

Title IX/VAWA Investigator Training



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Kathryn Nash



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Tell Us About Yourself

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

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



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Agenda

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



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Terminology

- ED = Department of Education
- Recipient = Institutions covered by Title IX
- OCR = Department of Education's Office for Civil Rights
- VAWA = Violence Against Women Reauthorization Act
- FERPA = Family Educational Rights and Privacy Act
- DOJ = Department of Justice
- CSA = Campus Security Authority
- Investigation/Grievance Procedures/Complaint Procedures
- Adjudicator/Decision-Maker
- Complainant/Reporting Party/Accuser/Victim/Survivor
- Respondent/Responding Party/Accused/Alleged Perpetrator

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The Legal Landscape



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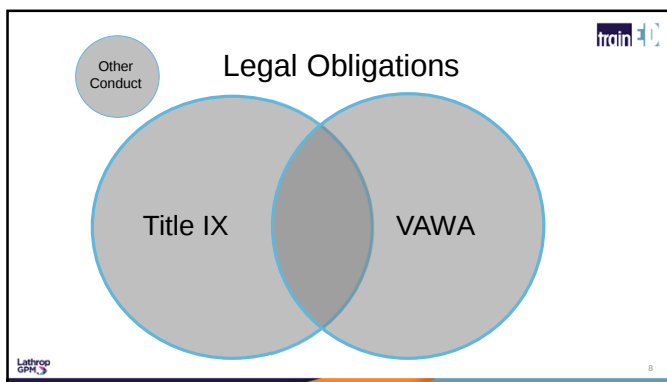
Session Overview

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



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Title IX

“No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any educational program or activity receiving Federal financial assistance”

20 U.S.C. § 1681

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Who Must Comply With Title IX?

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



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Discrimination “on the Basis of Sex”

- Includes:
 - Sexual harassment
 - Differential treatment

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When an Institution Must Respond

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



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When an Institution Must Respond

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

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When an Institution Must Respond

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

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When an Institution Must Respond

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

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How an Institution Must Respond

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



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The Legal Landscape

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



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Enforcement and Guidance

- OCR's Role:
 - Issue guidance
 - Compliance reviews
 - Investigations (with DOJ)
 - Agency enforcement (Resolution agreements)
- DOJ's Role:
 - Investigations (with OCR)
 - Judicial enforcement (lawsuits)



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Clery Act

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





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Violence Against Women Reauthorization Act (VAWA)

- Extends Clery crimes to include VAWA crimes: domestic violence, dating violence, and stalking
- Requires discipline procedures for addressing sexual assault and VAWA crimes
- Requires education programs to promote awareness



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Defining Sexual Misconduct



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Title IX—Sexual Harassment

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

Quid Pro Quo

Hostile Environment

Sexual Assault & VAWA Crimes

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Title IX – Sexual Harassment

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

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Title IX – Sexual Harassment

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

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Title IX—Sexual Harassment

• Sexual Assault:

- **Rape:** 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, or by a sex-related object without the consent of the victim, including instances in which the victim is incapable of giving consent because of temporary or permanent mental or physical incapacity (including due to the influence of drugs or alcohol) or because of age. Physical resistance is not required on the part of the victim to demonstrate lack of consent.

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Title IX—Sexual Harassment

• Sexual Assault:

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

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Title IX—Sexual Harassment

• Sexual Assault:

- **Fondling:**
 - The touching of the private body parts of another person for the purpose of sexual gratification without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental or physical incapacity.
- **Criminal Sexual Contact:**
 - The intentional touching of the clothed or unclothed body parts or the forced touching by the victim of the actor's clothed or unclothed body parts without consent of the victim for the purpose of sexual degradation, sexual gratification, or sexual humiliation, including instances where the victim is incapable of giving consent because of age or incapacity due to temporary or permanent mental or physical impairment or intoxication.

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Consent

- No particular definition of consent with respect to sexual assault is required under Title IX or VAWA

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VAWA Crimes

- **Domestic Violence:** a felony or misdemeanor crime committed by current/former spouse or intimate partner of the victim under domestic or family violence laws of the jurisdiction
- **Dating Violence:** violence by a 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 a reasonable person to fear for safety or suffer substantial emotional distress



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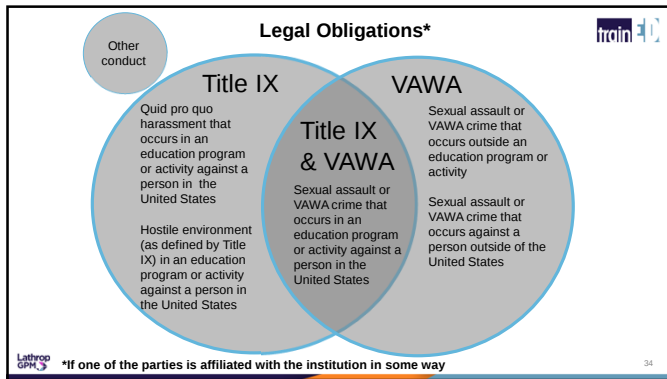
Title IX – Sexual Harassment

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

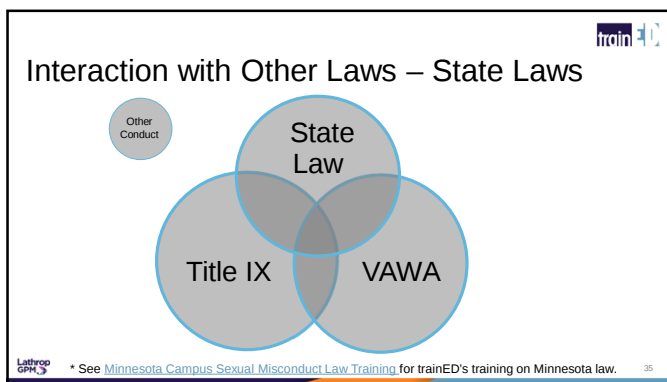
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Interaction with Other Laws

