



D. STAFFORD
& ASSOCIATES

Title IX Coordinator- Sex Discrimination Response (Tier 2)

2020 Regulations

Presented by DSA Associates:

Cathy Cocks

Adrienne Murray

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Title IX Coordinator

Tier 2 – 2020 Title IX Regulations Response

- Title IX Grievance Procedures
- Sex-Based Harassment
- Receiving a Report
- Intake Meetings
- The Complaint
- Emergency Removal & Leave
- Informal Resolution
- Consolidation
- Dismissals
- Notice
- The Investigation
- Evidence Review & The Final Report
- Evidence Evaluation
- Decision-Making
- The Appeal

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.



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Catherine Cocks, M.A.
Director, Student Affairs, Behavioral Threat Assessment and
Independent Investigation Services



Ms. Cocks has been a higher education professional for over thirty years. Her work with D. Stafford & Associates focuses on Title IX investigations and training; assessment of student affairs policies, practices and services; and behavioral threat assessment services. Cathy was the Director of Community Standards for the University of Connecticut for 14 years where she managed the student conduct process, which included managing all Title IX cases involving student respondents and chaired the University's student threat assessment team. Prior to that, she held several positions within Residential Life at the University of Connecticut and Roger Williams University.

She is a faculty member for the Association for Student Conduct Administration's (ASCA) Donald D. Gehring Academy teaching on subjects such as ethics, governance, threat assessment, media relations, and higher education trends. She was an affiliated faculty

member for many years in the University of Connecticut's Higher Education and Student Affairs Master's program teaching "The Law, Ethics, and Decision-Making in Student Affairs."

Cathy has co-authored the "Philosophy of Student Conduct" chapter in the 2nd edition of "Student Conduct Practice" (2020) and was a member of the writing team for CAS Standards' Cross-functional Framework for Identifying and Responding to Behavioral Concerns.

Cathy is a Past President of ASCA. She has also served as a Circuit representative, co-chair of the Public Policy and Legislative Issues Committee, and as a member of the ASCA Expectations of Members Task Force. Cathy has served in a variety of leadership roles in NASPA Region I.

She was the 2015 recipient of ASCA's Donald D. Gehring Award. She is a past recipient of the NASPA Region I Mid-Level Student Affairs Professional Award and the NASPA Region I Continuous Service Award.

She earned her Master's degree in Higher Education Administration from the University of Connecticut and Bachelor's degree in Communications/Media from Fitchburg State University.



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Jennifer Storm, Associate



Jennifer Storm is an international public speaker with over twenty years of experience in non-profit management and governmental relations, combined with a powerful personal story of survival from victimization and addiction. Today with over twenty-five years of active recovery, she has spent her life advocating for victims of crime, having worked on many high-profile cases, including helping victims/survivors of Jerry Sandusky, Bill Cosby, Catholic Clergy victims, and thousands of other cases in her twenty-year-long career as a victim advocate.

Ms. Storm currently serves as the Director of Institutional Compliance, Equity and Title IX at Muhlenberg College in Allentown, PA and has been in that position since 2020. She served over seven years as the Victim Advocate of the Commonwealth of Pennsylvania from 2013-2021 under the leadership and appointments of Governors Wolf and Corbett after being unanimously confirmed by the state Senate. She was responsible for representing the rights and interests of crime victims within the Commonwealth.

She earned a Master's Degree in Organizational Management from University of Phoenix in 2004 and a Bachelor of Science Degree from the Pennsylvania State University in 2002. She has appeared; The Today Show, ABC World News with Diane Sawyer, CBS 48 Hours Live to Tell, The New York Times, People, Parents, Business Week, The Washington Post, LA Times, San Francisco Chronicle, The New Yorker, Cosmopolitan, Marie Claire, Curve Magazine, The Advocate, Time Magazine, Rolling Stone, and E! News online.

