



D. STAFFORD
& ASSOCIATES

Title IX Investigator Custom Advanced Class

Presented by:

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Adrienne Meador Murray, Vice President, Equity Compliance and Civil Rights Services



In January 2014, Adrienne Meador Murray joined D. Stafford & Associates where she currently serves as the Vice President, Equity Compliance and Civil Rights Services after having been affiliated with D. Stafford & Associates as a part-time Associate since 2012 and the National Association of Clery Compliance Officers & Professionals (NACCOP) where she currently serves as Director of Training and Compliance Activities. Murray began her career in municipal law enforcement as a civilian employee with the City of Richmond Police Department (Virginia). She graduated from the Virginia Commonwealth University Police Training Academy and began her career as a sworn police officer for the University of Richmond (UR) Police Department (Virginia). At UR, Murray progressed through the ranks from a night shift patrol officer to Operations Lieutenant (overseeing criminal investigations, crime prevention and patrol) over the span of a decade before becoming the Chief of Police at Davidson

College in North Carolina. Most recently, Murray served as Chief of Police at Trinity Washington University (in Washington, D.C.).

As the Executive Director, Equity Compliance and Civil Rights Services for DSA, Murray builds on her 17-year career in law enforcement in which she became a nationally recognized expert in the field of best practice postsecondary institutional response to the sexual victimization of college women in the United States and in Canada. She is also a trained civil rights investigator and is well respected throughout the country for her ability to aid institutions in understating how to do best practice criminal and civil rights investigations concurrently. She is well known for her work in having provided support, advocacy and criminal investigative services for victims of sexual assault, stalking and intimate partner violence and is a sought-out speaker and investigator. She has expertise in the construction of best practice law enforcement standard operating procedures and training police officers to respond in best practice and trauma-informed ways to victims of sexual assault and intimate partner violence. In her current role, Murray coordinates curriculum development and instruction for national classes, including basic and advanced sexual misconduct investigation classes; an investigation of dating violence, domestic violence and stalking class; and a Title IX Coordinator/Investigator class offered through D. Stafford & Associates. To date, Murray has trained more than 3,500 criminal and civil rights investigators throughout the U.S.

Drawing on her experiences as a trained criminal and civil rights investigator, Murray also oversees independent investigations of complex sexual misconduct cases; conducts audits of Title IX/VAWA



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Compliance; drafts institutional sexual misconduct policies and procedures; and conducts campus-based trainings pertaining to the resolution of sexual misconduct offenses on college and university campuses. Murray frequently presents at regional and national conferences on topics such as the *Sexual Victimization of College Women*, *Understanding Consent and Incapacitation*, and *Responding to Sexual Assault on Campus: Clery Act and Title IX Implications*. Murray also conducts provincially specific sexual misconduct trainings throughout Canada.

Murray is a graduate of the University of Richmond, where she received her Bachelor's Degree in Applied Studies in Human Resource Management and of New England College, where she received her Master's Degree in Campus Public Safety Administration. Murray is also a graduate of the 235th session of the prestigious FBI National Academy where she was awarded a graduate certificate in Criminal Justice from the University of Virginia. She has authored numerous journal articles.



TITLE IX

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ISSUANCE OF CERTIFICATES FOR COMPLETION

To receive a certificate, attendees must attend the majority of the class and have paid class invoice in full. This applies to both in-person classes and virtual classes. We understand that attendees may need to miss class for a legitimate reason for longer periods of time or may need to leave the room during a class for a few minutes to take a phone call or attend to other business. If an attendee misses a significant amount of the class (depending on the length of the class) or they miss an attendance poll, they will not be issued a certificate of completion for the class.

Attendees should report each absence using the online form provided (each class has its own unique form that is sent to all attendees via email prior to class). Attendees should complete the form twice for each absence: once to record their departure, and again to record their return. Attendees should complete the form immediately before leaving class and as soon as practicable upon their return. If an attendee signs out but does not sign back in, they will be marked absent for the remainder of the day.

The criteria for receiving a certificate is determined based on missed class time and participation in the Attendance Polls that will be launched throughout each day of class. Attendance polls are left up for approximately 5 minutes and the instructor notifies the attendees that a poll is being launched to ensure that everyone who is present can respond to the poll. If an attendee is unable to respond to the attendance poll, the attendee would need to **immediately post "I am here"** in the chat feature within the Zoom platform. That way we can give the attendee credit for being in attendance for that specific poll. Notifying us after the attendance poll has been closed will not allow us to give the attendee credit for being in class during the poll.