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

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Interaction with Other Laws

- Mandatory reporting laws: state-specific laws requiring school employees to report child abuse
 - Mandatory reporters may include teachers, coaches, administrators, or others who interact with minors or who supervise those who interact with minors
 - Must report if know or reasonably suspect abuse or neglect of a child
 - Report to police or county department



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Risks of Non-Compliance

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



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Training Requirements

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

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Training Requirements

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

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Recordkeeping Requirements

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



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Recordkeeping Requirements

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

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Q & A



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Overview of Process

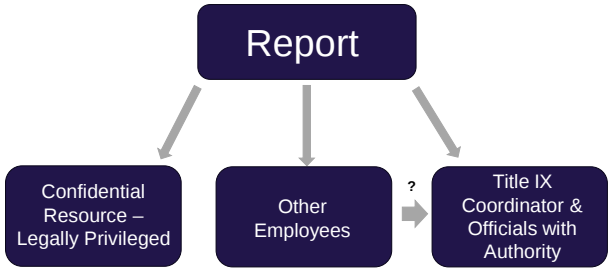
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Responding to a Report



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Case Study: AD Report

- Two members of the women's volleyball team stop by the athletic director's office to talk to him about concerns they have with their coach. The two students share that the coach makes inappropriate sexual comments and jokes and that she touches the players in a way that makes them feel uncomfortable. The students also tell him that the coach makes comments about their bodies.
- The students ask the athletic director not to tell anyone. They just want his advice and aren't looking for the coach to get into trouble.
- What should the athletic director do?

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Responding to a Report

- Title IX:
 - Institution has actual knowledge of
 - Sexual harassment (as defined by regulations)
 - In an education program or activity of the institution
 - Against a person in the United States
- VAWA:
 - Allegations of sexual assault, domestic violence, dating violence, or stalking
 - Applies regardless of location of alleged conduct (on or off campus; in or out of the education program or activity; in or out of the U.S.)

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Responding to a Report

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

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Responding to a Report

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



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Responding to a Report—Supportive Measures

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

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Responding to a Report—Supportive Measures

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

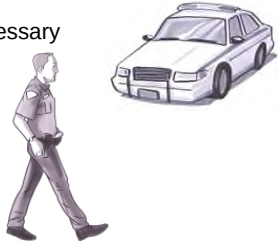
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Responding to a Report

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



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Responding to a Report

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

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Formal Grievance Process

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

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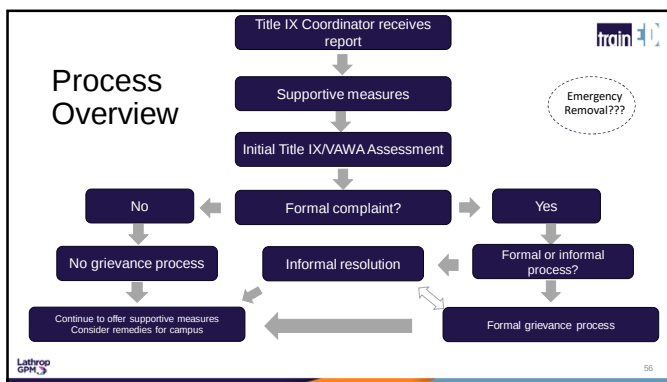
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Informal Resolution

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

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Role of Investigator in Formal Grievance Process

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

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Formal Grievance Process

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

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Formal Grievance Process: Dual Roles Under Title IX

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

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Formal Grievance Process—Other Requirements

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

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Formal Grievance Process—Advisors

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

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Formal Grievance Process—Timeframes

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



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Formal Grievance Process

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



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Formal Grievance Process—Dismissal of Formal Complaint

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

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Formal Grievance Process—Consolidation of Formal Complaints

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

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Criminal Process

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

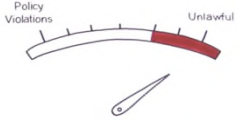
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Differences Between Criminal and Institutional Investigations

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



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Q & A



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Working with the Parties



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Case Study

- When assessing the credibility of the complainant, which of the following might cause you to find the complainant less credible:
 1. Complainant repeatedly asks the investigator to repeat the investigator's questions.
 2. Prior to the alleged assault, Complainant kissed Respondent while Complainant was in a relationship with someone else.
 3. Complainant initially says she was sober during the alleged assault but later says she had a couple of drinks and was pretty tipsy.
 4. Complainant did not break up with Respondent until five months after the alleged assault.

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Case Study

- When assessing the credibility of the respondent, which of the following might cause you to find the respondent less credible:
 1. Respondent repeatedly reschedules interviews with the investigator.
 2. Respondent initially says she does not remember the interaction with Complainant but in a follow-up interview, provides specific details about the interaction.
 3. Respondent suggests a witness who he says can corroborate his account, but the witness declines to be interviewed.
 4. Respondent does not submit response to the directly related evidence or investigation report.

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Session Overview

- Rape Myths
- Secondary Victimization
- Common Victim Responses
- Neurobiology of Sexual Assault
- How to Serve Impartially
 - Working with complainant
 - Working with respondent



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Rape Myths

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

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Secondary Victimization

- Secondary victimization:
 - The attitudes, beliefs, and behaviors that victims experience as victim blaming and insensitive
 - It exacerbates their trauma, and it makes them feel like what they're experiencing is a second rape — hence the term "secondary victimization"

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Secondary Victimization

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

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Common Victim Responses

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

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Neurobiology of Sexual Assault

The Neurobiology of Sexual Assault

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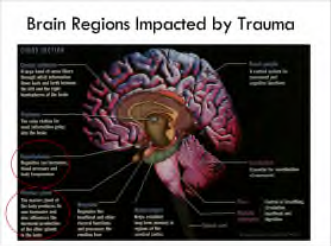
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Neurobiology of Sexual Assault

Brain Regions Impacted by Trauma



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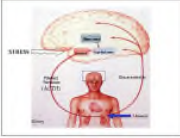
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Neurobiology of Sexual Assault

