual harassment, date and location of the alleged incident, if known
 - Provide notice of additional allegations that arise during the process
 - Disclosure of evidence to the parties
 - Investigation report
 - Live hearing including cross-examination conducted by advisors
 - Schools must provide advisor to any party that does not have one at the hearing
 - No single investigator/adjudicator
 - Standard of evidence
 - Must be consistent with standard in other student conduct processes with same maximum sanction and with standard used for complaints against employees, including faculty


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OVERVIEW OF PROCESS 




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COMPLAINT 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
 - **the clear and convincing evidence standard**^{2017 Q & A} (“substantially more likely than not”); and
 - If the conduct occurred, what actions the school will take to end the sexual violence, eliminate the hostile environment, and prevent its recurrence, which may include:
 - Imposing sanctions on the respondent;
 - Providing remedies for the complainant; and
 - Addressing the campus community




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COMPLAINT PROCESS




- Determine whether the alleged sexual misconduct occurred
- “Prompt and equitable” or “prompt, fair, and impartial”
- Separate from criminal investigation
- May not dissuade complainant from going to police in cases involving allegations of criminal conduct—should encourage reporting to police




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PROMPT




- Designate time frames
- **No fixed time frame under guidance**^{2017 Q & A}
 - **Prior guidance was 60 calendar days (not including appeal)**
- If a delay, need to give written notice to the parties about the delay and the reason for the delay




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PROMPT 




- 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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IMPARTIAL 

- Conflicts and appearances of conflicts disclosed and managed
- Inform parties and witnesses that retaliation is prohibited
- Pay attention to the language used
 - Complainant/respondent vs. victim/alleged perpetrator


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THOROUGH, ADEQUATE, RELIABLE, FAIR 

- Interview/hear from both parties
- Equal opportunity for parties
 - Identify/present fact witnesses and evidence
 - Access to evidence (if any)
 - Must for sexual assault/VAWA
 - "Must" if Title IX²⁰¹⁷ Q & A (?)
 - Right to an advisor/participation by a lawyer
 - Required by VAWA regulations for cases of sexual assault/VAWA crimes
 - May limit extent of participation (must apply equally)
 - Participate in pre-hearing meeting (if any)
 - Identify/present character witnesses (if any)
 - Written notice of outcome of complaint




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TRAINING REQUIREMENTS 

- Institutional officials conducting proceedings (including adjudicators and individuals deciding appeals) must be trained on:
 - Institution's policy and procedures
 - Applicable law
 - 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 (annually)
 - Types of conduct that would constitute sexual violence (including same-sex sexual violence)
 - Standard of review (preponderance of the evidence)

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TRAINING REQUIREMENTS 

- (cont.)
 - Consent and the role of alcohol or drugs can play in the ability to consent
 - Importance of accountability for individuals found to have committed sexual violence
 - Need for remedial actions for the perpetrator, complainant, and school community
 - How to determine credibility
 - How to evaluate evidence and weigh it in an impartial manner
 - Confidentiality
 - Effects of trauma, including neurobiological change
 - Cultural awareness training regarding how sexual violence may impact students differently depending on their cultural backgrounds
- Training materials that apply sex stereotypes or generalizations should be avoided^{2017 Q & A}

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RECORDS TO MAINTAIN 

- Reports and complaints
- Notice to respondent of complaint
- Communications with parties and other correspondence relating to investigation (including documentation of verbal in-person/phone conversations)
- No-contact orders and other interim measures (offered and whether accepted or declined) for both parties
- 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
- Adjudicator or hearing panel notes
- Notice of determination
- Appeal records
- Names of all involved in process (parties, witnesses, investigators, adjudicators, appeal officers)
- Training records – relating to investigators, adjudicators, appeal officers, and other involved officials, as well as training received by parties
- Records relating to complaints of retaliation or violation of interim measures or sanctions
- Start and stop dates of investigation suspension
- Records relating to other complaints involving same parties


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WORKING WITH THE PARTIES



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TELL US ABOUT YOUR EXPERIENCE

When assessing the credibility of the complainant, the following are factors that could cause me to find the complainant less credible:

1. The next day, Complainant was excited about their night together
2. Complainant added new details to the account as time went on
3. Complainant did not resist or seek help
4. The police investigated but did not press charges

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TELL US ABOUT YOUR EXPERIENCE

When assessing the credibility of the respondent, the following are factors that could cause me to find the respondent less credible:


1. Only answered the exact questions asked
2. Insisted on receiving more specific information about the allegations before participating in an interview
3. Was drinking heavily the night of the incident
4. Hired an attorney as an advisor

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SESSION OVERVIEW




- Rape Myths
- Secondary Victimization
- Common Victim Responses
- Neurobiology of Sexual Assault



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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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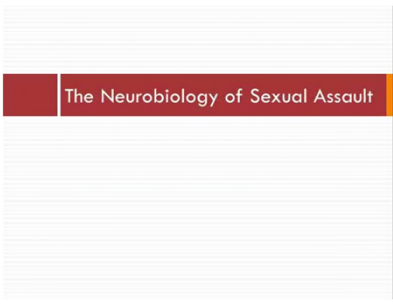
COMMON VICTIM RESPONSES

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




GRAY PLANT MOOTY 56

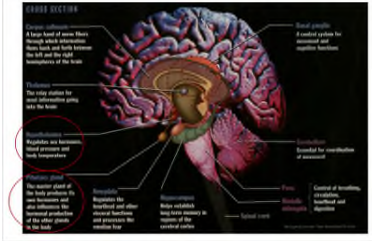
NEUROBIOLOGY OF SEXUAL ASSAULT



GRAY PLANT MOOTY 57

NEUROBIOLOGY OF SEXUAL ASSAULT 

Brain Regions Impacted by Trauma



Cerebellum
A large mass of nerve fibers through which information that has been processed by the brain is sent for the coordination of the body.

Hippocampus
The area within the brain that stores and retrieves information about previous and current experiences.

Amygdala
The almond-shaped mass of gray matter in the brain that is involved in processing information about the emotional significance of events.

Hypothalamus
Regulates the body's temperature, hunger, thirst, and other basic drives.

Pituitary gland
The master gland of the endocrine system, which secretes hormones that regulate the activity of other glands in the body.


Brain stem
The part of the brain that controls basic life functions, such as breathing and heart rate.

Basal ganglia
A control system for movement and cognitive functions.

Frontal cortex
Essential for coordination of movement.

Control of bodily functions, including breathing and digestion.


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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: Southwick et al., 2005

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NEUROBIOLOGY OF SEXUAL ASSAULT 

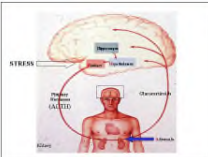
Brain-Body Regions Impacted by Trauma

Catecholamines: Fight or flight response

Cortisol: Energy available

Opioids: Prevent pain


Oxytocin: Promotes good feelings



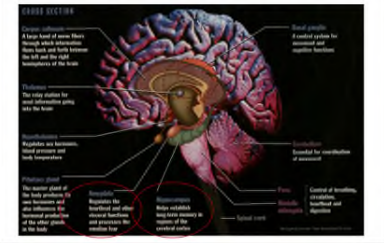
SOURCE: Southwick et al., 2005

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NEUROBIOLOGY OF SEXUAL ASSAULT



Brain Regions Impacted by Trauma



Cerebellum
A large mass of nerve fibers through which information that is sent to and from the rest of the brain.

Hypothalamus
The area under the cerebral cortex and above the brainstem.

Amygdala
Responsible for emotions that primary and secondary.

Hippocampus
The largest part of the limbic system, it is responsible for learning and memory.

Prefrontal cortex
Responsible for planning, decision making, and problem solving.


Basal ganglia
A control system for movement and cognitive functions.

Brainstem
Responsible for coordination of movement.

Control of breathing, circulation, heartbeat, digestion.

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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



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NEUROBIOLOGY OF SEXUAL ASSAULT



Like These . . .

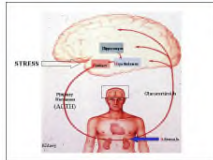
Catecholamines: Fight or flight response

Cortisol: Energy available


Opioids: Prevent pain

Oxytocin: Promotes good feelings


THESE HORMONES IMPAIR MEMORY CONSOLIDATION



Gray Plant Mooty 63

NEUROBIOLOGY OF SEXUAL ASSAULT 


What Happens During A Sexual Assault



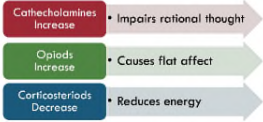
```
graph LR; A[Amygdala Detects Threat] --> B[Activates Hypothalamus]; B --> C[HPA Axis Kicks In Hormonal Flood];
```

SOURCE: Baskin, 2002; Southwick et al., 2003

GRAY PLANT MOOTY 64

NEUROBIOLOGY OF SEXUAL ASSAULT 


What Happens During A Sexual Assault



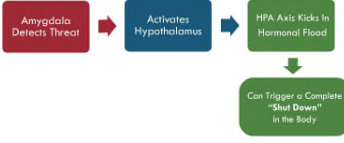
```
graph TD; A[Catecholamines Increase] --> B[Impairs rational thought]; C[Opioids Increase] --> D[Causes flat affect]; E[Corticosteroids Decrease] --> F[Reduces energy];
```

SOURCE: Baskin, 2002; Southwick et al., 2003

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NEUROBIOLOGY OF SEXUAL ASSAULT 

What Happens During A Sexual Assault



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

SOURCE: Baskin, 2002; Southwick et al., 2003

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NEUROBIOLOGY OF SEXUAL ASSAULT


Tonic Immobility (TI)

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

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

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COMMON BEHAVIORS DURING ASSAULT



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

GRAY PLANT MOOTY 68

MEMORY

What Happens During A Sexual Assault

GRAY PLANT MOOTY 69

MEMORY

What Happens During A Sexual Assault

```
graph TD; A[Increased Stress Hormones] --> B[Impaired Functioning in Hippocampus]; B --> C[Memories Fragmented]; C --> D[Memory Recall Can Be Slow & Difficult];
```

BUT...
Alcohol use during the assault may prevent encoding, which means there's nothing to retrieve.

Events of the Assault **CAN** Be Recalled Accurately.

SOURCE: Koss et al., 1985, 1996; Besselink et al., 2009; Rubin et al., 2008

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IMPACT OF TRAUMA ON MEMORY

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



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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?

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IMPACT OF CULTURE



- Survivors' experiences of sexual assault are not universal
- A survivor's cultural background is one of many factors that may impact the way that the individual reacts to sexual assault
- Different cultural backgrounds will influence individuals in different ways
- Be aware of and sensitive to possible cultural influences
- Incorporate training as appropriate

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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


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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


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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.

GRAY PLANT MOOTY 76


THE DECISION-MAKING PROCESS 



GRAY PLANT MOOTY 77

SESSION OVERVIEW 

- Adjudication Process
- Weighing Evidence and Assessing Credibility
- Dealing with Inculpatory and Exculpatory Evidence
- Determination
- Case Study
- Sanctions and Remedies



GRAY PLANT MOOTY 78

DECISION-MAKING PROCESS


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



GRAY PLANT MOOTY 79

STRUCTURING YOUR INSTITUTION'S COMPLAINT PROCESS

- Who investigates?
- Who makes the decision?
- What model does your institution use?
 - Investigation/Decision-Maker Model
 - Hearing Model
 - Hybrid Model
 - Voluntary Resolution/Mediation
 - If all parties agree after receiving full disclosure of the allegations and their options for formal resolution and if the school determines that the particular complaint is appropriate for such a process^{2017 Q & A}



GRAY PLANT MOOTY 80

ADJUDICATION PROCESS

- What evidence will the decision-maker(s) consider*?
 - Investigation report
 - Parties' response statements
 - Recordings
 - Meeting with the parties

* NOTE: Whatever information is provided to the decision-maker(s) for informal meetings or hearings must be shared with the parties

- Must if sexual assault and VAWA cases
- "Must" if Title IX^{2017 Q & A} (?)

GRAY PLANT MOOTY 81

ADJUDICATION PROCESS

(cont.)

- Not all information given to investigator is passed on (?)
 - Investigator must *synthesize all available evidence*, including inculpatory and exculpatory evidence^{2017 Q & A}
 - Should result in written report summarizing *relevant* inculpatory and exculpatory evidence^{2017 Q & A} (*recommended*)
- Investigator not opining on credibility or decision (?)
 - If weigh in on credibility, must objectively evaluate parties and witnesses^{2017 Q & A}
- Process may be different depending on whether respondent is a student or an employee

GRAY PLANT MOOTY 82


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
 - If communication with adjudicators is necessary, work with Title IX Coordinator to provide the parties with access to additional information

GRAY PLANT MOOTY 83

DECISION-MAKING PROCESS


- If investigator(s) also act as decision-maker(s):
 - Clearly separate and distinguish fact-gathering stage and decision-making stage
 - Thoughtfully determine what "information" is being used during the decision-making stage



GRAY PLANT MOOTY 84

trainED

WEIGHING EVIDENCE AND ASSESSING CREDIBILITY




GRAY PLANT MOOTY 85

trainED

EVIDENTIARY ISSUES

- Always consider relevance
- Types of evidence
 - Statements from parties and witnesses
 - Character evidence
 - Physical evidence (texts, video, security access information, etc.)
 - Medical information (including mental health records)
 - Consider need for expert guidance in understanding and interpreting information
 - Polygraph/lie detector test results




GRAY PLANT MOOTY 86


trainED

EVIDENTIARY ISSUES


- Prior sexual history
 - Questioning (or testimony) about the complainant's sexual history with anyone other than the alleged perpetrator should not be permitted
 - The complainant's sexual history with anyone other than the respondent should not be considered or revealed to respondent
 - 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




GRAY PLANT MOOTY 87

EVIDENTIARY ISSUES 

- Prior bad acts/pattern evidence:
 - Allegation v. policy violation
 - Determine whether prejudicial impact outweighs probative value
 - 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




GRAY PLANT MOOTY 88


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?