Author of six critically acclaimed books on addiction, recovery, and victimization. [Awakening Blackout Girl: A Survivors Guide for Healing from Addiction and Sexual Trauma](#), [Blackout Girl: Tracing my Scars from Addiction and Sexual Assault, Second Edition](#), [Echoes of Penn State: Facing Sexual Trauma](#), [Picking Up the Pieces Without Picking Up: A Guidebook Through Victimization for People in Recovery](#), [Leave the Light On: A Memoir of Recovery and Self-Discovery](#) and [Blackout Girl: Growing Up and Drying Out in America](#).

Jennifer has been an associate with D. Stafford & Associates since 2024, where she serves as an instructor in Title IX, Diversity, Equity and Inclusion and a consultant.



NACCOP Title IX & Equity Alliance

The Alliance is a dedicated affinity group through which Title IX and Equity Professionals, and the practitioners who support and/or supervise them, can benefit from NACCOP's expertise in complying with the Clery Act, Title IX, and other civil rights laws that affect their work.

BENEFITS OF JOINING THE ALLIANCE

- **Access to NACCOP's annual 9 on IX webinar series at no additional cost (a \$710 value)**
 - These 60-minute succinct webinars will offer legal insight and practical guidance on Title IX topics from experts who have served or are currently serving as active practitioners on college and university campuses.
- **Alliance-Exclusive Professional Development Opportunities such as the Title IX & Equity Open House Discussion Series**
 - An Alliance-exclusive virtual open house will be held bi-monthly (every other month, 6 sessions annually) to engage with experts from NACCOP's partner organization, D. Stafford & Associates, as well as other invited guests, to discuss current trends and issues. Each open house will focus on a specific topic for discussion and participants will be encouraged to engage in the conversation.
- **Access to Alliance-Exclusive Whitepapers regarding Title VI, VII, and IX**
- **Connect and collaborate with other Title IX and Equity Professionals via an Alliance-restricted Listserv**
- **Discounted Professional Development Opportunities**
 - Coffee and Conversations webinar series and individual webinars focused on Title IX & Equity compliance issues
- **A 50% discount on the Title IX Notice Document Library developed by NACCOP's Partner Organization, D. Stafford & Associates (a \$335 value)**

Join the Alliance

Eligible individuals must have Institutional, Professional, or Committee Membership with NACCOP.

Cost: \$425 for 1 year subscription

(The first year of enrollment will be pro-rated to match the NACCOP membership expiration date.)

Request to Join: <https://naccop.memberclicks.net/join-the-alliance>

Questions? Contact us at info@naccop.org or 302-344-1068.



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.

INVESTIGATION CLASS ACRONYMS

- ASR:** Annual Security Report (often used as a reference to the Annual Security Report and/or the Annual Security and Fire Safety Report) that must be published by each institution of higher education.
- CSA:** Campus Security Authority—Individuals on each campus who have been identified by the Department of Education as persons who are required to report crimes that they become aware of to the Reporting Structure at each institution.
- DCL:** Dear Colleague Letter—this is a formal name of the method of communication from the Department of Education to college campuses. It is like naming their official “memo” to campuses.
- FERPA:** Family Educational Rights and Privacy Act—governs the confidentiality of student records.
- FNE:** Forensic Nurse Examiners
- GO:** General Order—some departments describe their operating procedures as general orders
- HEOA:** Higher Education Opportunity Act—the broader law that contains the Clery Act language and the fire safety and missing person language that is in the law but not contained within the “Clery Act” portion of the law.
- HIPAA:** Health Insurance and Privacy and Portability Act—governs privacy of medical records.
- MOU:** Memorandum of Understanding—an official agreement developed between agencies.
- NIBRS:** National Incident-Based Reporting System. 1 of 2 crime reporting systems developed by the FBI, but not the system that you are required to use for Clery Reporting—the only portion of this system that is used for Clery Act purposes are the 4 forcible and 2 non-forcible sex offense definitions.
- OCR:** Office of Civil Rights—the unit of the Department of Education that oversees Title IX Compliance.
- PD:** Police Department
- PS:** Public Safety
- PNG:** Persona-non-Grata—process used by some campuses not keep students from entering certain areas of the campus or the entire campus (administrative process) versus legal bar notice or trespass warning.
- SACC:** Sexual Assault Crisis Center, also known as Women’s Center.
- SANE:** Sexual Assault Nurse Examiner

SART: Sexual Assault Response Team

SOP: Standard Operating Procedures—some departments describe their operating procedures as Standard Operating Procedures. Some call them General Orders, etc...