Some of our classes may qualify for credit toward a Master's Degree at New England College (and regardless if you decide to seek credit or not, accreditation requirements mandate that we follow the same standards for all class attendees), so we have strict attendance standards that we follow for issuance of a certificate. For DSA & NACCOP, issuance of a Certificate of Completion is verification of attendance.


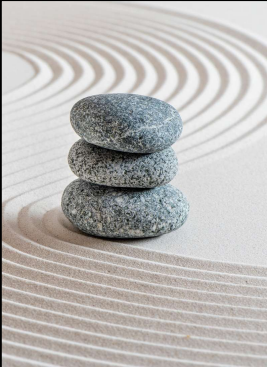


ADVANCED TITLE IX TRAINING

PRESENTED FOR MIDWESTERN STATE UNIVERSITY
JUNE 20, 2023
8 HOURS OF INSTRUCTION



1





MORNING COURSE AGENDA

- Review of Definitions (Elements)
- Review of the DSA Interview Model
- Warm-up
- Case Study & Simulation

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SEXUAL HARASSMENT DEFINITIONS

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 **§ 106.30(a) - SEXUAL HARASSMENT**

Sexual harassment means conduct on the basis of sex that satisfies one or more of the following:

1. An employee of the recipient conditioning the provision of an aid, benefit, or service of the recipient on an individual's participation in unwelcome sexual conduct;
2. Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the recipient's education program or activity;
3. "Sexual assault" as defined in 20 U.S.C. 1092(f)(6)(A)(v), "dating violence" as defined in 34 U.S.C. 12291(a)(10), "domestic violence" as defined in 34 U.S.C. 12291(a)(8), or "stalking" as defined in 34 U.S.C. 12291(a)(30).


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**PRONG 1:
QUID PRO QUO**






An employee of the recipient conditioning the provision of an aid, benefit, or service of the recipient on an individual's participation in unwelcome sexual conduct

(§ 106.30(a))

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 **QUID PRO QUO (FROM THE PREAMBLE)**


-  "This for that" harassment
-  Must be an employee respondent (not volunteer, visitor, student)
-  "Unwelcome" is subjective element (submission vs. consent)
-  Does not need to meet pervasiveness element
-  Limited need to show impact - single instance could jeopardize access

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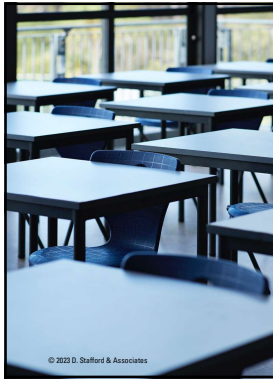
**PRONG 2:
HOSTILE
ENVIRONMENT+
(THE DAVIS
STANDARD)**

Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the recipient's education program or activity

 (§ 106.30(a))

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§ 106.30(a) - HOSTILE ENVIRONMENT+

Referred to in preamble as “The Davis Standard”

Not the same Title VII “hostile environment” or 2001 Guidance

First Amendment protections

Must show the “effectively denies” to reach the bar

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**PRONG 3:
THE VAWA
OFFENSES**

“Sexual assault” as defined in 20 U.S.C. 1092(f)(6)(A)(v), “dating violence” as defined in 34 U.S.C. 12291(a)(10), “domestic violence” as defined in 34 U.S.C. 12291(a)(8), or “stalking” as defined in 34 U.S.C. 12291(a)(30)

 (§ 106.30(a))

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THE VAWA OFFENSES




- Severity, pervasiveness, and offensiveness are not elements
- Denial of equal access not an element - it is assumed
- Includes multiple offenses

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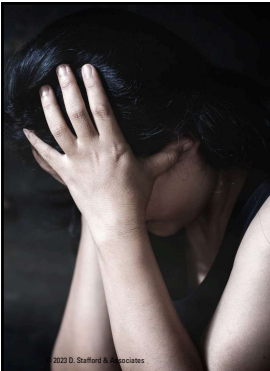


§ 106.30(a) - THE VAWA OFFENSES

 Sexual Assault	Rape Fondling Incest Statutory Rape
 Intimate Partner Violence	Dating Violence Domestic Violence
 Stalking	

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SEXUAL ASSAULT

“Sexual assault” as defined in 20 U.S.C. 1092(f)(6)(A)(v)

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SEXUAL ASSAULT - RAPE

Rape - The penetration, no matter how slight, of the vagina or anus, with any body part or object, or oral penetration by a sex organ of another person, without the consent of the victim. This offense includes the rape of both males and females.