GRAY PLANT MOOTY 89

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?


GRAY PLANT MOOTY 90

DETERMINATION 

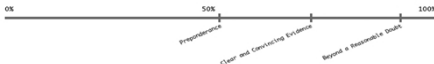


- Finding re: policy violation
 - Sexual contact/harassment
 - Consent/unwelcomed
- Sanctions
- Remedies
- Written Notice


GRAY PLANT MOOTY 91

DETERMINATION: FINDING 

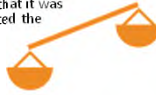
- Standard of proof
 - "Preponderance of the evidence" or "clear and convincing"* (not "beyond a reasonable doubt")
 - Burden is on the school to gather sufficient evidence to reach a fair, impartial determination^{2017 Q&A}
 - Presumption of non-responsibility that would need to be overcome
 - Decision-maker(s) must ultimately decide whether it was more likely than not that a policy violation has occurred (preponderance) or whether it is substantially more likely than not that a policy violation has occurred (clear and convincing)




GRAY PLANT MOOTY 92

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:^{2017 Q & A}
 - Must decide either that:
 - It was "substantially more likely than not" that the Respondent violated the institution's misconduct policy OR
 - That there was insufficient evidence to establish that it was "substantially more likely than not" that the Respondent violated the institution's sexual misconduct policy



GRAY PLANT MOOTY 93

train 




CASE STUDY

Summary of Facts Gathered

GRAY
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MOOTY

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CASE STUDY—SUMMARY OF THE FACTS **train** 


Investigation Report Excerpt

Summary of Facts/Background

The parties are both students at the College. Jessica Johnson is a freshman and Will Williams is a junior. Jessica and Will agreed that they met at a party after the first week of classes in January 2018 and that they began dating a few days later.

GRAY
PLANT
MOOTY


95

CASE STUDY—SUMMARY OF THE FACTS **train** 

The parties agreed that during their relationship they engaged in sexual interactions including kissing, touching, Jessica giving Will hand jobs, and Jessica performing oral sex on Will, but they did not engage in sexual intercourse. Jessica stated that Will often asked to take their sexual relationship further, including asking her to have intercourse. Jessica stated that she would tell Will “no,” but he was often persistent. Jessica stated that sometimes, she would agree to give Will a hand job so that he would stop asking for sexual intercourse. Jessica also stated that she gave Will oral sex one time before the night of January 27, but that the next day she told Will she was not comfortable with oral sex and was not sure she wanted to do it again. Will stated that he respected Jessica’s boundaries and never pressured her to do anything she did not want to do.

GRAY
PLANT
MOOTY

96

CASE STUDY—SUMMARY OF THE FACTS 

January 27-28, 2018


Jessica and Will Attend a Party

The parties agree that they attended a party together at a house off campus on January 27, 2018.

Jessica's Account


Jessica stated that she went to the party with Will and her friend Cindy around 10:00 p.m. on January 27. Jessica stated that she and Cindy had "a couple shots" of Bacardi as soon as they arrived. Jessica stated that the shots "hit her quickly," because she had eaten a light dinner and took the shots "back to back." Jessica stated that during the party, she and Cindy shared two mixed drinks that Cindy made in plastic cups. Jessica stated that she thought the drink had rum in it, but she was not sure and did not know what else was in it.

GRAY PLANT MOOTY 97

CASE STUDY—SUMMARY OF THE FACTS 

Jessica stated that a few hours after arriving, she was "really out of it" and told Will that she wanted to leave the party. Jessica stated that she does not remember much after that until she was in Will's dorm room sometime later that night. When asked what she remembered between telling Will she wanted to leave and being in Will's dorm room, Jessica stated, "I kind of remember walking to his room; I was just really tired and sort of out of it."


GRAY PLANT MOOTY 98

CASE STUDY—SUMMARY OF THE FACTS 

Will's Account

Will stated that he and Jessica went to the party around 9:00 p.m. Will stated that he drank beer during the few hours that they were there, but he did not remember how many beers he consumed. Will stated that he was not sure what Jessica had to drink. Will stated that Jessica was with her friend Cindy at the beginning of the party, and he was in a different room with some of his friends. Will stated that after a few hours, he went to find Jessica.


GRAY PLANT MOOTY 99

CASE STUDY—SUMMARY OF THE FACTS 

Will stated that around 12:00 a.m., Jessica told him she was tired, so they left the party. Will stated that he and Jessica walked back to campus and went to his dorm room. Will stated that they arrived in his room around 12:30 a.m.


Jessica and Will Return to Will's Room
The parties agreed that they returned to Will's room after the party on January 27.

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PLANT
MOOTY 100

CASE STUDY—SUMMARY OF THE FACTS 

Jessica's Account
Jessica stated that she and Will were watching a movie on his computer while lying next to each other in his bed. Jessica stated that at some point they started "making out." When asked if she was okay with "making out," Jessica stated, "yeah, we did that all the time; so, I guess so. But I mean, I was really messed up at the time though, so maybe not." Jessica stated that the kissing started getting "more heated" and both she and Will took their own shirts off. Jessica stated that Will unbuttoned his pants and "pulled them down a little bit" so that his penis was exposed. Jessica stated that while they were "making out," Will stopped and asked if she wanted to have sex. Jessica stated that she responded "no." Jessica stated that Will tried to guilt her into sex. When asked what she meant by "guilt her into sex" she stated that he said something like "You always do this to me, say you're ready for sex, get me all heated and then nothing." Jessica stated that Will also said something about "all of [their] friends thinking [she's] frigid." Jessica stated that Will was pressuring her and "kept asking [her] for maybe 20 minutes." Jessica stated that because Will had asked her many times to have sex and she told him "no" each time, she felt like Will might break up with her if she did not "satisfy" him. She stated that she was also worried about him "badmouthing" her to their friends.

GRAY
PLANT
MOOTY 101

CASE STUDY—SUMMARY OF THE FACTS 

Jessica stated that they started kissing again and then Will put his hands on her head and moved her head toward his penis. Jessica stated that Will moved his hips forward and put his penis in her mouth. When asked for more details, Jessica stated "he like guided me to his penis and then like thrust it into my mouth." Jessica also stated, "it wasn't super forceful, but he just moved me sort of gently until I was where he wanted and then he put himself in my mouth." Jessica stated that she performed oral sex on Will. Jessica stated "I had to do something to make him happy; something so that he would stop pushing me to have sex." Jessica stated that after several minutes, Will told her he "was not going to finish" so she stopped. When asked if Will asked for oral sex, Jessica stated "no, we didn't talk about it."

GRAY
PLANT
MOOTY 102

CASE STUDY—SUMMARY OF THE FACTS



Jessica stated that the next thing she remembers is waking up in Will's room after the movie ended. Jessica stated that she told Will she was tired and wanted to go home. Jessica stated that she and Will kissed goodbye at his door and then she walked home.

When asked what sexual contact she did not consent to, Jessica stated, "other than kissing, all of it. I didn't want to do any of it. And I was so drunk I don't think I could have consented if I wanted to, like not even to kissing." Jessica also stated, "Not only was I drunk but I felt pressured, I had to do what he wanted so that he would stop asking me for sex because I didn't want to do that. It was always like that; he'd ask for sex and then I'd end up doing something else that I did not want to do. I mean, I almost never said yes, anytime we hooked up. Even with kissing and making out sometimes, I wouldn't want to and he would just pressure me until I did." When asked for details of other times she felt pressured to engage in kissing or other sexual contact, Jessica stated that she did not remember the dates or specific information about other encounters.

GRAY
PLANT
MOOTY

103

CASE STUDY—SUMMARY OF THE FACTS



Will's Account

Will stated that he put a movie on when he and Jessica got back to his room. Will stated that pretty quickly after that, he and Jessica started "making out." Will stated that as they continued making out "clothes came off," including Jessica's shirt and Will's shirt and pants. When asked what Jessica was wearing at that point, Will stated that she had on jeans and a bra. When asked what he was wearing at that point, Will stated "just boxer-briefs." Will stated that he then asked Jessica, "do you want to try having sex tonight?" Will stated "we had talked about it before and she said she thought she was ready and wanted to do it with me." Will stated that Jessica responded, "not tonight." When asked how he responded when Jessica said "not tonight," Will stated, "I accepted that. I always respected when she said she didn't want to do something."

GRAY
PLANT
MOOTY

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CASE STUDY—SUMMARY OF THE FACTS



When asked about Jessica's allegation that he said something to the effect of "You always do this to me, say you're ready for sex, get me all heated, and then nothing." Will stated "I might have pointed out that she said she would be ready and then she wasn't, but I wasn't mad. I respected her boundaries." When asked about Jessica's allegation that he said "All of our friends think you're frigid," Will stated "Yeah, I mean, I tried to talk to her about what our friends were saying, I just thought she should know." When asked if he asked Jessica to have sex multiple times over 20 minutes, Will stated, "no, like I said, I accepted it when she said no." Will stated that he then asked Jessica if she would "give [him] a blow job." Will stated that when he asked, he started to pull his underwear down a little.


GRAY
PLANT
MOOTY

105

CASE STUDY—SUMMARY OF THE FACTS 

Will stated that he was lying on his back on his bed and Jessica was sitting up next to him. Will stated he “nudged Jessica’s head downward” with his hands and then she put his penis in her mouth. Will stated that he then moved his hands up and put them behind his head while Jessica performed oral sex on him. Will stated that after a few minutes, he realized that he was not going to finish, so he told Jessica to stop. Will stated that Jessica stopped and he pulled his underwear back up. When asked what words or actions indicated that Jessica agreed to perform oral sex on him, Will stated “she didn’t say no, I mean, she said no when I asked for sex, but not for the blow job. She’s the one who put my penis in her mouth and then she did it.”


GRAY
PLANT
MOOTY 106

CASE STUDY—SUMMARY OF THE FACTS 

Will stated that after the oral sex ended, they started to watch the movie again. Will stated that less than a minute later Jessica reached out and “grabbed [his] penis” under his underwear and started “rubbing” it. Will stated he was “surprised” and “uncomfortable” when Jessica grabbed him. Will stated “it was just, no warning, she just grabbed me and started rubbing” and “I was embarrassed that I couldn’t finish, she was making it worse.” Will also stated that “it really didn’t feel good.” Will stated that he was quiet for a few seconds after Jessica grabbed him, but then he pushed her hand away. When asked how Jessica reacted when Will pushed her hand away, Will stated that Jessica stopped and “just laid there.”¹ When asked if there were any words or actions from him that may have indicated he consented to the contact, Will stated “no, nothing. After the blow job I pulled up my underwear and we went back to watching the movie.” When asked if he had asked Jessica for a hand job in the past after she had said no to intercourse, Will stated “it came up before. It would kind of be a both of us thing, like, we aren’t having sex today, what can we do instead.” When asked if he pressured Jessica to engage in sexual contact on the night of January 27, Will stated “No, I never pressured her to do anything she did not want to do.”


¹ When asked if she gave Will a “hand job,” after performing oral sex on him, Jessica stated “no, not that I remember, but I don’t really remember what happened after the oral sex. But I’m sure I just passed out.”

GRAY
PLANT
MOOTY 107

CASE STUDY—SUMMARY OF THE FACTS 

Will stated that Jessica and he watched the rest of the movie and then Jessica told him she was going to go home. Will stated that he and Jessica kissed for a few minutes near his door and then Jessica left.

GRAY
PLANT
MOOTY 108


CASE STUDY—SUMMARY OF THE FACTS 

The Parties' Intoxication Levels

Jessica's Account

Jessica stated that about an hour after arriving at the party, she was "feeling pretty drunk." When asked what she meant by "pretty drunk," Jessica stated, "I was good, loose, happy." When asked how intoxicated she was during the party on a scale of 1 (sober) to 10 (passed out), Jessica stated "maybe a 7 or an 8." When asked why she was a 7 or 8, Jessica stated "I was definitely drunk; not like, about to pass out, but I was having a good time." When asked how intoxicated she was when she arrived at Will's room on a scale of 1 (sober) to 10 (passed out), Jessica stated "a little less, maybe a 6 or 7. But I was still out of it."

GRAY
PLANT
MOOTY 109


CASE STUDY—SUMMARY OF THE FACTS 

Will's Account

When asked if he felt any effects of the beer he drank at the party, Will stated "not that I remember; I don't think I had much."

When asked if Jessica seemed intoxicated when he saw her a few hours after they arrived at the party, Will stated, "maybe, I mean she was tipsy for sure, but not more so than any other time we've been at a party." When asked how intoxicated Jessica was on a scale of 1 (sober) to 10 (passed out) when they arrived at Will's room after the party, Will stated "3." When asked why he said 3, Will stated "she had been drinking for sure and she was flirty, but it wasn't like she was falling over drunk."


GRAY
PLANT
MOOTY 110

CASE STUDY—SUMMARY OF THE FACTS 

Cindy's Account

Cindy stated that she and Jessica have been friends since the beginning of the fall semester. Cindy stated that she went to a house party with Jessica and Jessica's boyfriend, Will, on January 27 to celebrate the start of the new semester. Cindy stated she took "a few shots of vodka" with Jessica when they arrived and she might have given Jessica a few sips of the punch she mixed later in the night. Cindy stated that the last time she remembers seeing Jessica was about an hour after they arrived. Cindy stated that Jessica was hanging out with Will in another room and Cindy was with some of her friends from choir. When asked how intoxicated Jessica was on a scale of 1 (sober) to 10 (passed out) when she last saw her on the night of January 27, Cindy stated "a 6 or 7." When asked why she said a 6 or 7, Cindy stated, "it was a party, she was having a good time and she was being pretty loud, but she wasn't like passed out. I wasn't worried about her." When asked about Will's intoxication level, Cindy stated "I don't know, I didn't really see him much after we got to the party."