SWA: Senior Women's Administrator (Athletics)

TWN: Timely Warning Notice

UCR: Uniformed Crime Report. This is 1 of 2 crime statistics reporting systems developed by the FBI. Institutions are required to use UCR Standards for counting and classifying crimes for reporting the Clery statistics.

VAWA: Violence Against Women Act



RESPONSE



AGENDA

- Title IX Grievance Procedures
- Sex-Based Harassment
- Receiving a Report
- Intake Meetings
- The Complaint
- Emergency Removal & Leave
- Informal Resolution
- Consolidation
- Dismissals
- Notice
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- Decision-Making
- The Appeal

TITLE IX GRIEVANCE PROCEDURES



BEFORE WE BEGIN...

Sex Discrimination

§ 106.8(c)

- “grievance procedures that provide for the prompt and equitable resolution of student and employee complaints.”
- Any person may report sex discrimination to the Title IX Coordinator
- Must publish grievance procedures to address sex discrimination
- No requirement other than “prompt” and “equitable”

Sexual Harassment

§ 106.44 and § 106.45

Other Behaviors

Conduct codes

TITLE IX PERSONNEL



DUTIES OF THE TITLE IX COORDINATOR

- § 106.8(a) Must be referred to as the “Title IX Coordinator”
- § 106.8(a) Coordinate efforts to comply
- § 106.44(a) Receive reports and promptly contact the complainant
- § 106.30 Sign formal complaints
- § 106.30 Responsible for coordinating the effective implementation of supportive measures

§ 106.45(b)(1)(iii) - TRAINING

All Title IX Personnel

- Definition of sexual harassment
- Scope of the recipient's education program or activity
- How to conduct an investigation and grievance process including hearings, appeals, and informal resolution processes, as applicable
- How to serve impartially, including by avoiding prejudgment of the facts at issue, conflicts of interest, and bias

§ 106.45(b)(1)(iii) - TRAINING

Decision-makers

- Technology to be used at a live hearing
- Issues of relevance of questions and evidence, including when questions and evidence about the complainant's sexual predisposition or prior sexual behavior are not relevant

Investigators

- Issues of relevance to create an investigative report that fairly summarizes relevant evidence

SEX-BASED HARASSMENT



QUID PRO QUO HARASSMENT



QUID PRO QUO HARASSMENT

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

QUID PRO QUO INVESTIGATIONS

Respondent

- What is the respondent's status and authority?
- What is the relationship to the complainant?
- What, if any, perceived or actual power exists?

Aid, Benefit, or Service

- What was offered?
- How was it communicated?

Sexual Conduct

- What was the conduct requested?
- Was it sex-based?
- How was it communicated?
- How was it unwelcome?

HOSTILE ENVIRONMENT HARASSMENT

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15



HOSTILE ENVIRONMENT HARASSMENT

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.

HOSTILE ENVIRONMENT INVESTIGATIONS

Type, frequency, and
duration of the
conduct

Location of the
conduct and the
context

Parties' ages, roles,
previous
interactions, other
factors

Degree to which the
conduct affected
access to the
program or activity

Other sex-based
harassment in the
program or activity

SEXUAL
ASSAULT

CLERY DEFINITIONS OF SEXUAL ASSAULT

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

34 CFR 668 Appendix A

SEXUAL ASSAULT INVESTIGATIONS

What was the sexual behavior?

Who was the initiator?

What, if any, were the words or actions to indicate consent?

- Is there an issue of incapacitation or force?