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SEXUAL ASSAULT - FONDLING

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 age or because of temporary or permanent mental incapacity.

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SEXUAL ASSAULT - INCEST & STATUTORY RAPE

Incest - Sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.

Statutory Rape - Sexual intercourse with a person who is under the statutory age of consent.

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DATING VIOLENCE - 34 U.S.C. 12291(A)(10)

The term “dating violence” means violence committed by a person— (A) who is or has been in a social relationship of a romantic or intimate nature with the victim; and (B) where the existence of such a relationship shall be determined based on a consideration of the following factors: (i) The length of the relationship. (ii) The type of relationship. (iii) The frequency of interaction between the persons involved in the relationship.

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DATING VIOLENCE - CLERY REGULATION ADDITIONS

(ii) For the purposes of this definition -

(A) *Dating violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse.*

(B) *Dating violence does not include acts covered under the definition of domestic violence.*


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DOMESTIC VIOLENCE - 34 U.S.C. 12291(A)(8)

The term “domestic violence” includes felony or misdemeanor crimes of violence committed by

- a current or former spouse or intimate partner of the victim,*
- by a person with whom the victim shares a child in common,*
- a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner,*
- by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction receiving grant monies, or*
- by any other person against an adult or youth victim who is protected from that person’s acts under the domestic or family violence laws of the jurisdiction.*

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STALKING

“stalking” as defined in 34 U.S.C. 12291(a)(30)

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STALKING - 34 U.S.C. 12291(A)(30)

Engaging in a course of conduct directed at a specific person that would cause a reasonable person to—

- *Fear for the person’s safety or the safety of others; or*
- *Suffer substantial emotional distress.*

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STALKING - CLERY REGULATION ADDITIONS

(ii) For the purposes of this definition -

(A) Course of conduct means two or more acts, including, but not limited to, acts in which the stalker directly, indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to or about a person, or interferes with a person's property.

(B) Reasonable person means a reasonable person under similar circumstances and with similar identities to the victim.

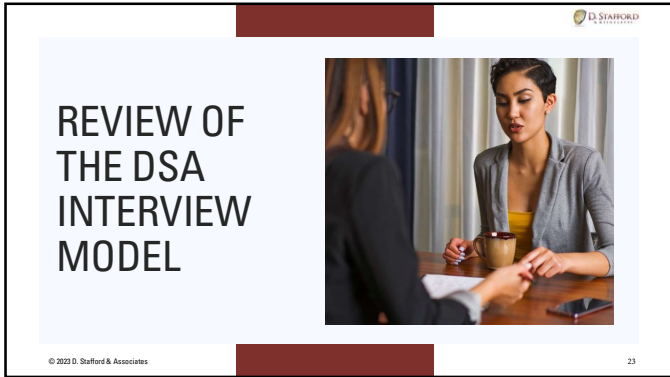
(C) Substantial emotional distress means significant mental suffering or anguish that may, but does not necessarily, require medical or other professional treatment or counseling.

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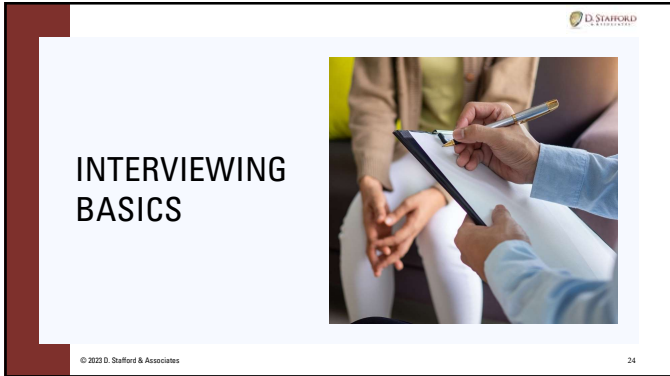
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INTERVIEWS



Testimonial Evidence




Conversation



Structured

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THE INTERVIEWEES

Complainant

Respondent

Witness

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KEYS TO A GREAT INTERVIEW

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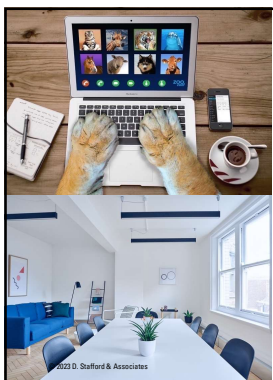
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PREPARATION