GRAY
PLANT
MOOTY 111


CASE STUDY—SUMMARY OF THE FACTS 

Troy's Account

Troy stated that he and Will have been "close friends" for the past two years. Troy stated that he met up with Will at a party on January 27. Troy stated that he hung out with Will on and off until Will left the party with Jessica. Troy stated that Will had "a few beers" at the party, but Troy "wouldn't have known unless I saw him drinking – he wasn't drunk." When asked how intoxicated Will was on a scale of 1 (sober) to 10 (passed out), Troy stated "2."

When asked if Jessica was drinking, Troy stated, "yeah, but I don't know what." Troy stated that he did not see Jessica drinking, but "she must have been, because she was all over Will, hanging on him." When asked how intoxicated Jessica was on a scale of 1 (sober) to 10 (passed out) when she left the party with Will, Troy stated "maybe a 6 or 7." When asked why he said 6 or 7, Troy stated "You could just tell from across the room that she had been drinking, she was drunk. Her eyes were kinda red. She was loud, too. I could hear her conversation from ten feet away, although I couldn't really follow what she was saying."

GRAY PLANT MOOTY 112


CASE STUDY—SUMMARY OF THE FACTS 

Jessica Returns to Her Room

Witness Accounts

Lisa stated that she is Jessica's roommate. Lisa stated that on January 27, she stayed at her dorm to watch movies with her friend, Sarah. Lisa stated that she and Sarah were just finishing a movie when Jessica entered their room. Lisa stated that it sounded like Jessica might have been crying, so she turned on the lights. Lisa stated that Jessica "looked upset" and "was sort of quiet." Lisa stated that she asked Jessica what happened and Jessica told her she had been with her boyfriend Will and said "he just wouldn't listen," and "she felt like she couldn't leave until she pleased him." Lisa stated that Jessica also asked if Lisa thought Jessica was frigid. Lisa stated that Jessica told her that Will pressured her to have sex with him and that when she didn't want to, he forced Jessica to give him a blow job instead. Lisa stated that Jessica told her "he took advantage of me. He made me feel guilty for not wanting to have sex and he knew I was drunk." When asked if Jessica mentioned any other sexual contact she had with Will that night, Lisa stated, "no, she just said that she gave him a blow job and then he let her leave." When asked, Lisa stated that Jessica did not mention that she had passed out.

GRAY PLANT MOOTY 113

CASE STUDY—SUMMARY OF THE FACTS 


Jessica and Will Break Up

Jessica and Will agree that they broke up a couple weeks after their January 27 interaction, in the middle of February.

Jessica's Account

Jessica stated that she was "tired of trying to please" Will and that she did not think they were compatible anymore. Jessica stated that she and Will had a brief conversation about it and that it was "pretty clear to both of [them] that [they] were done." Jessica stated that she sent him a text message a few days after they broke up "to get some things off [her] chest." Jessica provided the following text messages:

GRAY PLANT MOOTY 114


CASE STUDY—SUMMARY OF THE FACTS 

Jessica: I know that we shouldn't be around each other for a while and I'm not going to contact you anymore. I just wanted to say that I hope you learned that no means no and won't ever do this again to another girl.

Will: Thank you. I learned so much from you. I'm going to be a better person and I'm sorry if I ever made you feel uncomfortable.

Jessica stated that she and Will played on the same intramural volleyball team. Jessica stated that after they broke up, she stopped going to volleyball so she could avoid seeing him.


GRAY
PLANT
MOOTY 115

CASE STUDY—SUMMARY OF THE FACTS 

Will's Account


Will stated that in February 2018, he and Jessica realized that they wanted different things and decided to break up. Will also stated that Jessica said she had been feeling uncomfortable for a while and that he had pushed her past her boundaries. Will stated he was "surprised," because "she never said anything like that before." Will stated that, although she'd talked about having a sexual relationship with him, he knew that Jessica hadn't been quite ready to have sex, but that he "respected that and never pushed her to do anything she did not want to do." Will stated that, for this reason, he always made sure that Jessica was comfortable and that she consented to their sexual interactions. Will stated that he had even talked to their friends about his and Jessica's relationship and they all agreed with him that he had been very respectful.

GRAY
PLANT
MOOTY 116

CASE STUDY—SUMMARY OF THE FACTS 

When asked what he meant when he texted Jessica "I'm sorry if I ever made you feel uncomfortable," Will stated, "well that's what she said, that I made her uncomfortable. I don't know how really, but I just didn't want her to be mad or to go around thinking that I didn't care if I hurt her feelings." Will further stated "and I just kind of wanted to be done with Jessica and move on."


GRAY
PLANT
MOOTY 117

CASE STUDY—SUMMARY OF THE FACTS 

Witness Accounts

Troy stated that Will came to his room one day in mid-February and told him that Will and Jessica had broken up. Troy stated that Will told him that Jessica didn't want to have sex and that Will was "tired of trying."

GRAY
PLANT
MOOTY 118


CASE STUDY—WRITTEN STATEMENTS 

Parties' Written Statements

Jessica's Statement

Will never respected me or my boundaries. Now he's trying to say that I made him uncomfortable by touching him when I didn't. He asked if we could have sex over and over and over again. He knew I didn't want to and he didn't care. He made me give him oral sex and now he wants to say that I touched him without consent. I was the one that was assaulted, not Will.

GRAY
PLANT
MOOTY 119

CASE STUDY—WRITTEN STATEMENTS 

It's hard for me to believe that he can just accuse me of assaulting him when I'm the one who was assaulted. He's just saying that because he knows I don't remember anything that happened after the oral sex that night. His lie and this investigation against me have made this process extremely difficult. If I could do it over again, I would not report after what I have been forced to go through in this process. But I reported because I do not want Will to get away with this. For him to turn this around on me just isn't right. If he really thought I had assaulted him, he would have come forward right away instead of in retaliation.

GRAY
PLANT
MOOTY 120

CASE STUDY—WRITTEN STATEMENTS



Will clearly admitted that he did this in his text message. He said, "I'm going to be a better person and I'm sorry if I ever made you feel uncomfortable." He knows exactly what I meant with my text. I hope he is going to be a better person so that he does not put any other girl through what I went through. Even Troy said that Will was angry because I would not have sex with him. That anger made me feel so uncomfortable and pressured to do so many things I did not want to do. I was constantly stressed about it during our entire relationship. I was also so embarrassed because he'd obviously been talking to our friends about this.

Please hold Will responsible for what he has done.

GRAY
PLANT
MOOTY

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CASE STUDY—WRITTEN STATEMENTS



Will's Statement

Consent is "words or overt actions." I never gave Jessica any words or actions that gave her permission to touch my penis. She just did it. That's against the policy and she has to be held responsible for it.

GRAY
PLANT
MOOTY

122

CASE STUDY—WRITTEN STATEMENTS



I never pressured Jessica at any point during our relationship. She wanted to take it slow and I respected that. Of course, I told her what others were saying because I wanted her to understand that it wasn't just me and that sex is something that couples do during college. She obviously agreed because she said we would explore a sexual relationship and then the very next night refused. Most guys would have lost it. But remember that I was the one who ended the blow job. If I was the one putting so much pressure on her to get what I supposedly wanted, then why would I tell her to stop? When she said she was uncomfortable, I was confused why she would say that – I always respected her boundaries. We both just decided that we were better off apart. It was a mutual decision and then she goes and says that.

GRAY
PLANT
MOOTY

123

CASE STUDY—WRITTEN STATEMENTS



I learned recently that Jessica has depression and has been in counseling since we broke up. Several people have told me that she has been making up lies about me. She clearly is not in her right mind and the College should not let her spread lies about me through this investigation or outside of it. And the College definitely shouldn't believe her.

I never did anything with Jessica that she did not want to do. I hope you see that Jessica is the one who did not have words or actions giving her permission to touch me.

GRAY
PLANT
MOOTY

124

CASE STUDY—WRITTEN STATEMENTS



Rebuttal Statements

Will's Statement

Jessica claims that she passed out and does not remember anything that happened after we had oral sex, but that is not true. Jessica never passed out. She was talking to me about the movie and was awake the whole time. It's very convenient that the one part of the night that Jessica doesn't remember is the part where she assaulted me.

GRAY
PLANT
MOOTY

125


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.


GRAY
PLANT
MOOTY

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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.
 - A person's manner of dress does not constitute consent.
 - Consent cannot be procured, expressly or implicitly, by use of force, intimidation, threats, or coercion, as that term is defined below.
 - There can be no consent to sexual activity with someone known to be—or should be known to be—mentally or physically **incapacitated**, as that term is defined below.
 - Use of alcohol or other drugs will never function to excuse behavior that violates this Policy.

GRAY PLANT MOOTY 127

CASE STUDY—DEFINITION OF INCAPACITATION 


- A person who is incapacitated cannot give valid consent to sexual contact. 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.

GRAY PLANT MOOTY 128

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 and does not diminish personal accountability or criminal liability.

GRAY PLANT MOOTY 129

CASE STUDY—DEFINITION OF COERCION 

- **Coercion** refers to intimidation that would compel an individual to do something against their will by the use of psychological pressure, physical force, or threats of severely damaging consequences. Coercion is more than an effort to persuade or attract another person to engage in sexual activity. Coercive behavior differs from seductive behavior based on the degree and type of pressure someone used to get consent from another.


GRAY PLANT MOOTY 130


CASE STUDY

Determine Whether
a Policy Violation Occurred
and Rationale for your Decision

GRAY PLANT MOOTY 131

DETERMINATION: SANCTIONS 

- 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
 - Must for sexual assault and VAWA
 - "Must" if Title IX²⁰¹⁷ Q & A (?)
- VAWA regulations require a list of *all* possible sanctions for sexual violence in institution's ASR
- The list of sanctions must be specific, including the type and length of suspensions and any requirements that must be met for reinstatement



GRAY PLANT MOOTY 132

DETERMINATION: SANCTIONS



- Possible sanctions
 - No contact order
 - Suspension or expulsion
 - Transcript notations?
 - Disclosure to other institutions?
 - Separate disciplinary file?
 - Change in class schedule/living arrangements
 - Mandatory training/counseling
 - Limitations on access to campus facilities
 - Limitations on campus activities
 - Community service



133

DETERMINATION: SANCTIONS



- Sanctions when student **not** suspended or expelled
 - Make inquiries to determine whether restrictions need to be made to:
 - living arrangements
 - class schedules
 - use of facilities
 - co-curricular activities
 - campus events
 - Allow for Title IX Coordinator or other designee to modify or clarify
 - General no contact directive → limit use of facilities to specific time




134

DETERMINATION: REMEDIES


- Remedies for complainant
 - Changing living arrangements
 - Escorts
 - Separation from respondent
 - Counseling services
 - Medical services
 - Academic support services/accommodations
 - Allowing course withdrawal without penalty
 - Reviewing disciplinary actions against complainant to determine if harassment contributed
 - Reviewing academic issues to determine if harassment contributed
 - Financial aid and/or immigration assistance



135

DETERMINATION: REMEDIES 

- Remedies for broader student population in some cases:
 - Proactive measures to prevent sexual harassment and violence, such as trainings
 - Developing effective written materials to educate students on policy and resources
 - Encourage students to report
- Periodic “climate checks” and review of issues (e.g., better lighting?)
- Regulations only require a range of all protective measures for sexual violence in institution’s ASR




GRAY PLANT MOOTY 136


CASE STUDY 




Determine Sanctions and Reasoning, Remedies for Complainant, Remedies for Community

GRAY PLANT MOOTY 137


DRAFTING A NOTICE OF DETERMINATION 




GRAY PLANT MOOTY 138

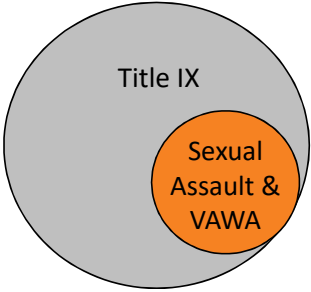
SESSION OVERVIEW 

- General Requirements Under Title IX & VAWA
- Elements of Notice of Determination
- Addressing Inculpatory and Exculpatory Evidence
- Delivery
- Additional Required Post-Determination Notices
- Case Study




GRAY PLANT MOOTY 139


OVERVIEW 




GRAY PLANT MOOTY 140

TITLE IX REQUIREMENTS 


- Both parties must be notified concurrently, in writing, about the outcome of both the complaint and any appeal, including:
 - Whether the alleged conduct occurred
 - Individual remedies offered or provided to the complainant (for complainant only)
 - Sanctions
 - You *must* only disclose to complainant those sanctions imposed on the respondent that relate to the complainant
 - Other steps the school has taken to eliminate the hostile environment and prevent recurrence




GRAY PLANT MOOTY 141

VAWA REQUIREMENTS 


- Complainant and respondent must be simultaneously informed in writing of:
 - The result of any disciplinary proceeding that arises from an allegation of sexual assault or a VAWA crime (*including sanctions and rationale*)
 - The institution's appeals procedures (if any)
 - Any change to the results that occurs prior to the time that such results become final
 - When such results become final




GRAY PLANT MOOTY 142

VAWA REQUIREMENTS 


- Written notice of result must –
 - Explain how the evidence was weighed
 - Explain how information supports the result
 - Describe how the standard of evidence was applied
 - Not enough to say the evidence met or did not meet the standard of evidence
 - Be presented simultaneously – no discussion with either party prior to the notice