Brain-Body Regions Impacted by Trauma

HPA Axis

Balances body following stress by releasing of various hormones/chemicals



SOURCE: Southwick et al., 2002

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Neurobiology of Sexual Assault

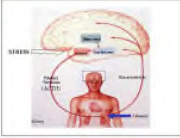
Brain-Body Regions Impacted by Trauma

Catecholamines: Fight or flight response

Cortisol: Energy available

Opioids: Prevent pain

Oxytocin: Promotes good feelings

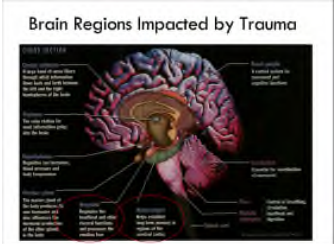


SOURCE: Southwick et al., 2002

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Neurobiology of Sexual Assault

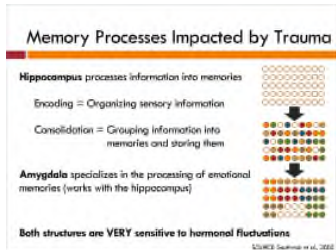
Brain Regions Impacted by Trauma



SOURCE: Southwick et al., 2002

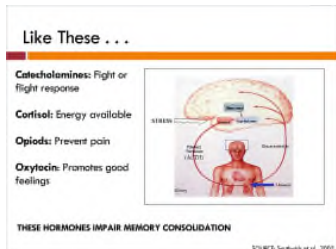
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Neurobiology of Sexual Assault



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Neurobiology of Sexual Assault



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Neurobiology of Sexual Assault



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Neurobiology of Sexual Assault

What Happens During A Sexual Assault

SOURCE: Banks, 2003; Southwick et al., 2001

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Neurobiology of Sexual Assault

What Happens During A Sexual Assault

SOURCE: Banks, 2003; Southwick et al., 2001

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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: Koss et al., 2007; Calhoun et al., 1995; Finkelhor et al., 2005

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Common Behaviors During Assault

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

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Memory

What Happens During A Sexual Assault

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Memory

What Happens During A Sexual Assault

Increased Stress Hormones

Impaired Functioning in Hippocampus

Memories Fragmented

Memory Recall Can Be Slow & Difficult

Events of the Assault CAN Be Recalled Accurately

BUT...

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

SOURCE: Koss et al., 1985, 1986; Rescorla et al., 2009; Rude et al., 2008

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Memory

Case Study: Memory Fragmentation

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

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

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Memory

Case Study: Memory Fragmentation

"We talked it through. And I didn't feel rattled and freaked out. I'm sure I was incoherent and he just let it roll. He was patient."

I felt like I was piecing it together, like a puzzle, we were putting together a puzzle together. And drinking coffee."

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Memory

Case Study: Memory Fragmentation

- Q: So, why did you do that? (give her the coffee)
- R: It helps. Not the coffee so much, just the moment to let it all come together in their heads.
- Q: What do you mean?
- R: I don't know why it's like that, I've just noticed that over the years. If you give them a few minutes to breathe It starts to make more sense. I don't know why, it just does.



**MEMORY
CONSOLIDATION**
A DOCUMENTED
NEUROBIOLOGICAL CONDITION

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Memory

Case Study: Memory Fragmentation

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

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

MEMORY CONSOLIDATION
A DOCUMENTED NEUROBIOLOGICAL CONDITION



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Impact of Trauma on Memory

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




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Sensory Details

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



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Impact of Culture

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



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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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Serving Impartially

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



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Serving Impartially

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

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Serving Impartially — Working with Complainant

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

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Serving Impartially — Working with Complainant



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

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Serving Impartially — Working with Respondent



- Recognize stress involved with being accused of sexual misconduct
 - Respondent may be defensive
 - Respondent may be nervous or uncomfortable
- Take same care in scheduling and approaching interview as you did with complainant
- Explain fair and equitable process
- Do not appear to take sides
- Use impartial language
- Afford same opportunity to provide narrative of experience, to provide physical or other evidence, etc.
- Memory may be impaired by alcohol

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Serving Impartially — Working with Respondent



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

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Communication

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

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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.

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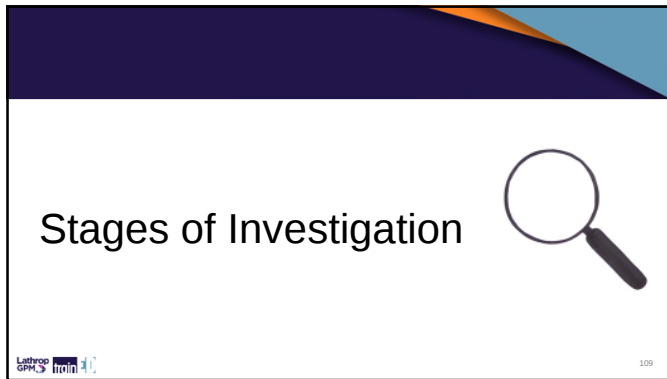
Q & A



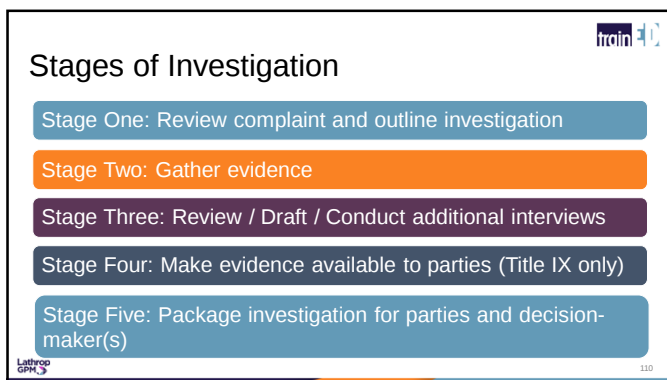
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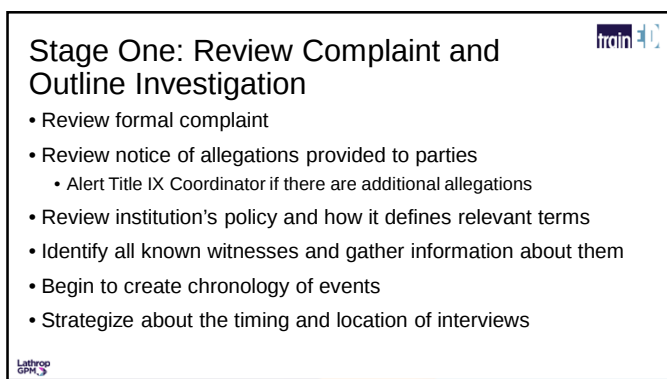
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Notice of Allegations