STALKING

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21



STALKING

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

- (A) Fear for the person's safety or the safety of others; or
- (B) Suffer substantial emotional distress.

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22

STALKING INVESTIGATIONS



Course of conduct -
two or more act



Reasonable person
standard



Substantial emotional
distress

INTIMATE PARTNER VIOLENCE



DATING VIOLENCE

Violence committed by a person:

(A) Who is or has been in a social relationship of a romantic or intimate nature with the Complainant; and

(B) Where the existence of such a relationship shall be determined based on a consideration of the following factors:

- (1) The length of the relationship;
- (2) The type of relationship; and
- (3) The frequency of interaction between the persons involved in the relationship.

§ 106.2

DOMESTIC VIOLENCE

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.

INTIMATE PARTNER VIOLENCE INVESTIGATIONS

Parties

- Type of relationship
- Length of the relationship
- Frequency of interaction between the persons

Behaviors

- Type of violence
- Possible patterns of behaviors
- Other behaviors that may fall under other policy definitions

RECEIVING A REPORT





Report vs. Complaint

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29



What are some
barriers to reporting?

How do we address?

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30

CASE STUDY - THE REPORT

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31



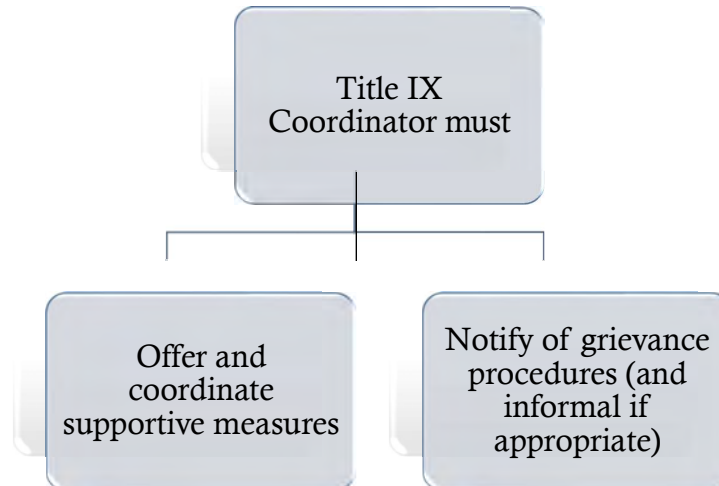
INTAKE MEETINGS



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32

TITLE IX COORDINATOR OUTREACH DUTIES TO COMPLAINANT



Remember

Clery obligations!

- CSA duties
- Rights and options
- Who assesses for timely warning?



What do you
need for the
meeting?



Supportive Measures

What are your options?