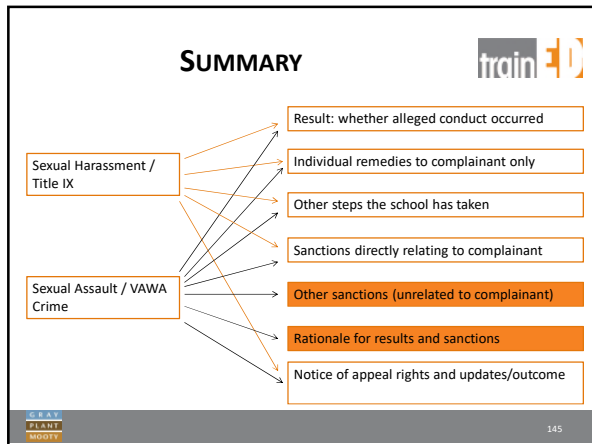
GRAY PLANT MOOTY 143

VAWA REQUIREMENTS 

- FERPA Exception – compliance with requirements for disciplinary proceedings— including the inclusion of the rationale for the result and the sanctions—does not violate FERPA




GRAY PLANT MOOTY 144




- ### ELEMENTS OF NOTICE OF DETERMINATION
-
- Summary of complaint
 - Summary of process
 - Relevant policy provisions
 - Result/decision**
 - Rationale for the result/decision*
 - Sanctions**
 - Rationale for the sanctions*
 - Remedies for complainant (complainant's notice only)**
 - Remedies for campus/community**
 - Appeal process (if offered)*
- * Mandatory for SA/VAWA
** Mandatory for both
- trainED
- GRAY PLANT MOOTY 146


- ### ELEMENTS
-
- Summary of complaint(s)
 - Recap allegations in the complaint
 - Use neutral language
 - Summary of process
 - Describe investigation process
 - Describe adjudication process
 - Reference policy provisions setting forth the process
- trainED
- GRAY PLANT MOOTY 147

ELEMENTS 


- Relevant policy provisions
 - Definition of relevant prohibited conduct
 - Elements of the offense
 - Definition of consent
 - Burden of proof



GRAY PLANT MOOTY 148


ELEMENTS 

- Result/decision**
 - Consider the elements of the offense
 - State whether it is more likely than not that a policy has been violated
- Provide the rationale for the result/decision*




* Mandatory for SA/VAWA
** Mandatory for both

GRAY PLANT MOOTY 149


ELEMENTS 

- Rationale for the result and sanction*
- Must include explanation of how information and evidence was weighed and how it supports the result and sanctions
 - Balance between too little and too much information
 - Consider whether to include some or all of the following, based on the facts and circumstances:
 - Elements of the prohibited conduct
 - Definitions from the institution's policy
 - Necessary factual findings
 - Admissions by respondent
 - Statement of the seriousness of the conduct
 - Statement of how the sanction will end the harassment and/or prevent its recurrence




* Mandatory for SA/VAWA
** Mandatory for both

GRAY PLANT MOOTY 150

ADDRESSING INCULPATORY AND EXCULPATORY EVIDENCE 

- Written notice should address all relevant evidence provided, including evidence that is contrary to your conclusion
 - What evidence supports your conclusion?
 - What evidence is contrary to your conclusion?
 - Why is the evidence that supports your conclusion stronger?
- Explain credibility determinations
 - Why do you find one party more credible than the other?
 - If a witness's statement is contrary to your conclusion, why do you not believe the witness?
- The reader should be able to tell that you considered all relevant evidence in making your decision

GRAY PLANT MOOTY 151


ELEMENTS 

- Sanctions**
 - If sexual harassment that does not constitute sexual assault or a VAWA crime
 - Include all sanctions in respondent's notice
 - You *must* include only those sanctions that relate to the complainant in complainant's notice
 - If sexual assault or a VAWA crime
 - You *must* include all sanctions in both notices
- Provide the rationale for the sanctions*
- Build in ability for Title IX Coordinator to modify/clarify sanctions and address future right to appeal

* Mandatory for SA/VAWA
** Mandatory for both

GRAY PLANT MOOTY 152



ELEMENTS 


- Individual remedies for complainant**
 - Offered and provided
 - Only include in complainant's notice
- Remedies for the campus/community**
 - Other steps the school has taken to eliminate the hostile environment and prevent recurrence

* Mandatory for SA/VAWA
** Mandatory for both



GRAY PLANT MOOTY 153




ELEMENTS



- Appeal process*
 - To whom appeals should be sent
 - Required format of request for appeal
 - Timing/deadline for appeal
 - Bases for appeal
 - General process/who will decide the appeal (e.g., single decision-maker or rehearing by panel)




* Mandatory for SA/VAWA
** Mandatory for both




154


DELIVERY



- Must be in writing**
- Must be delivered simultaneously**
 - Email
 - In-person meetings to deliver hard copies of written notice
- Best practice: Let parties know ahead of time when decision will be delivered




* Mandatory for SA/VAWA
** Mandatory for both




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ADDITIONAL REQUIRED POST-DETERMINATION NOTICES





- For sexual assault and VAWA crimes, your institution must provide simultaneous notice to both parties of—
 - Any change to the results that occurs prior to the time that such results become final*
 - When such results become final*
- For Title IX, your institution must provide concurrent written notice of—
 - The outcome of any appeal**



* Mandatory for SA/VAWA
** Mandatory for both




156


CASE STUDY

Notice of Determination



157


CASE STUDY—NOTICE OF DETERMINATION



Notice of Determination Excerpt
Findings and Rationale


Based on all the evidence in the investigation file and the Policy regarding sexual assault and consent, the adjudicator finds there is insufficient evidence to determine that it is more likely than not that Will engaged in sexual assault as defined by the Policy, as further explained below. Based on all the evidence in the investigation file and the Policy regarding sexual assault and consent, the adjudicator finds there is sufficient evidence to determine that it is more likely than not that Jessica engaged in sexual assault as defined by the Policy, as further explained below.

Jessica and Will were students at the College at the time of the alleged incidents. The parties agree that they dated during the fall 2017 semester and broke up in the middle of February 2018. The parties agree that they went to a party on the night of January 27, 2018 and then returned together to Will's room where they engaged in sexual contact. The parties disagree as to what sexual contact they engaged in, who initiated the sexual contact, and whether consent was obtained for the sexual contact.



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CASE STUDY—NOTICE OF DETERMINATION



Jessica's Allegation of Sexual Assault on the night of January 27, 2018

The parties agree that Jessica performed oral sex on Will on the night of January 27, 2018, but disagree as to who initiated the oral sex and whether consent was obtained. Jessica alleges that she did not consent to the oral sex and that Will coerced her into performing oral sex on him. Jessica also alleges that she was incapacitated and could not have provided consent to perform oral sex.

Jessica reported that she and Will were watching a movie when they started kissing. Jessica stated that Will then asked her if she wanted to have sex. Jessica stated that Will pressured her to say yes for about 20 minutes. Jessica stated that she was concerned that Will might break up with her or "badmouth" her to their friends if she said no. Jessica stated that they started kissing again and that Will then put his hands on her head and moved her head toward his penis. Jessica stated that Will put his penis in her mouth. Jessica stated that she performed oral sex on Will because she "had to do something to make him happy" and "so that he would stop pushing [her] to have sex." Jessica stated that she performed oral sex for several minutes until Will told her he was not going to finish and so she stopped.



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CASE STUDY—NOTICE OF DETERMINATION (CONT.)



In contrast, Will denied pressuring Jessica to have sex. Will reported that he asked Jessica if she wanted to have sex, she said no, and he accepted that. Will stated that he then asked if she wanted to “give [him] a blow job.” Will stated that he “sort of guided Jessica’s head down” with his hands until her head was near his penis, and Jessica then put his penis in her mouth. Will stated that Jessica performed oral sex on him for a few minutes before he told her to stop.

Pursuant to the Policy, the adjudicator must determine whether it is more likely than not that Will engaged in sexual assault of Jessica. The adjudicator must determine who initiated the oral sex and, if Will initiated the oral sex, whether he had consent to proceed with the act.

GRAY
PLANT
MOOTY

160

CASE STUDY—NOTICE OF DETERMINATION (CONT.)



Under the Policy, the party initiating the specific sexual activity has the responsibility to obtain consent for that sexual activity. Therefore, Will had the responsibility to obtain Jessica’s consent to perform oral sex on him only if he initiated that sexual activity. The parties’ accounts differ slightly as to the actions leading up to the oral sex, but both parties have set forth plausible accounts. If true, Will’s account indicates that he first raised the idea of oral sex by asking Jessica to perform oral sex on him and guiding her head down toward his penis. His account also indicates, however, that Jessica initiated the sexual act when she put his penis in her mouth. In contrast, if true, Jessica’s account indicates that Will initiated the oral sex by putting his penis in her mouth. There is no surrounding evidence that tips the balance of evidence sufficient to meet the preponderance of the evidence standard as to whether Will initiated the oral sex. Therefore, the adjudicator finds insufficient evidence to determine that it is more likely than not that Will initiated the oral sex. For the reasons described below, however, the adjudicator concludes that even if Will initiated the oral sex, and therefore needed to obtain Jessica’s consent, there is insufficient evidence to determine that it is more likely than not that Jessica was incapacitated or that she did not otherwise consent to perform oral sex on Will.

GRAY
PLANT
MOOTY

161

CASE STUDY—NOTICE OF DETERMINATION (CONT.)




Incapacitation

The parties agree that Jessica had been drinking on the night of January 27. Jessica reported that she had “a couple shots” of Bacardi and that she shared two mixed rum drinks with her friend Cindy. Jessica stated that she was “definitely drunk” at the party and that she was “still out of it,” when she arrived at Will’s room. Will reported that Jessica was “tipsy” and “flirty”, but that she was not “falling over drunk.” Cindy stated that Jessica “was having a good time” and was “pretty loud,” but that Cindy “wasn’t worried about her.” Troy reported that Jessica was “drunk” and that you could tell from across the room that she had been drinking.


GRAY
PLANT
MOOTY

162

CASE STUDY—NOTICE OF DETERMINATION (CONT.) 


The Policy states that a person is incapacitated when they do not have the ability to understand the fact, nature, or extent of the sexual situation. Under the Policy, a person is not incapacitated just because they have been drinking. When determining whether a person was incapacitated, the adjudicator must consider whether the person was able to understand the fact, nature, or extent of the sexual situation; whether the person 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. For the reasons provided below, the adjudicator finds insufficient evidence to determine that it is more likely than not that Jessica was incapacitated as that term is defined in the Policy during the oral sex.

GRAY
PLANT
MOOTY 163

CASE STUDY—NOTICE OF DETERMINATION (CONT.) 

The adjudicator finds insufficient evidence to determine that it is more likely than not that Jessica was unable to understand the fact, nature, and extent of the sexual situation at the time of the incident. Jessica gave a detailed account of how she performed oral sex on Will. Jessica’s account indicates that she felt pressured to perform oral sex on Will to prevent him from breaking up with her or “badmouthing” her to their friends. These facts indicate that Jessica was aware of and understood the fact, nature, and extent of the sexual situation. Based on Jessica’s account, there is insufficient evidence to conclude that it is more likely than not that Jessica was unable to understand the fact, nature and extent of the sexual situation and accordingly, the adjudicator finds insufficient evidence to determine that it is more likely than not that Jessica was incapacitated as defined in the Policy.


GRAY
PLANT
MOOTY 164

CASE STUDY—NOTICE OF DETERMINATION (CONT.) 

Consent


Further, even if Will initiated the oral sex, the adjudicator finds insufficient evidence that Jessica did not consent to the contact. Again, the parties’ accounts differ slightly as to the actions leading up to the oral sex, but both parties have set forth plausible accounts. Jessica’s account, if true, indicates that Will put his penis in her mouth without any words or overt actions indicating Jessica’s consent. In contrast, Will’s account, if true, indicates that he asked Jessica if she was willing to perform oral sex on him and guided her head down until her head was near his penis. Will’s account indicates that Jessica responded by putting his penis in her mouth and performing oral sex on him. Although verbal communication is the most reliable form of asking for and gauging consent, consent does not need to be verbal. An overt action, such as beginning to perform the sexual act, can also indicate consent. Will’s account if true, indicates that Jessica consented to the sexual contact through her overt action of beginning to perform oral sex on Will. There is no surrounding evidence that tips the balance of evidence sufficient to meet the preponderance of the evidence standard as to whether Jessica consented to the oral sex. The adjudicator therefore finds insufficient evidence to determine that Jessica did not consent to perform oral sex on Will.

GRAY
PLANT
MOOTY 165

CASE STUDY—NOTICE OF DETERMINATION (CONT.) 

The adjudicator does not find additional evidence sufficient to alter the conclusion that there is insufficient evidence that Jessica did not consent to perform oral sex on Will. The adjudicator considered Will's text message sent to Jessica a few days after their break up. In the text message exchange, Jessica stated "I just wanted to say that I hope you learned that no means no and won't ever do this again to another girl." Will responded with a message saying that he "learned so much" from Jessica, that he is "going to be a better person," and that he was "sorry if [he] ever made [her] feel uncomfortable." Will explained to the investigator that Jessica told him that he had made her uncomfortable during their relationship and said that he did not know how, but he did not want her to be mad or think he did not care. The adjudicator finds that the text messages between Jessica and Will are ambiguous and given the totality of the evidence in this case, Will's response to Jessica's text message is not sufficient to alter the adjudicator's determination that there is insufficient evidence that Jessica did not consent to perform oral sex on Will.


GRAY
PLANT
MOOTY 166

CASE STUDY—NOTICE OF DETERMINATION (CONT.) 