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





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Notice of Allegations

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



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Stage One: Review Complaint and Outline Investigation

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



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Stage One: Review Complaint and Outline Investigation

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




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Stage One: Review Complaint and Outline Investigation

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




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Stage One: Review Complaint and Outline Investigation

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




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Stage One: Review Complaint and Outline Investigation

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

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Stage One: Review Complaint and Outline Investigation

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

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Case Study: Haddie/Damian

- On May 6, 2026, Haddie Haderson made a complaint of sexual misconduct against Damian Daniels.

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Case Study: Haddie/Damian

Sexual Misconduct Complaint Form

COMPLAINANT NAME: Haddie Haderson

DATE OF ALLEGED POLICY VIOLATION: May 1-2, 2026

DATE OF COMPLAINT: May 6, 2026

RESPONDENT NAME: Damian Daniels

ALLEGATIONS:

I went on a few dates with Damian Daniels earlier this semester. We were getting along well, but then he started to pressure me physically and ultimately took advantage of me when I was drunk. On Friday, May 1, I went to his dorm to watch a show and when he tried to put his hand up my shirt, I told him I didn't want to do that type of thing yet. But he wouldn't take no for an answer. Then the next night we were at a party together and I got super drunk. He brought me back to my dorm and the next thing I knew we were both naked and he was having sex with me. The night is a total blur. I was way too drunk to consent.

I understand that by signing this formal complaint, I am seeking to initiate the formal grievance process and/or informal resolution process in regards to the above allegations and am requesting that the University investigate the allegations.

X Haddie Haderson

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Case Study: Haddie/Damian

- What potential policy violation does Haddie's complaint raise?

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Case Study: Haddie/Damian

Excerpt of Notice of Allegations

On May 6, 2026, a formal complaint of alleged sexual misconduct was made by Haddie Haderson ("Haddie" or "Complainant") against Damian Daniels ("Damian" or "Respondent") under the University's Sexual Misconduct Policy.

Haddie alleged that:

- On May 1, 2026, in Damian's dorm room in Residence Village, Damian engaged in nonconsensual sexual contact in the form of touching Haddie's intimate body parts.
- On May 2, 2026, in Haddie's dorm room in Residence Village, Damian engaged in nonconsensual sexual penetration of Haddie.

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Case Study: Haddie/Damian

- Begin preparing outline for interview with the parties.
- Identify evidence to gather and potential people to interview.

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Stage Two: Gather Evidence

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



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Stage Two: Gather Evidence—Interview Parties and Witnesses

- Strongly recommend audio recording interviews
 - Reduces risk of misinterpretation by investigator
 - Facilitates sharing of relevant evidence from interview
 - Accurate record in case of dispute



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Stage Two: Gather Evidence—
Initial *Party* Interviews

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



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Stage Two: Gather Evidence—
Witness Interviews

- Purpose is to gather relevant information from each witness without providing more information than necessary
- “Do you know why you were asked to come speak with me today?”
 - “Highway” or “Scenic Route” interview?
- If Scenic Route, use “funnel” approach
- If Highway interview, download everything they “know” about relevant events



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Stage Two: Gather Evidence—
Witness Interviews

- Scenic Route: Funnel Approach
 - Start broadly; avoid leading questions
 - “I understand you live in Smith Hall; did you observe anything out of the ordinary in the last few weeks?”
 - “Tell me about your courses this semester. Did anything unusual happen in your classes in February?”
 - Decide whether to ask more detailed questions
 - More reliable responses and less rumor mill



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Stage Two: Gather Evidence— Interview Parties & Witnesses

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





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Stage Two: Gather Evidence— Interview Parties & Witnesses

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




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Stage Two: Gather Evidence— Interview Parties & Witnesses

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




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Stage Two: Gather Evidence— Interview Parties & Witnesses

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

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Stage Two: Gather Evidence— Interview Parties & Witnesses

- Prepare a summary/draft report immediately following each interview
 - Assists investigator in identifying:
 - Whether the Notice of Allegations needs to be amended
 - Follow-up questions for that party/witness
 - Additional evidence that needs to be obtained from that party/witness
 - Other individuals to interview
 - Questions for follow-up interviews with other party and witnesses
 - Distributes workload throughout the process
 - Allows Title IX Coordinator to provide meaningful supervision and feedback throughout the investigation

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Case Study: Mr. Langford

- In another case you are investigating, you are conducting an initial interview with respondent Lucy Langford. Her father, Mr. Langford, is serving as her advisor and has signed the institution's advisor agreement in advance of the interview. As you begin to ask Lucy about her interactions with the complainant, Mr. Langford interrupts. He asks, "When are we actually going to hear what Lucy is accused of doing? All we know is that she is accused of making unwelcome comments on the basis of sex. What does that even mean?"
- What do you do?

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Stage Two: Gather Evidence—Interview Parties—Advisors

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

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Case Study: Haddie/Damian

- You have your interview with Haddie coming up in a few days.
- What should you be doing in preparation for the interview?