CASE STUDY - THE INTAKE MEETING

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37

Meeting Follow-up

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38

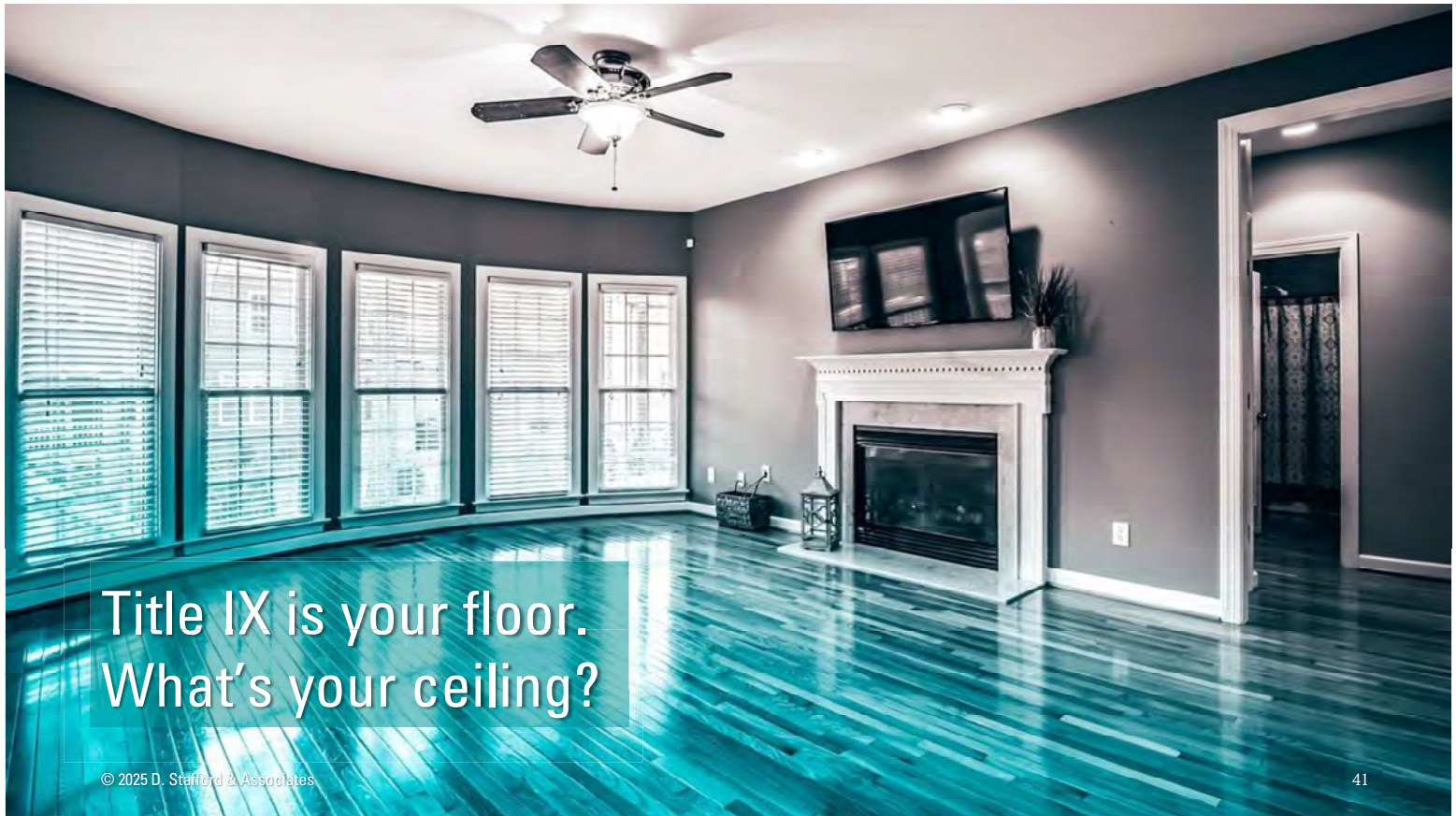
Take a temperature check



- What are the alleged violations?
- Should there be an emergency removal/administrative leave?
- What if it would not “reasonably constitute sex discrimination?”

THE COMPLAINT





FORMAL COMPLAINT

Formal complaint means a document filed by a complainant or signed by the Title IX Coordinator alleging sexual harassment against a respondent and requesting that the recipient investigate the allegation of sexual harassment.

CASE STUDY - THE COMPLAINT

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43



TITLE IX- INITIATED COMPLAINTS



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44



What if the complainant doesn't respond or doesn't want to proceed?



TITLE IX-INITIATED COMPLAINTS

The Title IX Coordinator can initiate a complaint. The Title IX Coordinator is not considered the complainant or a party.