Coercion


Jessica also alleges that Will coerced her into performing oral sex on him. Under the Policy, consent cannot be procured through the use of psychological pressure, physical force, or threats of severely damaging consequences. Jessica stated that Will asked her to have sex multiple times over about 20 minutes on the night of January 27. Jessica also reported that she felt pressured to perform oral sex on Will to prevent him from breaking up with her or "badmouthing" her to their friends. Will denied pressuring Jessica to engage in any sexual contact. Even taking Jessica's account that Will pressured her to have oral sex as true, the adjudicator finds insufficient evidence that Will coerced Jessica into performing oral sex on him. Although the adjudicator recognizes that Jessica may have felt uncomfortable, feeling pressured to engage in sexual contact in order to make her relationship with Will work or in order to prevent Will from talking about her to their friends does not constitute "psychological pressure, physical force, or threats of severely damaging consequences" that would rise to the level of coercion under the Policy.

GRAY
PLANT
MOOTY 167

CASE STUDY—NOTICE OF DETERMINATION (CONT.) 


The adjudicator does not find additional evidence sufficient to alter the conclusion that there is insufficient evidence of coercion. The adjudicator considered Will's text message sent to Jessica a few days after their break up and Troy's statement regarding Will's and Jessica's breakup. As previously stated, the adjudicator finds that the text messages between Jessica and Will are ambiguous. Accordingly, given the totality of the evidence in this case, Will's text message is not sufficient to alter the adjudicator's determination that there is insufficient evidence that Will engaged in coercion. Similarly, Troy's report that Will told him that Jessica did not want to have sex and that Will was "tired of trying" is also ambiguous and insufficient to alter the adjudicator's conclusion. As stated above, even taking Jessica's account that Will pressured her to engage in sexual contact as true, there is insufficient evidence that this pressure rose to the level of coercion, as defined in the Policy.

GRAY
PLANT
MOOTY 168

CASE STUDY—NOTICE OF DETERMINATION (CONT.) 


For these reasons, the adjudicator finds insufficient evidence to determine that it is more likely than not that Will engaged in sexual assault of Jessica on the night of January 27 in violation of the Policy.

GRAY PLANT MOOTY 169

CASE STUDY—NOTICE OF DETERMINATION (CONT.) 

Jessica’s Other Allegations of Nonconsensual Sexual Contact
Jessica alleged that on other occasions Will pressured her to engage in sexual contact, including kissing. Jessica stated that she did not remember the dates or specific information about the other encounters. Jessica’s allegations were vague and nonspecific, making it difficult for Will to respond to her allegations and for the adjudicator to assess the credibility of her allegations. Accordingly, the adjudicator finds insufficient evidence to determine that it is more likely than not that Will engaged in nonconsensual sexual contact with Jessica on those other occasions.

GRAY PLANT MOOTY 170

CASE STUDY—NOTICE OF DETERMINATION (CONT.) 

Will’s Allegation of Nonconsensual Sexual Contact
Will alleges that Jessica violated the Policy when she “grabbed” his penis without his consent on the night of January 27. The parties too do not agree as to whether this contact occurred.
Will reported that after the oral sex ended, he and Jessica continued to watch the movie. Will stated that less than a minute later, Jessica reached out and “grabbed [his] penis” and started “rubbing” it. Will stated that he was “surprised” and “uncomfortable” when Jessica “grabbed” him. Will stated that he was quiet for a few seconds and then he pushed her hand away.

GRAY PLANT MOOTY 171

CASE STUDY—NOTICE OF DETERMINATION (CONT.)



In contrast, Jessica reported that she did not recall touching Will's penis after the oral sex. Jessica stated that the next thing she remembered after the oral sex was waking up in Will's room after the movie ended. Jessica stated that she was "sure [she] just passed out." In his rebuttal statement, Will stated that Jessica never passed out and that she was making comments to him about the movie throughout the entire movie.

Pursuant to the Policy, the adjudicator must determine whether it is more likely than not that Jessica engaged in sexual assault of Will. The adjudicator must determine whether the alleged sexual contact occurred, and if so, whether Jessica had consent to proceed with the act.

GRAY
PLANT
MOOTY

172

CASE STUDY—NOTICE OF DETERMINATION (CONT.)



The adjudicator finds sufficient evidence to determine that it is more likely than not that Jessica "grabbed" Will's penis. Will's account of the sexual contact is detailed, plausible, and credible. While Jessica's account is also plausible, the adjudicator finds that her lack of memory is insufficient evidence to overcome Will's account of the sexual contact. Jessica reported that she does not remember touching Will's penis after the oral sex, but she does not refute that this contact happened. Rather, she says that she does not remember the contact because she "passed out." Given Jessica's admitted alcohol consumption, it's possible that Jessica's intoxication level may have affected her memory of events during this sexual contact.

GRAY
PLANT
MOOTY

173


CASE STUDY—NOTICE OF DETERMINATION (CONT.)



In addition, although the adjudicator finds both parties presented plausible accounts of whether this sexual contact occurred, the adjudicator finds Will's account of the sexual contact more plausible and more credible than Jessica's account. Jessica's roommate stated that when Jessica arrived back at her room on the night of January 27, Jessica did not mention passing out, but told her roommate that she "gave [Will] a blow job and then he let [Jessica] leave." Jessica's fairly detailed memory of the conversations with Will and the oral sex, short duration of being "passed out," awareness to decide to leave Will's dorm, and the statements she recalls making to her roommate upon her return lead the adjudicator to find Jessica's account that she passed out following the oral sex and doesn't remember touching Will's penis somewhat questionable. Accordingly, because the adjudicator finds Will's account to be more credible for the reasons discussed above, the adjudicator concludes that it is more likely than not that Jessica "grabbed" Will's penis.


GRAY
PLANT
MOOTY

174

CASE STUDY—NOTICE OF DETERMINATION (CONT.) 


The timing of Will's Title IX complaint is not sufficient to alter the adjudicator's conclusion that it is more likely than not that this contact occurred. In her written statement, Jessica stated that Will's complaint was in retaliation for her filing a complaint. Jessica stated that Will made the allegation against her because he knows that she does not remember what happened after the oral sex. Jessica also stated that if Will thought Jessica had assaulted him, "he would have come forward right away," instead of after Jessica had filed a complaint against him. Will did not, however, immediately file a complaint after receiving notice that Jessica had accused him of sexual assault. Rather, Will first raised Jessica "grabb[ing]" his penis during his initial interview with the investigator. Only after the allegation came up during his interview with the investigator did Will file a complaint with the Title IX Coordinator. Accordingly, the adjudicator does not find the timing of Will's complaint to be sufficient to alter the conclusion that it is more likely than not that Jessica "grabbed" Will's penis.

GRAY PLANT MOOTY 175

CASE STUDY—NOTICE OF DETERMINATION (CONT.) 

The adjudicator further concludes that based on Will's account, Jessica initiated the sexual contact by touching Will's penis. While Jessica's intoxication level may have impaired her memory of the sexual contact, under the Policy, Jessica's use of alcohol is not a defense against allegations of sexual misconduct. Even if Jessica's intoxication reached the level of incapacitation at the time when she touched Will's penis, because the adjudicator finds it more likely than not that Jessica initiated the sexual contact, she had the responsibility to obtain consent for the act.

GRAY PLANT MOOTY 176

CASE STUDY—NOTICE OF DETERMINATION (CONT.) 

The adjudicator must accordingly determine whether Jessica had consent to engage in the contact. Will reported that he did not provide words or overt actions indicating that he was willing to have Jessica touch his penis. Will's account is plausible and credible. In addition, Jessica has not provided any evidence of any words or overt actions by Will that would indicate that he consented to the sexual contact. Accordingly, the adjudicator finds sufficient evidence to conclude that it is more likely than not that Will did not consent to this sexual contact.

For the reasons explained above, the adjudicator finds sufficient evidence to determine that it is more likely than not that Jessica engaged in sexual assault of Will on the night of January 27.

GRAY PLANT MOOTY 177

CASE STUDY – POST-ADJUDICATION



You are walking on campus the day after the Title IX Coordinator sent the notice of determination to the parties. You see Jessica running across the quad to catch up with you. Jessica approaches you and tells you that she thinks your decision was unfair.

APPEALS




APPEALS



- Not required, but adds a layer of due process
- When available, must:
 - Be prompt and equitable
 - Follow grounds for appeal as outlined in policy
 - Set timelines for various stages
 - Examples of typical grounds include:
 - New evidence
 - Unfair investigation/hearing
 - Failure to follow policy
 - Sanctions too severe/lenient
- Consider scope of authority (change decision or remand only)
 - If new decision, is other party permitted to appeal?
- Individuals responsible for appeal must receive specialized training
- May limit right to only respondent^{2017 Q&A}

APEALS




- 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*
 - "Must" provide access if Title IX 2017 Q & A
 - Simultaneous notice of outcome**

* Mandatory for SA/VAWA
** Mandatory for both

GRAY PLANT MOOTY 181


CASE STUDY - APPEAL



Jessica appeals the determination, contending that the school was biased against her because it investigated Will's complaint at the same time as her complaint. She also argues that the sanction she received was too severe. In addition, Jessica argues that Will's complaint against her was clearly retaliation for her filing a complaint against him, and the school failed to investigate the retaliatory action.

GRAY PLANT MOOTY 182

UPCOMING TRAININGS




- **Trainings for individuals with heightened responsibility:**
 - 2/28/19: Trauma Informed Training for First Responders, Confidential Resources and Campus Security
 - 7/29/19: Annual Training for Advanced Title IX Coordinators and Deputy Coordinators
 - 7/30/19: Annual Title IX/VAWA Investigator and Adjudicator Training
 - 8/5/19: Annual Training for New Title IX Coordinators and Deputy Coordinators
 - 8/6/19: Annual Training for Advanced Title IX Coordinators and Deputy Coordinators
 - 8/7/19: Annual Title IX/VAWA Investigator and Adjudicator Training

GRAY PLANT MOOTY 183

ON DEMAND TRAININGS 

- **Available on-demand:**
 - Annual Trauma Informed Training for Investigators and Adjudicators
 - Annual Training for NEW Title IX Coordinators and Deputy Coordinators
 - Annual Training for ADVANCED Title IX Coordinators and Deputy Coordinators
 - Title IX/VAWA Hearing Panel Training
 - Trauma Informed Training for First Responders, Confidential Resources, and Campus Security
 - Making Your Sexual Misconduct Policy a 10
 - Title IX/VAWA Training for Chief Academic Officers
 - Title IX/VAWA Panel Discussion for Coaches and Athletic Directors
 - Compliance Update: New VAWA Guidance
 - Senior Leadership Training
 - Transgender Students and Employees Training
 - Minnesota Law Update: Title IX Coordinator Overview of Legal Requirements
 - Confidential Resources Training
 - Attorneys Serving as Advisors
 - Panel Discussion on Interviewing Survivors of Sexual Assault
 - Fundamentals of FERPA

GRAY PLANT MOOTY 184

ON DEMAND TRAININGS 

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

GRAY PLANT MOOTY 185



TITLE IX/VAWA ADJUDICATOR TRAINING

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Session 2: Overview of Process

Session 3: Working with the Parties

Session 4: The Decision-Making Process

Session 5: Drafting a Notice of Determination

Other Resources:

- **Adjudication Checklist**
- **Web Resources**

Case Study

GP:4837-5764-5189 v1



**TITLE IX/VAWA
ADJUDICATOR TRAINING
AGENDA**

Introduction and Legal Landscape

Overview of Process

Working with the Parties

The Decision Making Process

Drafting a Notice of Determination



TITLE IX/VAWA ADJUDICATOR TRAINING CHECKLIST

PRE-INVESTIGATION OBLIGATIONS *Title IX Coordinator

- Assess immediate safety and well-being for individual and campus
- Notify complainant of right to contact law enforcement (or not to) and seek medical treatment
- Enter into daily crime log, if applicable
- Assess for whether campus alert should be issued
- Identify resources available to the complainant
- Offer accommodations
- Identify advocate/support person
- Notify importance of preserving evidence
- Provide written notice required under VAWA
- Discuss process options—e.g., mediation, full investigation—if applicable
- Get consent to proceed with the complaint process
- Assign complaint to *trained* investigator(s)
- Appoint *trained* decision-maker(s)—if different from investigator(s)

STAGE ONE: REVIEW COMPLAINT AND OUTLINE INVESTIGATION

- Prepare script of opening remarks
 - Provide general explanation of reason for interview—gathering facts
 - Explain possible uses of witness's statements
 - If applicable, inform witness of recording and its use
 - Explain complaint process to parties
 - Explain the need to ask difficult, detailed questions
 - Ask a complainant witness not to read into questions
 - Explain to complainant witness that different people respond differently
 - Explain that timelines and order of events may not be clear
 - Tell the witness to feel free to ask why a question is asked (Investigators: be prepared to answer)
 - Instruct witness regarding confidentiality
 - Warn witness regarding policy prohibiting retaliation
 - If applicable, advise witness on alcohol policy waiver
 - Obtain commitment to tell truth

- Advise party and advisor on advisor's limited role
- Gather and review available evidence
- Begin to create chronology of events
- Identify sources of evidence
 - Witnesses
 - Physical evidence (e.g., text messages, emails, surveillance video, evidentiary examination, student/personnel files, etc.)
- Identify and strategize order for witnesses
- Familiarize yourself with the setting(s) of the events
- Familiarize yourself with the witnesses as best you can
- Identify topics for interviews
- Coordinate witness interviews
- Notify parties of meetings/interviews with the other party
- Determine whether to record interviews
- Maintain confidentiality if requested