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Stage Two: Gather Evidence—Notice of Meetings

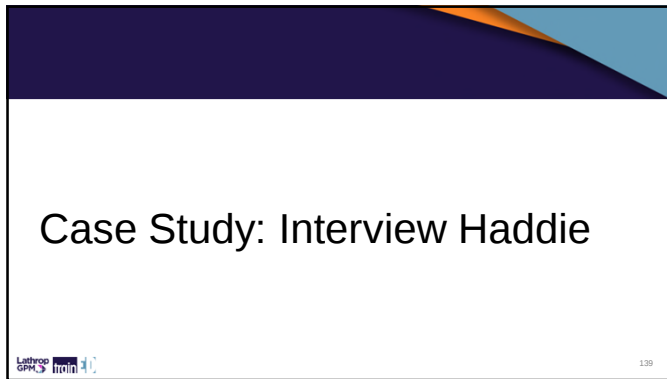
- Title IX: Written notice to the party whose participation is invited or expected of the
 - Date
 - Time
 - Location
 - Participants
 - Purpose
- of all hearings, investigative interviews, or other meetings with a party, with sufficient time for the party to prepare to participate
- VAWA: Timely notice to the other party of meetings that are part of the disciplinary process



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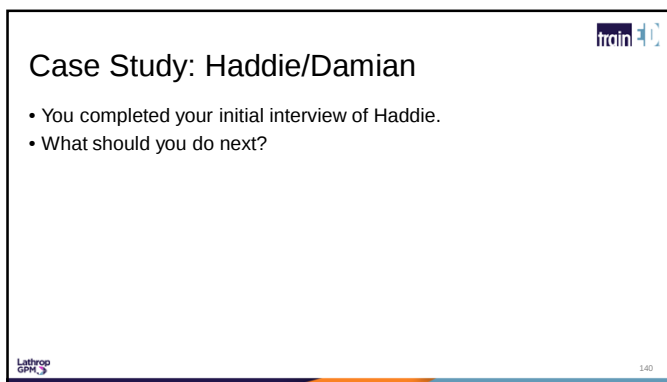
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Case Study: Interview Haddie

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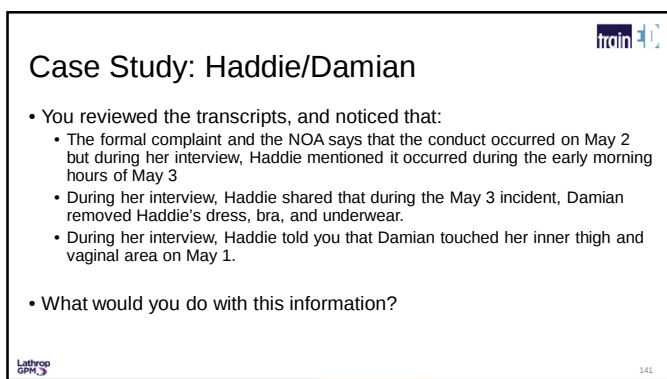


Case Study: Haddie/Damian

- You completed your initial interview of Haddie.
- What should you do next?

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Case Study: Haddie/Damian

- You reviewed the transcripts, and noticed that:
 - The formal complaint and the NOA says that the conduct occurred on May 2 but during her interview, Haddie mentioned it occurred during the early morning hours of May 3
 - During her interview, Haddie shared that during the May 3 incident, Damian removed Haddie's dress, bra, and underwear.
 - During her interview, Haddie told you that Damian touched her inner thigh and vaginal area on May 1.
- What would you do with this information?

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Case Study: Haddie/Damian

Excerpt of Amended Notice of Allegations

On May 6, 2026, a formal complaint of alleged sexual misconduct was made by Haddie Haderson ("Haddie" or "Complainant") against Damian Daniels ("Damian" or "Respondent") under the University's Sexual Misconduct Policy. Haddie alleged that:

- On May 1, 2026, in Damian's dorm room in Residence Village, Damian engaged in nonconsensual sexual contact in the form of touching Haddie's intimate body parts.
- On **May 3, 2026**, in Haddie's dorm room in Residence Village, Damian engaged in nonconsensual sexual penetration of Haddie **and took nonconsensual or abusive sexual advantage of Haddie in the form of removing Haddie's clothing without consent.**

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Case Study: Haddie/Damian

- You have your interview with Damian coming up in a few days.
- What should you be doing in preparation for the interview?

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Case Study: Interview Damian

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Case Study: Haddie/Damian

- During Damian's initial interview, Damian said that when he and Haddie were at the off-campus party on May 2, Haddie was "grinding up on" him, "like pushing her hip region into mine."
- What, if any, follow-up questions should you ask Damian after he shares this with you?
- What, if anything, should you do with this information?

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Case Study: Haddie/Damian

- You've reached out to several witnesses but hardly anyone is responding. Of the people who did respond, they said that they don't have time because of studying for finals.
- What should you do?

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Notice of Delay

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

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Case Study: Coach Jackie

- You are investigating another case that involves two students, Francesca and Georgia, who brought complaints against their volleyball coach (Coach Jackie), alleging that she sexually harassed them.
- During Francesca's interview, she mentioned that another player on the team, Iris, is really uncomfortable with Coach Jackie's conduct.
- Francesca immediately regrets mentioning Iris's name. She ask you to "strike that from the record."
- What should you do?

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Stage Three: Review/Draft/ Conduct Additional Interviews

- Continue to draft report
- Assess what more needs to be done
 - Additional witnesses—necessary or duplicative?
 - New facts or allegations that require additional interviews?
- Ensure notice of allegations is up to date; inform Title IX Coordinator of any new allegations
 - Also inform Title IX Coordinator of any allegations unrelated to your investigation
- Check timeframe for investigation and assess need for a notice of delay

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Stage Three: Follow-Up Interviews

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

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Stage Three: Review/Draft/ Conduct Additional Interviews



- Set close of evidence date and notify parties
- Finalize draft of investigation report
- Update Title IX Coordinator
 - Ensure parties have received notice of all allegations
 - Confirm process and timing for sharing evidence (if any)
 - Title IX: Send hard copy or electronic format of directly related evidence
 - VAWA: Access to evidence that will be shared with the decision-maker
 - When in doubt, err on side of following Title IX process

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Case Study: Haddie/Damian



- You've completed interviewing all of the witnesses and have completed your follow-up interviews with Haddie and Damian.
- What is the next step?