EIGHT FACTORS TO CONSIDER

Complainant's
request

Safety
concerns

Risk of
additional acts

Severity of
allegation

Age and
relationship

Scope and
pattern

Evidence

Alternatives to
resolve



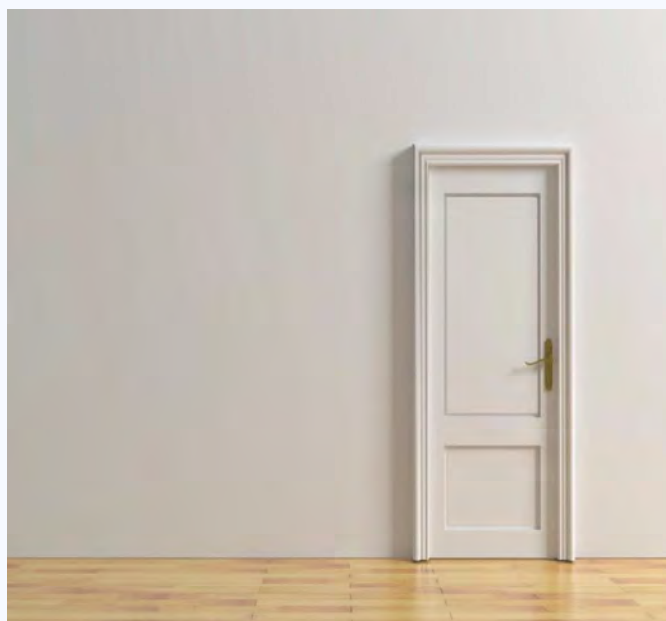
What circumstances
may warrant the Title
IX Coordinator to
initiate a complaint?

IF TITLE IX INITIATES A COMPLAINT...

Notify the complainant prior to doing so and appropriately address reasonable concerns about the complainant's safety or the safety of others, including by providing supportive measures.

49

EMERGENCY REMOVAL & LEAVE



LEAVE OPTIONS



Emergency removal



Administrative leave

EMERGENCY REMOVAL



Immediate threat to the physical health or safety of any student or other individual