STAGE TWO: GATHER EVIDENCE

- Review student/personnel files
- Gather physical evidence
- Witness interview
 - Review script of opening remarks with each witness (see above)
 - Attempt to establish chronology of events
 - Identify potential witnesses and evidence to gather
 - Ask witness to forward evidence/information immediately
 - "Is there anything else"
 - Discuss non-retaliation and confidentiality
 - Request to contact if further information
 - Prepare a summary immediately following interview
- Continue to update chronology of events

STAGE THREE: REVIEW/REVISE/RE-INTERVIEW

- Note all factual discrepancies
- Assess additional investigation needs
- Determine whether additional witnesses should be interviewed
- Determine whether follow-up with any previous witnesses necessary

STAGE FOUR: PACKAGE INVESTIGATION FOR DECISION-MAKERS

- Summarize evidence
 - Recording and/or written summary of each interview (prepare immediately following interviews)
 - Written summary of other facts/evidence gathered

- If using written summary of interview, consider allowing each witness to review the summary of their interview and/or give option to attach a written narrative
- Prepare information to be provided to decision-maker(s)
- Ensure that parties are updated on the status of the investigation ***Title IX Coordinator**
- Ensure that parties are provided an opportunity to view information that will be provided to the decision-maker ***Title IX Coordinator**
- Institution should consider whether policy should allow parties to submit a written statement in response to information provided to the decision-maker ***Title IX Coordinator**

STAGE FIVE: ADJUDICATION/DECISION-MAKING

- Use preponderance of the evidence standard
- Specify role of advisors/attorneys (if hearing)
- Consider whether to review recordings (if any) and summaries and ensure parties are provided access
- Weigh evidence and assess credibility
- Review institution's sexual misconduct policy, including definitions of consent
- Make a determination
- Consider limited consultation with Title IX coordinator
- Determine sanctions
- Determine remedies for complainant and campus community
- Provide written notice of determination to parties simultaneously
 - Result
 - Any appeal rights
 - Sanctions (if sexual violence, include all sanctions in notices to both parties; if not sexual violence, only include sanctions related to complainant in complainant's notice)
 - Remedies for complainant (only in notice to complainant)
 - Remedies for campus
 - If sexual violence, rationale for result and sanction

STAGE SIX: APPEAL (if applicable)

- Assign to trained official(s) ***Title IX Coordinator**
- Review institution's policy for grounds for appeal
- Determine whether grounds for appeal under the policy are satisfied
- Provide written notice to parties simultaneously of updates and outcome of appeal

2019 Title IX/VAWA Adjudicator Training

Handout 1

Complaint

On March 9, 2018, Jessica Johnson made a complaint of sexual misconduct against Will Williams.

Sexual Assault/Harassment Complaint Form

COMPLAINANT NAME: Jessica Johnson

ADDRESS: 999 University Circle

DATE OF REPORT OF ALLEGED POLICY VIOLATION: March 9, 2018

RESPONDENT NAME: Will Williams

ADDRESS: 1234 College Lane

TITLE IX COORDINATOR SUMMARY OF JESSICA'S ORAL REPORT:

Jessica dated Will from January 2018 through February 2018. Will pressured Jessica to engage in sexual contact throughout their relationship. On January 27, 2018, Jessica and Will went to a party. After the party, they went back to Will's room. Once they were in his room, Will initiated oral sex with Jessica and put his penis in Jessica's mouth without her consent. This type of nonconsensual and coercive conduct happened repeatedly throughout their dating relationship. Jessica also reported that she was too drunk to consent on January 27, 2018.

The Title IX Coordinator notified Will of the complaint. Will denied the allegations and said that Jessica consented to the sexual contact on the night of January 27, 2018. Will said that he never pressured Jessica to engage in sexual contact during their relationship.

2019 Title IX/VAWA Adjudicator Training

Handout 2

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.
- A person’s manner of dress does not constitute consent.
- Consent cannot be procured, expressly or implicitly, by use of force, intimidation, threats, or **coercion**, as that term is defined below.
- There can be no consent to sexual activity with someone known to be—or who should be known to be—mentally or physically **incapacitated**, as that term is defined below.
- 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. 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.

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 and does not diminish personal accountability or criminal liability.

Definition of Coercion

Coercion refers to intimidation that would compel an individual to do something against their will by the use of psychological pressure, physical force, or threats of severely damaging consequences. Coercion is more than an effort to persuade or attract another person to engage in sexual activity. Coercive behavior differs from seductive behavior based on the degree and type of pressure someone used to get consent from another.

2019 Title IX/VAWA Adjudicator Training

Handout 3

Complaint

Will Williams met with the investigator as part of the investigation into a complaint made against him by Jessica Johnson on March 20, 2018. During his interview with the investigator, Will raised an allegation of sexual misconduct against Jessica. On March 22, 2018, Will made a complaint of sexual misconduct against Jessica to the Title IX Coordinator.

Sexual Assault/Harassment Complaint Form

COMPLAINANT NAME: Will Williams

ADDRESS: 1234 College Lane

DATE OF REPORT OF ALLEGED POLICY VIOLATION: March 22, 2018

RESPONDENT NAME: Jessica Johnson

ADDRESS: 999 University Circle

TITLE IX COORDINATOR SUMMARY OF WILL'S ORAL REPORT:

Will and Jessica dated from January 2018 through February 2018. On the night of January 27, 2018, after returning to Will's room from a party, Jessica touched Will's penis without his consent.

The Title IX Coordinator notified Jessica of the complaint. Jessica stated that she did not touch Will's penis on the night of January 27, 2018. Jessica stated that Will's report was "ridiculous" since he consistently asked her to have sex during their relationship. Jessica stated that she believes Will made his report only because she first reported him.

2019 Title IX/VAWA Adjudicator Training

Handout 4

Investigation Report Excerpt

Summary of Facts/Background

The parties are both students at the College. Jessica Johnson is a freshman and Will Williams is a junior. Jessica and Will agreed that they met at a party after the first week of classes in January 2018 and that they began dating a few days later.

The parties agreed that during their relationship they engaged in sexual interactions including kissing, touching, Jessica giving Will hand jobs, and Jessica performing oral sex on Will, but they did not engage in sexual intercourse. Jessica stated that Will often asked to take their sexual relationship further, including asking her to have intercourse. Jessica stated that she would tell Will “no,” but he was often persistent. Jessica stated that sometimes, she would agree to give Will a hand job so that he would stop asking for sexual intercourse. Jessica also stated that she gave Will oral sex one time before the night of January 27, but that the next day she told Will she was not comfortable with oral sex and was not sure she wanted to do it again.

Will stated that he respected Jessica’s boundaries and never pressured her to do anything she did not want to do.

January 27-28, 2018

Jessica and Will Attend a Party

The parties agree that they attended a party together at a house off campus on January 27, 2018.

Jessica’s Account

Jessica stated that she went to the party with Will and her friend Cindy around 10:00 p.m. on January 27. Jessica stated that she and Cindy had “a couple shots” of Bacardi as soon as they arrived. Jessica stated that the shots “hit her quickly,” because she had eaten a light dinner and took the shots “back to back.” Jessica stated that during the party, she and Cindy shared two mixed drinks that Cindy made in plastic cups. Jessica stated that she thought the drink had rum in it, but she was not sure and did not know what else was in it.

Jessica stated that a few hours after arriving, she was “really out of it” and told Will that she wanted to leave the party. Jessica stated that she does not remember much after that until she was in Will’s dorm room sometime later that night. When asked what she remembered between telling Will she wanted to leave and being in Will’s dorm room, Jessica stated, “I kind of remember walking to his room; I was just really tired and sort of out of it.”

Will's Account

Will stated that he and Jessica went to the party around 9:00 p.m. Will stated that he drank beer during the few hours that they were there, but he did not remember how many beers he consumed. Will stated that he was not sure what Jessica had to drink. Will stated that Jessica was with her friend Cindy at the beginning of the party, and he was in a different room with some of his friends. Will stated that after a few hours, he went to find Jessica.

Will stated that around 12:00 a.m., Jessica told him she was tired, so they left the party. Will stated that he and Jessica walked back to campus and went to his dorm room. Will stated that they arrived in his room around 12:30 a.m.

Jessica and Will Return to Will's Room

The parties agreed that they returned to Will's room after the party on January 27.

Jessica's Account

Jessica stated that she and Will were watching a movie on his computer while lying next to each other in his bed. Jessica stated that at some point they started "making out." When asked if she was okay with "making out," Jessica stated, "yeah, we did that all the time; so, I guess so. But I mean, I was really messed up at the time though, so maybe not." Jessica stated that the kissing started getting "more heated" and both she and Will took their own shirts off. Jessica stated that Will unbuttoned his pants and "pulled them down a little bit" so that his penis was exposed. Jessica stated that while they were "making out," Will stopped and asked if she wanted to have sex. Jessica stated that she responded "no." Jessica stated that Will tried to guilt her into sex. When asked what she meant by "guilt her into sex" she stated that he said something like "You always do this to me, say you're ready for sex, get me all heated and then nothing." Jessica stated that Will also said something about "all of [their] friends thinking [she's] frigid." Jessica stated that Will was pressuring her and "kept asking [her] for maybe 20 minutes." Jessica stated that because Will had asked her many times to have sex and she told him "no" each time, she felt like Will might break up with her if she did not "satisfy" him. She stated that she was also worried about him "badmouthing" her to their friends.

Jessica stated that they started kissing again and then Will put his hands on her head and moved her head toward his penis. Jessica stated that Will moved his hips forward and put his penis in her mouth. When asked for more details, Jessica stated "he like guided me to his penis and then like thrust it into my mouth." Jessica also stated, "it wasn't super forceful, but he just moved me sort of gently until I was where he wanted and then he put himself in my mouth." Jessica stated that she performed oral sex on Will. Jessica stated "I had to do something to make him happy; something so that he would stop pushing me to have sex." Jessica stated that after several minutes, Will told her he "was not going to finish" so she stopped. When asked if Will asked for oral sex, Jessica stated "no, we didn't talk about it."

Jessica stated that the next thing she remembers is waking up in Will's room after the movie ended. Jessica stated that she told Will she was tired and wanted to go home. Jessica stated that she and Will kissed goodbye at his door and then she walked home.

When asked what sexual contact she did not consent to, Jessica stated, "other than kissing, all of it. I didn't want to do any of it. And I was so drunk I don't think I could have consented if I wanted to, like not even to kissing." Jessica also stated, "Not only was I drunk but I felt pressured, I had to do what he wanted so that he would stop asking me for sex because I didn't want to do that. It was always like that; he'd ask for sex and then I'd end up doing something else that I did not want to do. I mean, I almost never said yes, anytime we hooked up. Even with kissing and making out sometimes, I wouldn't want to and he would just pressure me until I did." When asked for details of other times she felt pressured to engage in kissing or other sexual contact, Jessica stated that she did not remember the dates or specific information about other encounters.

Will's Account

Will stated that he put a movie on when he and Jessica got back to his room. Will stated that pretty quickly after that, he and Jessica started "making out." Will stated that as they continued making out "clothes came off," including Jessica's shirt and Will's shirt and pants. When asked what Jessica was wearing at that point, Will stated that she had on jeans and a bra. When asked what he was wearing at that point, Will stated "just boxer-briefs." Will stated that he then asked Jessica, "do you want to try having sex tonight?" Will stated "we had talked about it before and she said she thought she was ready and wanted to do it with me." Will stated that Jessica responded, "not tonight." When asked how he responded when Jessica said "not tonight," Will stated, "I accepted that. I always respected when she said she didn't want to do something." When asked about Jessica's allegation that he said something to the effect of "You always do this to me, say you're ready for sex, get me all heated, and then nothing." Will stated "I might have pointed out that she said she would be ready and then she wasn't, but I wasn't mad. I respected her boundaries." When asked about Jessica's allegation that he said "All of our friends think you're frigid," Will stated "Yeah, I mean, I tried to talk to her about what our friends were saying, I just thought she should know." When asked if he asked Jessica to have sex multiple times over 20 minutes, Will stated, "no, like I said, I accepted it when she said no." Will stated that he then asked Jessica if she would "give [him] a blow job." Will stated that when he asked, he started to pull his underwear down a little. Will stated that he was lying on his back on his bed and Jessica was sitting up next to him. Will stated he "nudged Jessica's head downward" with his hands and then she put his penis in her mouth. Will stated that he then moved his hands up and put them behind his head while Jessica performed oral sex on him. Will stated that after a few minutes, he realized that he was not going to finish, so he told Jessica to stop. Will stated that Jessica stopped and he pulled his underwear back up. When asked what words or actions indicated that Jessica agreed to perform oral sex on him, Will stated "she didn't say no, I mean,

she said no when I asked for sex, but not for the blow job. She's the one who put my penis in her mouth and then she did it."

Will stated that after the oral sex ended, they started to watch the movie again. Will stated that less than a minute later Jessica reached out and "grabbed [his] penis" under his underwear and started "rubbing" it. Will stated he was "surprised" and "uncomfortable" when Jessica grabbed him. Will stated "it was just, no warning, she just grabbed me and started rubbing" and "I was embarrassed that I couldn't finish, she was making it worse." Will also stated that "it really didn't feel good." Will stated that he was quiet for a few seconds after Jessica grabbed him, but then he pushed her hand away. When asked how Jessica reacted when Will pushed her hand away, Will stated that Jessica stopped and "just laid there."¹ When asked if there were any words or actions from him that may have indicated he consented to the contact, Will stated "no, nothing. After the blow job I pulled up my underwear and we went back to watching the movie." When asked if he had asked Jessica for a hand job in the past after she had said no to intercourse, Will stated "it came up before. It would kind of be a both of us thing, like, we aren't having sex today, what can we do instead." When asked if he pressured Jessica to engage in sexual contact on the night of January 27, Will stated "No, I never pressured her to do anything she did not want to do."