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Stage Four: Provide Evidence to Parties to Review and Respond*



- *Prior to completion of investigation report, must provide equal opportunity to inspect and review any evidence obtained that is directly related to the allegations*
 - Includes evidence upon which the institution does not intend to rely in reaching a determination and inculpatory or exculpatory evidence whether obtained from a party or other source
 - Must send to party and party's advisor in hard copy or electronic format
 - May use a file sharing platform that restricts downloading or copying
 - May prohibit photographing/copying
 - May require signing a non-disclosure agreement
 - May not limit time for review (besides the 10 days)
 - May not require supervision
 - Party must be given at least 10 days to submit a written response
- Investigator must consider that written response before completing investigation report
- Must make all that evidence available at any hearing

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Stage Four: Provide Evidence to Parties to Review and Respond*



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

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Stage Four: Provide Evidence to Parties to Review and Respond*



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

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Stage Four: Provide Evidence to Parties to Review and Respond*



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

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Case Study: Haddie/Damian

- You are finalizing the directly related evidence for the parties' review, and are wondering whether you should include the following as part of the directly related evidence:
 - Haddie stated that she told Damian that she "usually want[s] to be in a more serious, long-term relationship before things get physical." Haddie stated, "I had told him in an earlier conversation that I'd only been with a few guys and only when we were exclusively dating for a while."
 - Haddie stated that Damian said something like, "I don't get it. You told me that you've done more than this with other guys and we've known each other a while. What more are you waiting for?"

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Case Study: Haddie/Damian

- You are finalizing the directly related evidence for the parties' review, and are wondering whether you should include the following as part of the directly related evidence (cont.):
 - Elise stated, "I've always been a little creeped out by Damian. Every time I would see him, he would look me up and down, even though he was basically dating my roommate."
 - Damian stated, "I've started to see a counselor because of the toll this process has taken."
 - Damian stating, "I don't really trust this process. My friend was falsely accused by a girl last year, and his whole college career was ruined."

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Stage Four: Provide Evidence to Parties to Review and Respond*

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

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Stage Four: Provide Evidence to Parties to Review and Respond*



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

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Stage Four: Provide Evidence to Parties to Review and Respond*



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

*Title IX Only

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Case Study: Haddie/Damian



- Haddie includes the following statement in her response to the directly related evidence:
 - "Damian told the investigator that I was grinding up on him at the party. Dancing with him did not mean that I wanted to have sex with him. Plus, I remember dancing with him at the party because I wasn't that drunk yet, but my memory of the time back at my place is very limited. I was too drunk to consent by the time we got back to campus."
- Does this warrant any further investigation or other action?

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Case Study: Haddie/Damian

- Damian includes the following statement in his response to the directly related evidence:
 - "Why wasn't my roommate Chris interviewed? He came home while Haddie and I were making out at my place on the first night. I told the investigator to talk to him."
- What, if anything, should you do about this?

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Case Study: Haddie/Damian

- Damian's response to the directly related evidence also includes the following:
 - "Haddie makes it seem like it was my idea to go into her place after the party. But she's the one who invited me to come over and even said her roommate was going to be out of town. I have the texts to prove it."
- Damian pastes texts messages into his response that were not provided during the investigation.
- What do you do with this response?

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Stage Five: Package Investigation for Parties and Decision-Makers

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

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Title IX Coordinator Role During Complaint Process

- Determine which process applies
- Oversee process to ensure compliance with policy and designated time frames
- Ensure advisor agreements are signed (if any)
- Ongoing check-ins with the parties
 - Supportive measures
 - Notice of delays?
 - Notice of meetings?
- Stay in touch with investigator to discuss case
- Ensure parties receive adequate notice of any new allegations
- Ensure non-disclosure agreements are signed by parties and advisors (if any)

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Title IX Coordinator Role During Complaint Process (cont.)

- Review directly related evidence before it is provided to the parties (Title IX)
- Review working drafts of investigation report
- Review party responses to DRE and report (and any rebuttals)
 - Redact impermissible content
 - Evaluate whether further investigation is necessary
- Review notice of determination before finalized
- Review appeal to determine whether permissible ground is stated?
- Review appeal decision before finalized

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Q & A



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Drafting an Investigation Report

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Session Overview

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



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Other Conduct

Legal Requirements

Title IX

VAWA

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Legal Requirements

- Must create investigative report that fairly summarizes relevant evidence (Title IX)
- Investigator cannot adjudicate (Title IX)
- Parties must be provided:
 - VAWA: information used in the decision-making process – access required
 - Title IX:
 - Investigation report – must send hard copy or electronic format to parties and advisors
 - May use a file sharing platform that restricts downloading or copying
 - May prohibit photographing/copying
 - May require signing a non-disclosure agreement
 - May not limit time for review
 - May not require supervision
 - Opportunity to submit written response


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Relevancy Issues

- Always consider relevance:
 - Expert reports?
 - Character evidence?
 - Lie detector test results?
 - Prior violation by respondent?
 - Allegations of similar misconduct?
- The investigation report should not include any information about the complainant's sexual history that does not meet an exception


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Case Study: Haddie/Damian

- You are running behind on drafting your investigation report, so you decide to use ChatGPT to help. You uploaded the transcripts and asked it to draft a report and are pretty impressed with the draft. You mentioned in your instructions that it should pay particular attention to Damian's credibility issues.


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Case Study: Haddie/Damian

- You are finalizing the investigation report, and are wondering whether you should include the following:
 - Haddie stated that she told Damian that she "usually want[s] to be in a more serious, long-term relationship before things get physical." Haddie stated, "I had told him in an earlier conversation that I'd only been with a few guys and only when we were exclusively dating for a while."
 - Haddie stated that Damian said something like, "I don't get it. You told me that you've done more than this with other guys and we've known each other a while. What more are you waiting for?"