Logistics	Procedures (communication, scheduling)
	Notice documents
	Case file
Research	Policy review
	Preliminary evidence
	Topics of inquiry
Pre-drafted questions	Background
	Narrative
	Case specific

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COMFORTABLE ENVIRONMENT




- The space
- Investigative tools
- Coping items
- Safety measures

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HELPFUL PROMPTS

Recreate the Scene	Physical Space	Sensory
		

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AVOID BAD HABITS

- Interrupting
- Asking two questions at once
- Not listening for the answer
- Avoiding the hard questions
- Not focusing on the elements

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BE FULLY PRESENT

- Treat the interviewee ethically and with dignity
- Be non-judgmental and non-adversarial
- Be objective - you are not "making a case" or pushing a theory
- Adjust and adapt

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THE INTERVIEW

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**THE D. STAFFORD
INTERVIEW OUTLINE**



- Preliminaries
- Background
- Narrative
- Clarification
- Case Questions
- Closing
- Self Evaluation

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**PRELIMINARIES:
You do the talking**



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**BACKGROUND:
Build the rapport**



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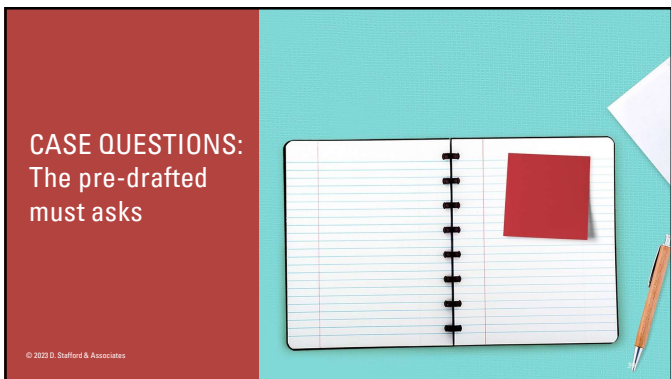
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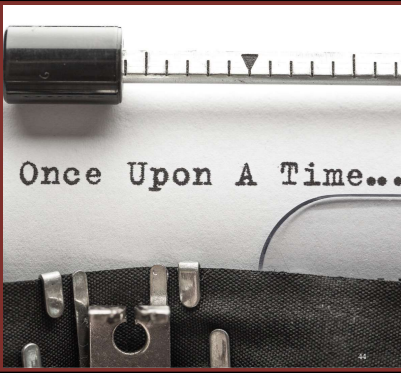
CREDIBILITY



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CREDIBILITY OF THE STORY









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CORROBORATING EVIDENCE

 Physical	 Contemporaneous Documentation	 Personal Documents
 Admissions	 Eyewitness	 Outcry

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PLAUSIBILITY

?

Possible


😊

Believable

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CREDIBILITY OF THE STORYTELLER



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MOTIVATION

Afraid

Pressured


Revenge

History


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BIAS



Past Relationship



Identity



Internal Biases

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ABILITY TO PERCEIVE

Distance

Knowledge


Credentials

Competence


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ABILITY TO REMEMBER




Passage of Time




Alcohol



Trauma



Peripheral Details



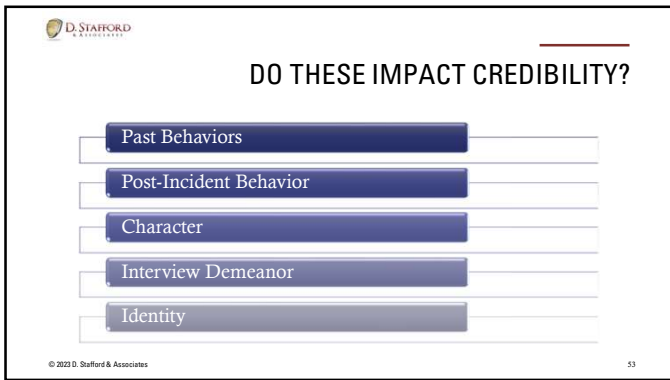
History of Memory

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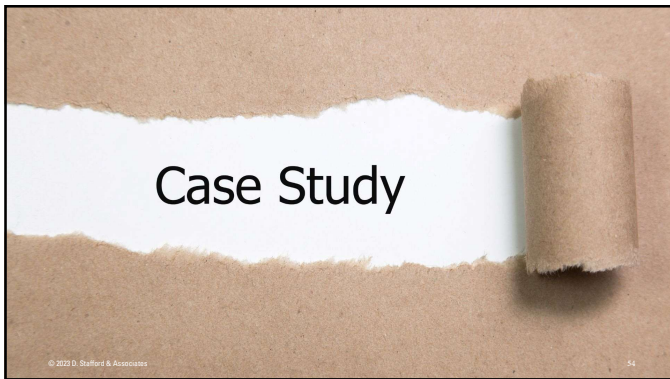
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THE STALKER