Will stated that Jessica and he watched the rest of the movie and then Jessica told him she was going to go home. Will stated that he and Jessica kissed for a few minutes near his door and then Jessica left.

The Parties' Intoxication Levels

Jessica's Account

Jessica stated that about an hour after arriving at the party, she was "feeling pretty drunk." When asked what she meant by "pretty drunk," Jessica stated, "I was good, loose, happy." When asked how intoxicated she was during the party on a scale of 1 (sober) to 10 (passed out), Jessica stated "maybe a 7 or an 8." When asked why she was a 7 or 8, Jessica stated "I was definitely drunk; not like, about to pass out, but I was having a good time." When asked how intoxicated she was when she arrived at Will's room on a scale of 1 (sober) to 10 (passed out), Jessica stated "a little less, maybe a 6 or 7. But I was still out of it."

Will's Account

When asked if he felt any effects of the beer he drank at the party, Will stated "not that I remember; I don't think I had much."

¹ When asked if she gave Will a "hand job," after performing oral sex on him, Jessica stated "no, not that I remember, but I don't really remember what happened after the oral sex. But I'm sure I just passed out."

When asked if Jessica seemed intoxicated when he saw her a few hours after they arrived at the party, Will stated, “maybe, I mean she was tipsy for sure, but not more so than any other time we’ve been at a party.” When asked how intoxicated Jessica was on a scale of 1 (sober) to 10 (passed out) when they arrived at Will’s room after the party, Will stated “3.” When asked why he said 3, Will stated “she had been drinking for sure and she was flirty, but it wasn’t like she was falling over drunk.”

Cindy’s Account

Cindy stated that she and Jessica have been friends since the beginning of the fall semester. Cindy stated that she went to a house party with Jessica and Jessica’s boyfriend, Will, on January 27 to celebrate the start of the new semester. Cindy stated she took “a few shots of vodka” with Jessica when they arrived and she might have given Jessica a few sips of the punch she mixed later in the night. Cindy stated that the last time she remembers seeing Jessica was about an hour after they arrived. Cindy stated that Jessica was hanging out with Will in another room and Cindy was with some of her friends from choir. When asked how intoxicated Jessica was on a scale of 1 (sober) to 10 (passed out) when she last saw her on the night of January 27, Cindy stated “a 6 or 7.” When asked why she said a 6 or 7, Cindy stated, “it was a party, she was having a good time and she was being pretty loud, but she wasn’t like passed out. I wasn’t worried about her.” When asked about Will’s intoxication level, Cindy stated “I don’t know, I didn’t really see him much after we got to the party.”

Troy’s Account

Troy stated that he and Will have been “close friends” for the past two years. Troy stated that he met up with Will at a party on January 27. Troy stated that he hung out with Will on and off until Will left the party with Jessica. Troy stated that Will had “a few beers” at the party, but Troy “wouldn’t have known unless I saw him drinking – he wasn’t drunk.” When asked how intoxicated Will was on a scale of 1 (sober) to 10 (passed out), Troy stated “2.”

When asked if Jessica was drinking, Troy stated, “yeah, but I don’t know what.” Troy stated that he did not see Jessica drinking, but “she must have been, because she was all over Will, hanging on him.” When asked how intoxicated Jessica was on a scale of 1 (sober) to 10 (passed out) when she left the party with Will, Troy stated “maybe a 6 or 7.” When asked why he said 6 or 7, Troy stated “You could just tell from across the room that she had been drinking, she was drunk. Her eyes were kinda red. She was loud, too. I could hear her conversation from ten feet away, although I couldn’t really follow what she was saying.”

Jessica Returns to Her Room

Witness Accounts

Lisa stated that she is Jessica's roommate. Lisa stated that on January 27, she stayed at her dorm to watch movies with her friend, Sarah. Lisa stated that she and Sarah were just finishing a movie when Jessica entered their room. Lisa stated that it sounded like Jessica might have been crying, so she turned on the lights. Lisa stated that Jessica "looked upset" and "was sort of quiet." Lisa stated that she asked Jessica what happened and Jessica told her she had been with her boyfriend Will and said "he just wouldn't listen," and "she felt like she couldn't leave until she pleased him." Lisa stated that Jessica also asked if Lisa thought Jessica was frigid. Lisa stated that Jessica told her that Will pressured her to have sex with him and that when she didn't want to, he forced Jessica to give him a blow job instead. Lisa stated that Jessica told her "he took advantage of me. He made me feel guilty for not wanting to have sex and he knew I was drunk." When asked if Jessica mentioned any other sexual contact she had with Will that night, Lisa stated, "no, she just said that she gave him a blow job and then he let her leave." When asked, Lisa stated that Jessica did not mention that she had passed out.

Jessica and Will Break Up

Jessica and Will agree that they broke up a couple weeks after their January 27 interaction, in the middle of February.

Jessica's Account

Jessica stated that she was "tired of trying to please" Will and that she did not think they were compatible anymore. Jessica stated that she and Will had a brief conversation about it and that it was "pretty clear to both of [them] that [they] were done." Jessica stated that she sent him a text message a few days after they broke up "to get some things off [her] chest." Jessica provided the following text messages:

Jessica: I know that we shouldn't be around each other for a while and I'm not going to contact you anymore. I just wanted to say that I hope you learned that no means no and won't ever do this again to another girl.

Will: Thank you. I learned so much from you. I'm going to be a better person and I'm sorry if I ever made you feel uncomfortable.

Jessica stated that she and Will played on the same intramural volleyball team. Jessica stated that after they broke up, she stopped going to volleyball so she could avoid seeing him.

Will's Account

Will stated that in February 2018, he and Jessica realized that they wanted different things and decided to break up. Will also stated that Jessica said she had been feeling uncomfortable for a while and that he had pushed her past her boundaries. Will stated he was “surprised,” because “she never said anything like that before.” Will stated that, although she’d talked about having a sexual relationship with him, he knew that Jessica hadn’t been quite ready to have sex, but that he “respected that and never pushed her to do anything she did not want to do.” Will stated that, for this reason, he always made sure that Jessica was comfortable and that she consented to their sexual interactions. Will stated that he had even talked to their friends about his and Jessica’s relationship and they all agreed with him that he had been very respectful.

When asked what he meant when he texted Jessica “I’m sorry if I ever made you feel uncomfortable,” Will stated, “well that’s what she said, that I made her uncomfortable. I don’t know how really, but I just didn’t want her to be mad or to go around thinking that I didn’t care if I hurt her feelings.” Will further stated “and I just kind of wanted to be done with Jessica and move on.”

Witness Accounts

Troy stated that Will came to his room one day in mid-February and told him that Will and Jessica had broken up. Troy stated that Will told him that Jessica didn’t want to have sex and that Will was “tired of trying.”

2019 Title IX/VAWA Adjudicator Training

Handout 5

Parties' Written Statements

Jessica's Statement

Will never respected me or my boundaries. Now he's trying to say that I made him uncomfortable by touching him when I didn't. He asked if we could have sex over and over and over again. He knew I didn't want to and he didn't care. He made me give him oral sex and now he wants to say that I touched him without consent. I was the one that was assaulted, not Will.

It's hard for me to believe that he can just accuse me of assaulting him when I'm the one who was assaulted. He's just saying that because he knows I don't remember anything that happened after the oral sex that night. His lie and this investigation against me have made this process extremely difficult. If I could do it over again, I would not report after what I have been forced to go through in this process. But I reported because I do not want Will to get away with this. For him to turn this around on me just isn't right. If he really thought I had assaulted him, he would have come forward right away instead of in retaliation.

Will clearly admitted that he did this in his text message. He said, "I'm going to be a better person and I'm sorry if I ever made you feel uncomfortable." He knows exactly what I meant with my text. I hope he is going to be a better person so that he does not put any other girl through what I went through. Even Troy said that Will was angry because I would not have sex with him. That anger made me feel so uncomfortable and pressured to do so many things I did not want to do. I was constantly stressed about it during our entire relationship. I was also so embarrassed because he'd obviously been talking to our friends about this.

Please hold Will responsible for what he has done.

Will's Statement

Consent is "words or overt actions." I never gave Jessica any words or actions that gave her permission to touch my penis. She just did it. That's against the policy and she has to be held responsible for it.

I never pressured Jessica at any point during our relationship. She wanted to take it slow and I respected that. Of course, I told her what others were saying because I wanted her to understand that it wasn't just me and that sex is something that couples do during college. She obviously agreed because she said we would explore a sexual relationship and then the very next night

refused. Most guys would have lost it. But remember that I was the one who ended the blow job. If I was the one putting so much pressure on her to get what I supposedly wanted, then why would I tell her to stop? When she said she was uncomfortable, I was confused why she would say that – I always respected her boundaries. We both just decided that we were better off apart. It was a mutual decision and then she goes and says that. I learned recently that Jessica has depression and has been in counseling since we broke up. Several people have told me that she has been making up lies about me. She clearly is not in her right mind and the College should not let her spread lies about me through this investigation or outside of it. And the College definitely shouldn't believe her.

I never did anything with Jessica that she did not want to do. I hope you see that Jessica is the one who did not have words or actions giving her permission to touch me.

Rebuttal Statements

Will's Statement

Jessica claims that she passed out and does not remember anything that happened after we had oral sex, but that is not true. Jessica never passed out. She was talking to me about the movie and was awake the whole time. It's very convenient that the one part of the night that Jessica doesn't remember is the part where she assaulted me.

2019 Title IX/VAWA Adjudicator Training

Handout 6

Notice of Determination Excerpt

Findings and Rationale

Based on all the evidence in the investigation file and the Policy regarding sexual assault and consent, the adjudicator finds there is insufficient evidence to determine that it is more likely than not that Will engaged in sexual assault as defined by the Policy, as further explained below. Based on all the evidence in the investigation file and the Policy regarding sexual assault and consent, the adjudicator finds there is sufficient evidence to determine that it is more likely than not that Jessica engaged in sexual assault as defined by the Policy, as further explained below.

Jessica and Will were students at the College at the time of the alleged incidents. The parties agree that they dated during the fall 2017 semester and broke up in the middle of February 2018. The parties agree that they went to a party on the night of January 27, 2018 and then returned together to Will's room where they engaged in sexual contact. The parties disagree as to what sexual contact they engaged in, who initiated the sexual contact, and whether consent was obtained for the sexual contact.

Jessica's Allegation of Sexual Assault on the night of January 27, 2018

The parties agree that Jessica performed oral sex on Will on the night of January 27, 2018, but disagree as to who initiated the oral sex and whether consent was obtained. Jessica alleges that she did not consent to the oral sex and that Will coerced her into performing oral sex on him. Jessica also alleges that she was incapacitated and could not have provided consent to perform oral sex.

Jessica reported that she and Will were watching a movie when they started kissing. Jessica stated that Will then asked her if she wanted to have sex. Jessica stated that Will pressured her to say yes for about 20 minutes. Jessica stated that she was concerned that Will might break up with her or "badmouth" her to their friends if she said no. Jessica stated that they started kissing again and that Will then put his hands on her head and moved her head toward his penis. Jessica stated that Will put his penis in her mouth. Jessica stated that she performed oral sex on Will because she "had to do something to make him happy" and "so that he would stop pushing [her] to have sex." Jessica stated that she performed oral sex for several minutes until Will told her he was not going to finish and so she stopped.

In contrast, Will denied pressuring Jessica to have sex. Will reported that he asked Jessica if she wanted to have sex, she said no, and he accepted that. Will stated that he then asked if she wanted to "give [him] a blow job." Will stated that he "sort of guided Jessica's head down" with his hands until her head was near his penis, and Jessica then put his penis in her mouth. Will stated that Jessica performed oral sex on him for a few minutes before he told her to stop.

Pursuant to the Policy, the adjudicator must determine whether it is more likely than not that Will engaged in sexual assault of Jessica. The adjudicator must determine who initiated the oral sex and, if Will initiated the oral sex, whether he had consent to proceed with the act.

Under the Policy, the party initiating the specific sexual activity has the responsibility to obtain consent for that sexual activity. Therefore, Will had the responsibility to obtain Jessica's consent to perform oral sex on him only if he initiated that sexual activity. The parties' accounts differ slightly as to the actions leading up to the oral sex, but both parties have set forth plausible accounts. If true, Will's account indicates that he first raised the idea of oral sex by asking Jessica to perform oral sex on him and guiding her head down toward his penis. His account also indicates, however, that Jessica initiated the sexual act when she put his penis in her mouth. In contrast, if true, Jessica's account indicates that Will initiated the oral sex by putting his penis in her mouth. There is no surrounding evidence that tips the balance of evidence sufficient to meet the preponderance of the evidence standard as to whether Will initiated the oral sex. Therefore, the adjudicator finds insufficient evidence to determine that it is more likely than not that Will initiated the oral sex. For the reasons described below, however, the adjudicator concludes that even if Will initiated the oral sex, and therefore needed to obtain Jessica's consent, there is insufficient evidence to determine that it is more likely than not that Jessica was incapacitated or that she did not otherwise consent to perform oral sex on Will.

Incapacitation

The parties agree that Jessica had been drinking on the night of January 27. Jessica reported that she had "a couple shots" of Bacardi and that she shared two mixed rum drinks with her friend Cindy. Jessica stated that she was "definitely drunk" at the party and that she was "still out of it," when she arrived at Will's room. Will reported that Jessica was "tipsy" and "flirty", but that she was not "falling over drunk." Cindy stated that Jessica "was having a good time" and was "pretty loud," but that Cindy "wasn't worried about her." Troy reported that Jessica was "drunk" and that you could tell from across the room that she had been drinking.