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Case Study: Haddie/Damian

- As you continue finalizing the investigation report, and are wondering whether you should include the following:
 - Elise stated, "I've always been a little creeped out by Damian. Every time I would see him, he would look me up and down, even though he was basically dating my roommate."
 - Damian stated, "I've started to see a counselor because of the toll this process has taken."
 - Damian stating, "I don't really trust this process. My friend was falsely accused by a girl last year, and his whole college career was ruined."

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Purpose

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

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Preparation

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

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Elements of the Report

- Introduction
- Summary of allegations/complaint(s)
- Documents/evidence reviewed
- Witnesses interviewed
- Interview methodology
- Summary of relevant evidence by allegation



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Elements of the Report

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

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Elements of the Report

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



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Elements of the Report

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



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Elements of the Report

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



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Elements of the Report

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



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Elements of the Report

- Summary of relevant evidence by allegation
 - Separate out each allegation
 - Give account from each party/witness
 - Describe other evidence supporting or refuting allegation
 - Include facts that may impact a credibility finding
 - Exclude facts that are not relevant
- Weigh in on credibility if that's part of your role
 - Adjudicator must make the ultimate determination (Title IX)

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Case Study: Haddie/Damian

- You are conducting your final review of the investigation report and notice some questions you may have missed during your interviews.
- Your report says Haddie stated that she and Damian had been drinking on the night of May 1, and you asked Haddie questions about both parties' intoxication levels. Haddie's account indicated that neither party had more than one drink, and she did not allege she was incapacitated on that date. You realize that you never asked Damian about the drinking or the parties' intoxication levels on that date.
- Is this cause to reopen the investigation?

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Case Study: Haddie/Damian

- Your report includes accounts about the parties' intoxication levels on May 2-3, because Haddie alleged that she was too drunk to consent to sexual contact that occurred on May 3. You see that your report includes Damian rated Haddie's level of intoxication differently at different points in the night. Each time Damian gave the rating, he also gave an explanation, but you wish you would have asked a follow-up question about what changed in Haddie's actions or demeanor to make him give a different rating.
- Is this cause to reopen the investigation?

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Case Study: Investigation Report

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Case Study: Haddie/Damian

- Damian did not submit a response to the investigation report.
- Haddie includes the following statement in her response to the investigation report and supplemental directly related evidence:
 - "The texts Damian provided mean nothing. I sent those before I was super drunk. And just because I invited him over doesn't mean I consented to having sex with him. He took advantage of me when I was vulnerable."
- What should you do with this response?

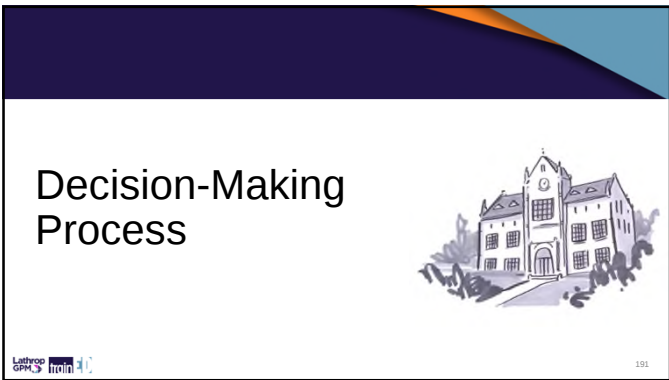
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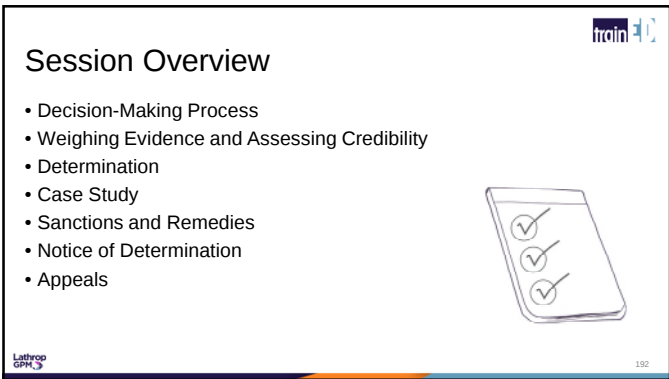
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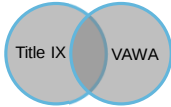
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Decision-Making Process

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



A Venn diagram with two overlapping circles. The left circle is labeled 'Title IX' and the right circle is labeled 'VAWA'. The overlapping area in the center is shaded light blue.

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Decision-Making Process

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

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Decision-Making Process

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

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Live Hearing

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

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Hearing—Relevancy Determinations

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

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Hearing—Cross-Examination

- Party or witness who does not appear at the hearing
 - Decision-maker(s) may still rely on previous statements from party/witness who is absent or refuses to answer one or more questions
 - Refusing to answer a question(s) or appear at the hearing may be considered in determining how much weight to give party's/witness's account or the credibility of their account
 - Decision-maker(s) cannot draw an inference about the determination regarding responsibility based solely on a party's or witness's absence from the live hearing or refusal to answer cross-examination or other questions

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Hearing—Cross-Examination

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

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Hearing—Other Procedural Rules

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

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Hearing—Other Procedural Rules

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

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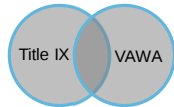
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Investigator Role in Decision-Making Process



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



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Case Study: Haddie/Damian



- The hearing panel heard from the parties and all of the witnesses in the investigation report. Their testimony was generally consistent with the accounts they provided to the investigator and no additional information was provided, except for the following:
- Haddie
 - The Panel gave Haddie an opportunity to respond to Damian's account of the conversation they had on May 1 before Damian touched her breasts. In response, Haddie stated, "I don't have a response to that."
 - The Panel gave Haddie an opportunity to respond to Damian's account that on May 1 he touched her breasts under her shirt but over her bra. In response, Haddie stated, "I thought he touched me under my bra, too, but I'm not 100% sure."