Complainant: Betty Aubuchon

Respondent: Barry Russell

Barry Russell is a classmate and is stalking me. We have two Nursing classes together, and he always sits next to me. He makes sexual comments about wanting to sleep with me and that he thinks I would be great in bed. The other day I was studying in the library, and I noticed him watching me through the stacks. I work at the coffee shop, and he comes in while I'm working. He will stay my entire shift drinking one latte. He always asks me if I want him to walk me home. I get random messages on my socials from "Russ," and I think it is him. "Russ" has posted photos of me around campus. He tags me and always makes some sexual comments about how I look. Barry has also sent me flowers and candies even though I told him to stop.

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INCAPACITATION



Complainant: Alex McMahon

Respondent: Jordan Hurley

On February 11, 2023, I went to a friend's room, and we pre-gamed before going to a party at a house off-campus. We were at the party for a short time when I didn't feel good, so I left. I don't remember how I got back to my residence hall room. I remember Jordan, who is kind of a friend, was in my room. I am not sure what happened, but I think we had sex because I found a condom the next day.

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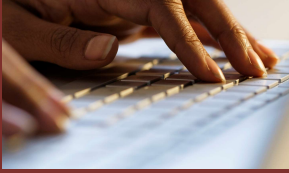
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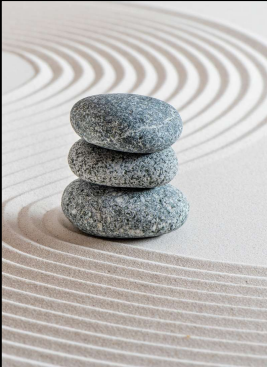
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REPORT WRITING

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AFTERNOON COURSE AGENDA

- Title IX report requirements
- Report contents
 - Compilation of the evidence
 - Documentation of the process
 - Summary of relevant evidence
- Putting it all together

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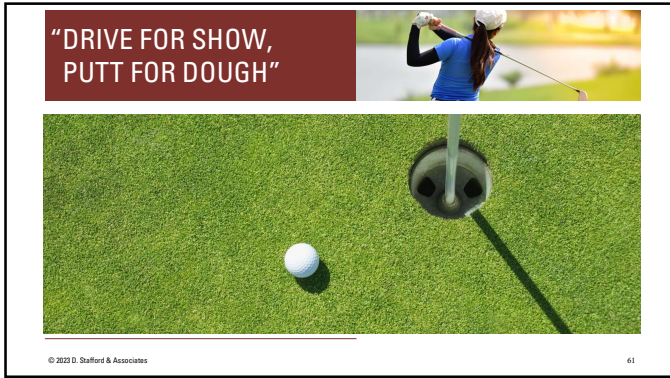
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YOU DO YOU (BUT FOLLOW YOUR POLICY)



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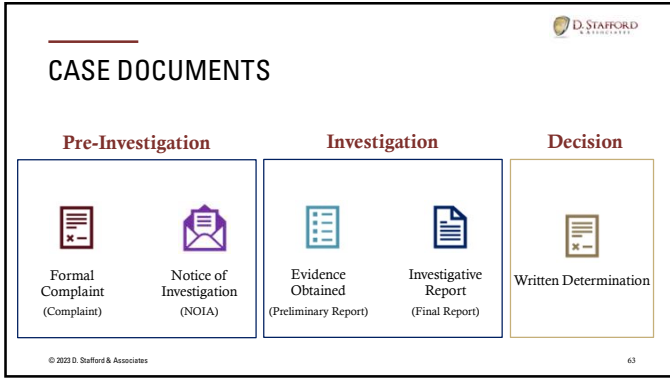
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STARTING AT THE END:


THE WRITTEN DETERMINATION

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WRITTEN DETERMINATION

(A) Allegations potentially constituting sexual harassment

(B) Description of the procedural steps taken from the receipt of the formal complaint through the determination:


- notifications to the parties
- interviews with parties and witnesses
- site visits
- methods used to gather other evidence
- hearings held

(C) Findings of fact supporting the determination

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WRITTEN DETERMINATION (PART 2)

(D) Conclusions regarding the application of the recipient's code of conduct to the facts