The Policy states that a person is incapacitated when they do not have the ability to understand the fact, nature, or extent of the sexual situation. Under the Policy, a person is not incapacitated just because they have been drinking. When determining whether a person was incapacitated, the adjudicator must consider whether the person was able to understand the fact, nature, or extent of the sexual situation; whether the person 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. For the reasons provided below, the adjudicator finds insufficient evidence to determine that it is more likely than not that Jessica was incapacitated as that term is defined in the Policy during the oral sex.

The adjudicator finds insufficient evidence to determine that it is more likely than not that Jessica was unable to understand the fact, nature, and extent of the sexual situation at the time of the incident. Jessica gave a detailed account of how she performed oral sex on Will. Jessica's account indicates that she felt pressured to perform oral sex on Will to prevent him from

breaking up with her or “badmouthing” her to their friends. These facts indicate that Jessica was aware of and understood the fact, nature, and extent of the sexual situation. Based on Jessica’s account, there is insufficient evidence to conclude that it is more likely than not that Jessica was unable to understand the fact, nature and extent of the sexual situation and accordingly, the adjudicator finds insufficient evidence to determine that it is more likely than not that Jessica was incapacitated as defined in the Policy.

Consent

Further, even if Will initiated the oral sex, the adjudicator finds insufficient evidence that Jessica did not consent to the contact. Again, the parties’ accounts differ slightly as to the actions leading up to the oral sex, but both parties have set forth plausible accounts. Jessica’s account, if true, indicates that Will put his penis in her mouth without any words or overt actions indicating Jessica’s consent. In contrast, Will’s account, if true, indicates that he asked Jessica if she was willing to perform oral sex on him and guided her head down until her head was near his penis. Will’s account indicates that Jessica responded by putting his penis in her mouth and performing oral sex on him. Although verbal communication is the most reliable form of asking for and gauging consent, consent does not need to be verbal. An overt action, such as beginning to perform the sexual act, can also indicate consent. Will’s account if true, indicates that Jessica consented to the sexual contact through her overt action of beginning to perform oral sex on Will. There is no surrounding evidence that tips the balance of evidence sufficient to meet the preponderance of the evidence standard as to whether Jessica consented to the oral sex. The adjudicator therefore finds insufficient evidence to determine that Jessica did not consent to perform oral sex on Will.

The adjudicator does not find additional evidence sufficient to alter the conclusion that there is insufficient evidence that Jessica did not consent to perform oral sex on Will. The adjudicator considered Will’s text message sent to Jessica a few days after their break up. In the text message exchange, Jessica stated “I just wanted to say that I hope you learned that no means no and won’t ever do this again to another girl.” Will responded with a message saying that he “learned so much” from Jessica, that he is “going to be a better person,” and that he was “sorry if [he] ever made [her] feel uncomfortable.” Will explained to the investigator that Jessica told him that he had made her uncomfortable during their relationship and said that he did not know how, but he did not want her to be mad or think he did not care. The adjudicator finds that the text messages between Jessica and Will are ambiguous and given the totality of the evidence in this case, Will’s response to Jessica’s text message is not sufficient to alter the adjudicator’s determination that there is insufficient evidence that Jessica did not consent to perform oral sex on Will.

Coercion

Jessica also alleges that Will coerced her into performing oral sex on him. Under the Policy, consent cannot be procured through the use of psychological pressure, physical force, or threats of severely damaging consequences. Jessica stated that Will asked her to have sex multiple times over about 20 minutes on the night of January 27. Jessica also reported that she felt

pressured to perform oral sex on Will to prevent him from breaking up with her or “badmouthing” her to their friends. Will denied pressuring Jessica to engage in any sexual contact. Even taking Jessica’s account that Will pressured her to have oral sex as true, the adjudicator finds insufficient evidence that Will coerced Jessica into performing oral sex on him. Although the adjudicator recognizes that Jessica may have felt uncomfortable, feeling pressured to engage in sexual contact in order to make her relationship with Will work or in order to prevent Will from talking about her to their friends does not constitute “psychological pressure, physical force, or threats of severely damaging consequences” that would rise to the level of coercion under the Policy.

The adjudicator does not find additional evidence sufficient to alter the conclusion that there is insufficient evidence of coercion. The adjudicator considered Will’s text message sent to Jessica a few days after their break up and Troy’s statement regarding Will’s and Jessica’s breakup. As previously stated, the adjudicator finds that the text messages between Jessica and Will are ambiguous. Accordingly, given the totality of the evidence in this case, Will’s text message is not sufficient to alter the adjudicator’s determination that there is insufficient evidence that Will engaged in coercion. Similarly, Troy’s report that Will told him that Jessica did not want to have sex and that Will was “tired of trying” is also ambiguous and insufficient to alter the adjudicator’s conclusion. As stated above, even taking Jessica’s account that Will pressured her to engage in sexual contact as true, there is insufficient evidence that this pressure rose to the level of coercion, as defined in the Policy.

For these reasons, the adjudicator finds insufficient evidence to determine that it is more likely than not that Will engaged in sexual assault of Jessica on the night of January 27 in violation of the Policy.

Jessica’s Other Allegations of Nonconsensual Sexual Contact

Jessica alleged that on other occasions Will pressured her to engage in sexual contact, including kissing. Jessica stated that she did not remember the dates or specific information about the other encounters. Jessica’s allegations were vague and nonspecific, making it difficult for Will to respond to her allegations and for the adjudicator to assess the credibility of her allegations. Accordingly, the adjudicator finds insufficient evidence to determine that it is more likely than not that Will engaged in nonconsensual sexual contact with Jessica on those other occasions.

Will’s Allegation of Nonconsensual Sexual Contact

Will alleges that Jessica violated the Policy when she “grabbed” his penis without his consent on the night of January 27. The parties do not agree as to whether this contact occurred.

Will reported that after the oral sex ended, he and Jessica continued to watch the movie. Will stated that less than a minute later, Jessica reached out and “grabbed [his] penis” and started “rubbing” it. Will stated that he was “surprised” and “uncomfortable” when Jessica “grabbed” him. Will stated that he was quiet for a few seconds and then he pushed her hand away.

In contrast, Jessica reported that she did not recall touching Will’s penis after the oral sex. Jessica stated that the next thing she remembered after the oral sex was waking up in Will’s

room after the movie ended. Jessica stated that she was “sure [she] just passed out.” In his rebuttal statement, Will stated that Jessica never passed out and that she was making comments to him about the movie throughout the entire movie.

Pursuant to the Policy, the adjudicator must determine whether it is more likely than not that Jessica engaged in sexual assault of Will. The adjudicator must determine whether the alleged sexual contact occurred, and if so, whether Jessica had consent to proceed with the act.

The adjudicator finds sufficient evidence to determine that it is more likely than not that Jessica “grabbed” Will’s penis. Will’s account of the sexual contact is detailed, plausible, and credible. While Jessica’s account is also plausible, the adjudicator finds that her lack of memory is insufficient evidence to overcome Will’s account of the sexual contact. Jessica reported that she does not remember touching Will’s penis after the oral sex, but she does not refute that this contact happened. Rather, she says that she does not remember the contact because she “passed out.” Given Jessica’s admitted alcohol consumption, it’s possible that Jessica’s intoxication level may have affected her memory of events during this sexual contact.

In addition, although the adjudicator finds both parties presented plausible accounts of whether this sexual contact occurred, the adjudicator finds Will’s account of the sexual contact more plausible and more credible than Jessica’s account. Jessica’s roommate stated that when Jessica arrived back at her room on the night of January 27, Jessica did not mention passing out, but told her roommate that she “gave [Will] a blow job and then he let [Jessica] leave.” Jessica’s fairly detailed memory of the conversations with Will and the oral sex, short duration of being “passed out,” awareness to decide to leave Will’s dorm, and the statements she recalls making to her roommate upon her return lead the adjudicator to find Jessica’s account that she passed out following the oral sex and doesn’t remember touching Will’s penis somewhat questionable. Accordingly, because the adjudicator finds Will’s account to be more credible for the reasons discussed above, the adjudicator concludes that it is more likely than not that Jessica “grabbed” Will’s penis.

The timing of Will’s Title IX complaint is not sufficient to alter the adjudicator’s conclusion that it is more likely than not that this contact occurred. In her written statement, Jessica stated that Will’s complaint was in retaliation for her filing a complaint. Jessica stated that Will made the allegation against her because he knows that she does not remember what happened after the oral sex. Jessica also stated that if Will thought Jessica had assaulted him, “he would have come forward right away,” instead of after Jessica had filed a complaint against him. Will did not, however, immediately file a complaint after receiving notice that Jessica had accused him of sexual assault. Rather, Will first raised Jessica “grabb[ing]” his penis during his initial interview with the investigator. Only after the allegation came up during his interview with the investigator did Will file a complaint with the Title IX Coordinator. Accordingly, the adjudicator does not find the timing of Will’s complaint to be sufficient to alter the conclusion that it is more likely than not that Jessica “grabbed” Will’s penis.

The adjudicator further concludes that based on Will’s account, Jessica initiated the sexual contact by touching Will’s penis. While Jessica’s intoxication level may have impaired her

memory of the sexual contact, under the Policy, Jessica's use of alcohol is not a defense against allegations of sexual misconduct. Even if Jessica's intoxication reached the level of incapacitation at the time when she touched Will's penis, because the adjudicator finds it more likely than not that Jessica initiated the sexual contact, she had the responsibility to obtain consent for the act.

The adjudicator must accordingly determine whether Jessica had consent to engage in the contact. Will reported that he did not provide words or overt actions indicating that he was willing to have Jessica touch his penis. Will's account is plausible and credible. In addition, Jessica has not provided any evidence of any words or overt actions by Will that would indicate that he consented to the sexual contact. Accordingly, the adjudicator finds sufficient evidence to conclude that it is more likely than not that Will did not consent to this sexual contact.

For the reasons explained above, the adjudicator finds sufficient evidence to determine that it is more likely than not that Jessica engaged in sexual assault of Will on the night of January 27.



TITLE IX/VAWA ADJUDICATOR TRAINING

WEB RESOURCES

September 22, 2017 Department of Education Guidance:

- Dear Colleague Letter: https://www2.ed.gov/about/offices/list/ocr/letters/colleague-title-ix-201709.pdf?utm_name
- Q & A on Campus Sexual Misconduct: https://www2.ed.gov/about/offices/list/ocr/docs/ga-title-ix-201709.pdf?utm_name

January 2001, Revised Sexual Harassment Guidance: Harassment of Students by School Employees, Other Students, or Third Parties:

<https://www2.ed.gov/about/offices/list/ocr/docs/shguide.pdf>

January 25, 2006 Dear Colleague Letter on Sexual Harassment:

<https://www2.ed.gov/about/offices/list/ocr/letters/sexhar-2006.html>

April 24, 2015 Department of Education Guidance on Title IX Coordinators:

- Dear Colleague Letter on Title IX Coordinators: <http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201504-title-ix-coordinators.pdf>
- Letter to Title IX Coordinators: <http://www2.ed.gov/about/offices/list/ocr/docs/dcl-title-ix-coordinators-letter-201504.pdf>
- Title IX Resource Guide: <http://www2.ed.gov/about/offices/list/ocr/docs/dcl-title-ix-coordinators-guide-201504.pdf>

April 28, 2015 Department of Education Response Letter to Senator Barbara Boxer:

<https://timedotcom.files.wordpress.com/2015/05/150428educationdepartmentreponsetoletter.pdf>

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The Clery Act showing amendments made by § 304 of the Violence Against Women Act:

<http://ifap.ed.gov/dpcletters/attachments/GEN1413VAWAAMendmentsCleryAct.doc>

Final Regulations for the Violence Against Women Act amendments to the Clery Act (October 20, 2014):

<http://www.gpo.gov/fdsys/pkg/FR-2014-10-20/pdf/2014-24284.pdf>

Handbook for Campus Safety and Security Reporting:

<http://www2.ed.gov/admins/lead/safety/handbook.pdf>

April 4, 2011 Dear Colleague Letter on Sexual Violence (withdrawn):

<http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201104.pdf>

Questions and Answers on Title IX & Sexual Violence (2014) (withdrawn):

<http://www2.ed.gov/about/offices/list/ocr/docs/qa-201404-title-ix.pdf>

**Building Partnerships among Law Enforcement Agencies, Colleges and Universities:
Developing a Memorandum of Understanding to Prevent and Respond Effectively to Sexual Assaults at Colleges and Universities:**

https://obamawhitehouse.archives.gov/sites/default/files/docs/white_house_task_force_law_enforcement_mou.pdf

Not Alone: <https://www.notalone.gov/>

- **Legal Guidance for Schools:** <https://www.notalone.gov/schools/#legal-guidance>
- **Understanding FERPA, the Clery Act, and Title IX:**
<https://www.notalone.gov/assets/ferpa-clerychart.pdf>
- **Confidentiality FAQs:** <https://www.hhs.gov/hipaa/for-professionals/faq/ferpa-and-hipaa>
- **Guide to State Confidentiality Laws:**
http://www.americanbar.org/content/dam/aba/uncategorized/cdsv-related/Advocate_Confidentiality_Chart_2_2014.authcheckdam.pdf
- **Guidance for Developing Partnerships with Local Rape Crisis Centers:**
<https://www.notalone.gov/assets/mou-rape-crisis-centers.pdf>

- **Key Components of Victim Service Resources:**
<https://www.notalone.gov/assets/intervention-resources.pdf>
- **Guide to Conducting Climate Surveys:** <https://www.notalone.gov/assets/ovw-climate-survey.pdf>
- **Student Resources:** <https://www.notalone.gov/students/>
- **Crisis Resources Search Tool:** <https://www.notalone.gov/resources/>

It's On Us Campaign:

<http://www.itsonus.org/>

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