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Case Study: Haddie/Damian



- Hearing summary (cont.)
- Haddie (cont.)
 - The Panel gave Haddie an opportunity to respond to Damian's account that after touching her breasts on May 1, he moved his hand down to her waist, stopped and said, "Are you good with down here, too?" and she responded, "Yeah." In response, Haddie stated, "No, he didn't ask me ahead of time. He started touching me down there and then was like, 'you still good?'"
 - The Panel gave Haddie an opportunity to respond to Damian's account that during the encounter on May 3, he only lifted her dress to mid-thigh. Haddie stated, "I don't remember how far he lifted it."

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Evidentiary Issues

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

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Evidentiary Issues

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

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Weighing Evidence / Assessing Credibility

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



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Dealing with Inculpatory & Exculpatory Evidence

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

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Determination

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



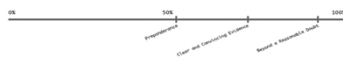
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Determination—Finding

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



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Determination—Finding

- Preponderance:
 - Must decide either that:
 - There was sufficient evidence to determine that it was "more likely than not" that the respondent violated the institution's sexual misconduct policy OR
 - There was insufficient evidence to determine that it was "more likely than not" that the respondent violated the institution's sexual misconduct policy
- Clear and convincing:
 - Must decide either that:
 - There was sufficient evidence to determine that it was "highly probable" that the respondent violated the institution's sexual misconduct policy OR
 - There was insufficient evidence to determine that it was "highly probable" that the respondent violated the institution's sexual misconduct policy

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Determination—Sanctions and Remedies

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



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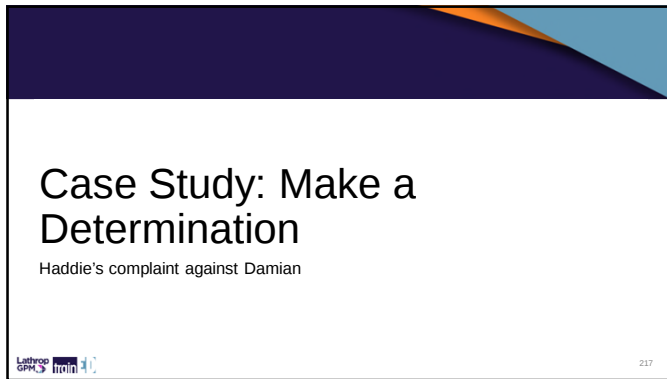
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Determination—Sanctions and Remedies

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

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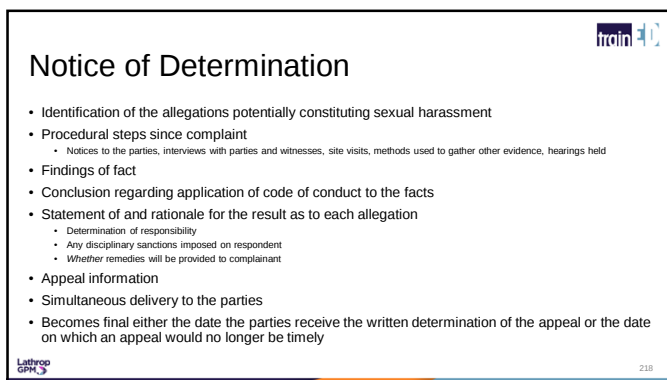


Case Study: Make a Determination

Haddie's complaint against Damian

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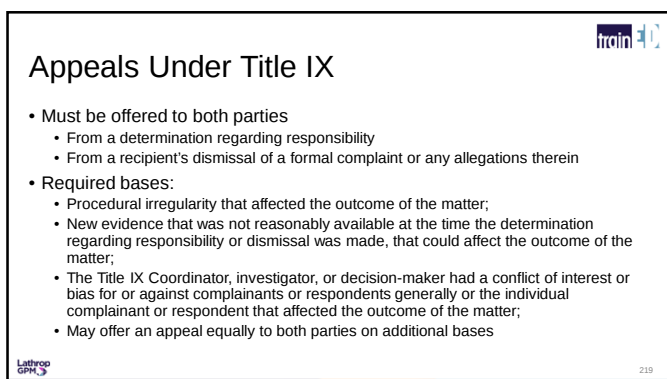


Notice of Determination

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

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Appeals Under Title IX

- Must be offered to both parties
 - From a determination regarding responsibility
 - From a recipient's dismissal of a formal complaint or any allegations therein
- Required bases:
 - Procedural irregularity that affected the outcome of the matter;
 - New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made, that could affect the outcome of the matter;
 - The Title IX Coordinator, investigator, or decision-maker had a conflict of interest or bias for or against complainants or respondents generally or the individual complainant or respondent that affected the outcome of the matter;
 - May offer an appeal equally to both parties on additional bases

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Appeals Under Title IX

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

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Appeals Under VAWA

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

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Upcoming Trainings

- **Trainings for individuals with heightened responsibility:**
 - September 16, 2026 - Trauma-Informed Training for First Responders, Confidential Resources, and Campus Security
 - September 30, 2026 - Conducting a Live Hearing Under Title IX/VAWA
 - October 6, 2026 – Non-Hearing Adjudicator Training
 - October 8, 2026 - Title IX/VAWA Appeal Officer Training



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On Demand Trainings

- **Available on-demand:**
 - Annual Training for New Title IX Coordinators and Deputy Coordinators
 - Annual Training for Advanced Title IX Coordinators and Deputy Coordinators
 - Title IX/VAWA Investigator Training
 - Conducting a Live Hearing Under Title IX/VAWA
 - Title IX/VAWA Appeal Officer Training
 - Trauma-Informed Training for First Responders, Confidential Resources, and Campus Security
 - Non-Hearing Adjudicator Training
 - Informal Resolution Training
 - Supplemental Decisionmaker Training on Live Hearings
 - Conducting a Grievance Process Under the 2020 Final Title IX Regulations
 - Title IX Update: 2020 Final Regulations
 - Exploring Alternative Non-Hearing Options for Resolving Complaints of Sex Discrimination
 - Notice of Allegations: Strategies of Drafting, Amending, and Avoiding Common Mistakes
 - Minnesota Campus Sexual Misconduct Law Training



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