(E) A statement of, and rationale for, the result as to each allegation

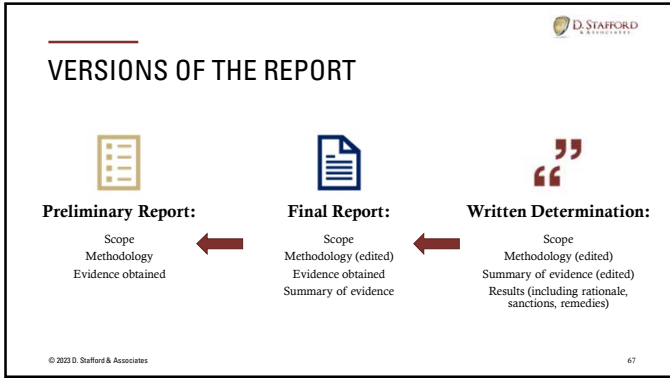
- determination regarding responsibility
- disciplinary sanctions on the respondent
- remedies to the complainant

(F) The recipient's procedures and permissible bases for the complainant and respondent to appeal

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“INSPECT & REVIEW” STAGE

EVIDENCE THAT IS DIRECTLY RELATED

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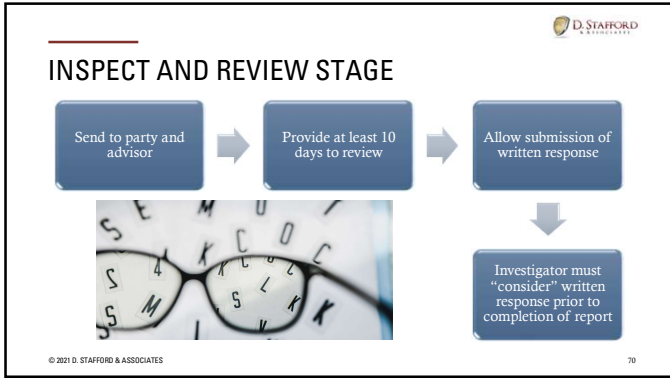
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EVIDENCE REVIEW

“provide both parties an equal opportunity to inspect and review any evidence obtained as part of the investigation that is directly related to the allegations raised in a formal complaint, including the evidence upon which the recipient does not intend to rely in reaching a determination regarding responsibility and inculpatory or exculpatory evidence whether obtained from a party or other source, so that each party can meaningfully respond to the evidence prior to conclusion of the investigation”

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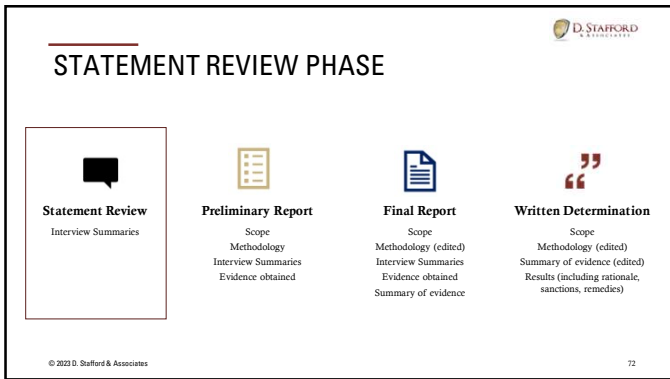
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INVESTIGATIVE REPORT:

“THE SUMMARY”

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INVESTIGATIVE REPORT

“Create an investigative report that fairly summarizes relevant evidence and, at least 10 days prior to a hearing, send to each party and the party’s advisor, if any, the investigative report in an electronic format or a hard copy, for their review and written response.”

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CONSIDERATIONS FOR FINAL “REPORT”

Parties have a right to submit written response to evidence

The investigator will consider prior to the completion of the investigative report

All related evidence must be available at hearing for parties to reference

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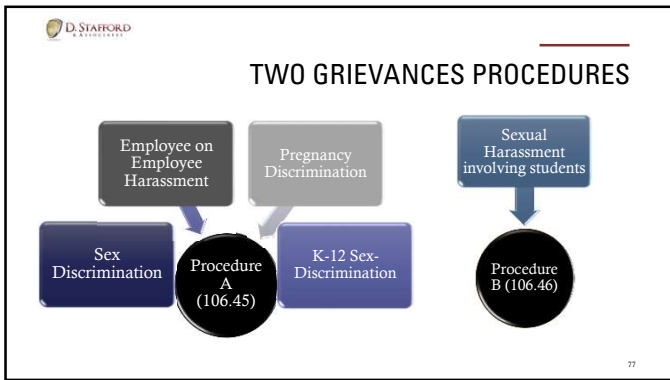
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REPORTS UNDER THE PROPOSED NEW TITLE IX REGULATIONS

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SEX DISCRIMINATION (PROPOSED 106.45)

- Review all evidence gathered through the investigation and determine what evidence is relevant and what evidence is impermissible regardless of relevance.
- Provide each party with a description of the evidence that is relevant to the allegations of sex discrimination and not otherwise impermissible, as well as a reasonable opportunity to respond.

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SEX-BASED HARASSMENT (PROPOSED 106.46)

- Must provide each party and the party’s advisor, either
 - Equitable access to the relevant and not otherwise impermissible evidence, **OR**
 - A written investigative report that accurately summarizes this evidence and parties may request access to view relevant evidence.
- If no hearing, must provide a reasonable opportunity to review and respond to the evidence prior to the determination.
- If there is a hearing, must provide a reasonable opportunity to review prior to hearing; and can provide opportunity to respond either before the hearing or at the hearing or both.

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WRITTEN DETERMINATION (106.46)

- A description of the alleged sex-based harassment
- Information about the policies and procedures that the postsecondary institution used to evaluate the allegations
- The decisionmaker’s evaluation of the relevant evidence and determination of whether sex-based harassment occurred
- Disciplinary sanctions (if any) imposed on the respondent and remedies (if any) for the complainant and others
- Procedures for the complainant and respondent to appeal

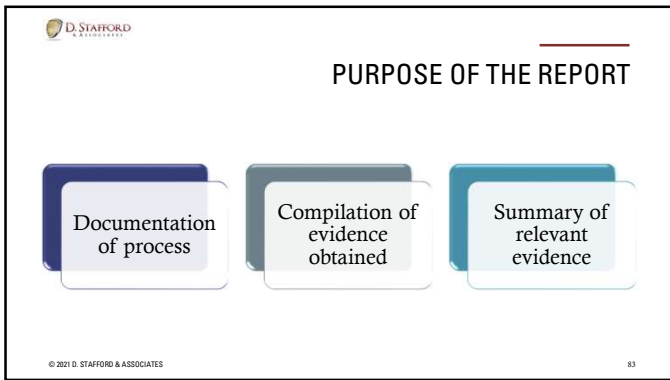
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KEEPING TRACK OF THE DATES



- Incident timeline (more to come)
- Institutional action

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CONFLICT OF INTEREST AND BIAS


Investigator background



Training


Acknowledge any relationship to parties



Opportunity to request new investigator


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TRAINING



Evidence gathering


Evidence assessment



Equitable process

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INVESTIGATIVE METHODOLOGY




Party rights
Present fact witnesses
Present expert witnesses
Present evidence




Quality investigation
Burden on school
Exculpatory & inculpatory

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PARTY EVIDENCE



Witness list



Evidence submission





Expert testimony

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COMPLIATION OF THE EVIDENCE





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OBTAINED EVIDENCE

“[A]ny evidence obtained as part of the investigation that is directly related to the allegations raised in a formal complaint, including the evidence upon which the recipient does not intend to rely in reaching a determination regarding responsibility and inculpatory or exculpatory evidence whether obtained from a party or other source, so that each party can meaningfully respond to the evidence prior to conclusion of the investigation.”

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“DIRECTLY RELATED”: IN THE COMMENTS



“interpreted using their plain and ordinary meaning”



We note that “directly related” in § 106.45(b)(5)(vi) aligns with requirements in FERPA, 20 U.S.C. 1232g(a)(4)(A)(i). (“information directly related to a student.”)



“directly related” may sometimes encompass a broader universe of evidence than evidence that is “relevant.”

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EVIDENCE COLLECTION




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WHAT IS NOT DIRECTLY RELATED



Medical
(unless signed waiver)



Other

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SEXUAL HISTORY OF COMPLAINANT



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CAPTURING INTERVIEWS

How do you capture the interview in the report?

Verbatim Record

Question/Answer format

Reorganization for clarity

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OTHER EVIDENCE

1 Incorporated Attached Available

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THE BALANCING GAME

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NEUTRAL VS. ACCURATE

Remember Believed Thought Stated Suspected Said Gussed Swore

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CONVEY THE MESSAGE



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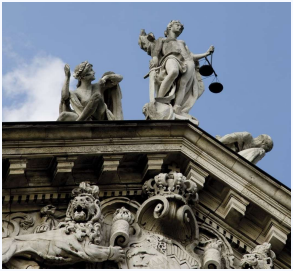
USE QUOTATIONS

It's **“whole chicken heaven”** at this acclaimed Flatiron offshoot of a Paris standout where **“French country-style”** dishes featuring responsibly farmed birds (including hens, duck and squab) are **“seriously delicious”** (as are the egg starters); tabs run **“pricey”**, but **“lovely”** service is another reason this place is **“taking off.”**

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SUMMARY OF RELEVANT EVIDENCE




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“RELEVANT” IN THE COMMENTS



“The parties should have the opportunity to argue that evidence directly related to the allegations is in fact relevant.”




“The investigator would then consider the parties’ viewpoints ... and on that basis decide whether to summarize that evidence in the investigative report.”



“A party who believes the investigator reached the wrong conclusion about the relevance of the evidence may argue again to the decision-maker (i.e., as part of the party’s response to the investigative report, and/or at a live hearing) about whether the evidence is actually relevant.”

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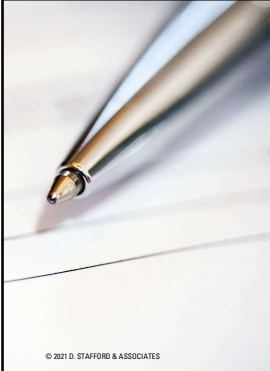



NOT RELEVANT (FROM THE TITLE IX REGULATIONS)

<p>Past Sexual Behavior</p> <ul style="list-style-type: none"> • Complainant’s sexual predisposition or prior sexual behavior unless... <ul style="list-style-type: none"> • Offered to prove that someone other than the respondent committed the conduct alleged or • Complainant’s prior sexual behavior with respect to the respondent and are offered to prove consent 	<p>Privileged Information</p> <ul style="list-style-type: none"> • Physician, psychiatrist, psychologist records in connection with the provision of treatment to the party unless <ul style="list-style-type: none"> • Voluntary, written consent
--	--

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“FAIRLY SUMMARIZES THE RELEVANT EVIDENCE”

How do you organize?

- Facts in agreement/facts in dispute
- Disputed and undisputed facts
- Exculpatory and inculpatory evidence
- Factual summary
- Timeline

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PUTTING IT ALL TOGETHER



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COVER PAGE: WHAT THIS IS

- Case identifier
- Title
- Drafter
- Reviewer
- Date

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SCOPE: WHY WE DID IT

- Allegation
- Policy
- Notice timeline (or summary)

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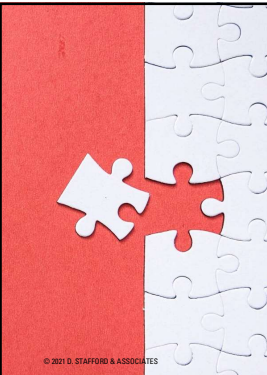
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METHOD: HOW WE DID IT

- Rights established
- Steps taken
- Report versioning

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SUMMARY: WHAT WE LEARNED

- In final report only
- Recognize the target audience

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EVIDENCE: WHAT DID WE GET

- Testimonial
- Documentary
- Demonstrative
- Real

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FORMATTING


 Page numbers


 Line numbers


 Footnotes


 Capitalization


 Punctuation


 Titles


 Redacting


 Disclaimers/
Legalese

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Consolidation and Reports

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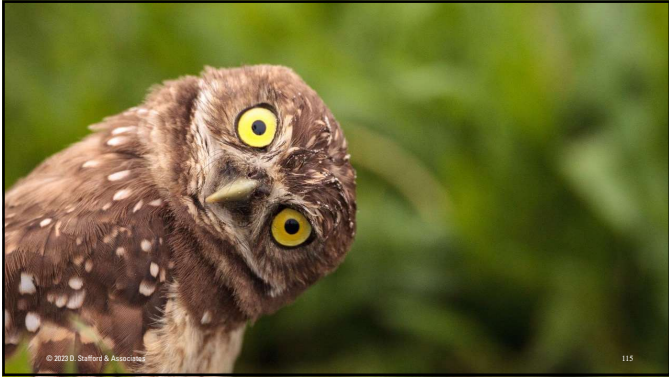


RECOMMENDED FINDING?

“The Department does not wish to prohibit the investigator from including recommended findings or conclusions in the investigative report. However, the decision-maker is under an independent obligation to objectively evaluate relevant evidence, and thus cannot simply defer to recommendations made by the investigator in the investigative report.”

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