Arises from the allegations



Provide notice and opportunity to challenge immediately following the removal



Cannot modify any rights under IDEA, Section 504, or the ADA

CASE STUDY - CHECK FOR EMERGENCY REMOVAL

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53

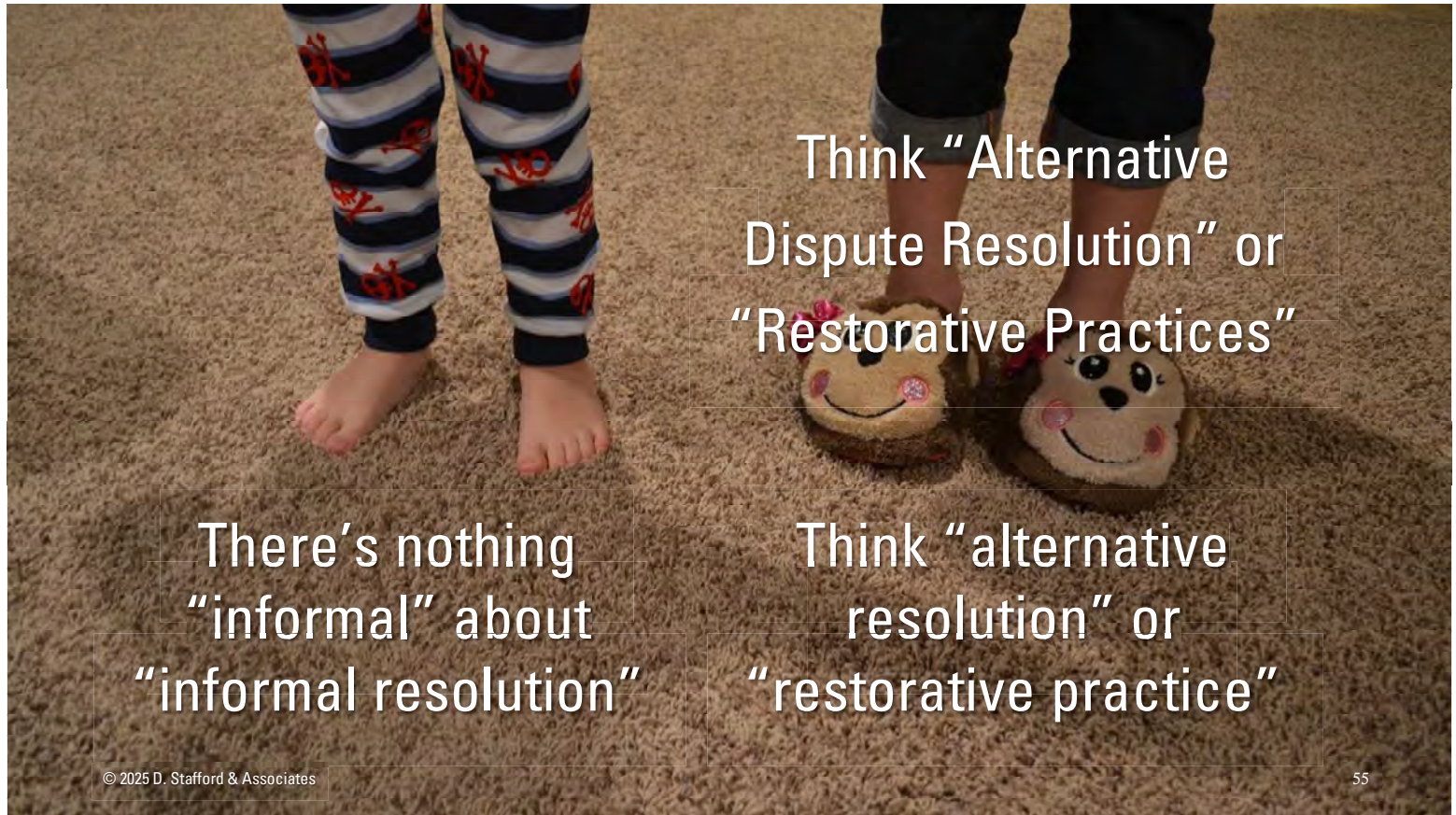


INFORMAL RESOLUTION



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54



INFORMAL RESOLUTION



No
employee/student



Discretion to offer
or decline



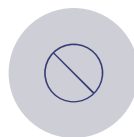
Voluntary for
parties



Provide notice



Facilitator must not
be investigator or
decisionmaker



Must be in writing
IF offered in lieu of
grievance procedure

NOTICE REQUIREMENTS

Requires voluntary, written consent

- (i) The allegations;
- (ii) The requirements of the informal resolution process;
- (iii) That, prior to agreeing to a resolution, any party has the right to withdraw from the informal resolution process and to initiate or resume the recipient's grievance procedures;
- (iv) That the parties' agreement to a resolution at the conclusion of the informal resolution process would preclude the parties from initiating or resuming grievance procedures arising from the same allegations;
- (v) The potential terms that may be requested or offered in an informal resolution agreement, including notice that an informal resolution agreement is binding only on the parties; and
- (vi) What information the recipient will maintain and whether and how the recipient could disclose such information for use in grievance procedures ... if initiated or resumed.

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57



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EXAMPLES OF ALTERNATIVE RESOLUTIONS

- Shuttle conference
- Mediation
- Restorative justice
- Agreements
- Single-adjudicator determination

58

A row of five blue doors set into a blue wall. The fourth door from the left is slightly ajar, revealing a bright yellow light source inside, which casts a warm glow on the floor and the surrounding doors.

Under what
circumstances would
you offer an
alternative resolution?

A 3D rendering of a grey, winding road on a light blue surface. Three red location pins are placed along the road: one in the distance, one in the middle ground, and one in the foreground on the right side, partially cut off by the frame. The background is a clear blue sky with soft clouds.

At what point in the
process do you offer
an alternative
resolution?

CONSOLIDATION



CONSOLIDATION OF COMPLAINTS

Multiple
respondents

More than one
complainant
against one or
more respondent

One party
against another
party

Consolidation Considerations

DISMISSALS



DISMISSALS

- Must
 - The formal complaint, on its face, does not constitute sexual harassment
 - Not in educational program or activity
 - Not in the United States
- May
 - Complainant withdraws complaint
 - Respondent no longer enrolled
 - Prevented from gathering evidence

SUGGESTED DUTIES BEFORE DISMISSAL

Unable to identify the respondent	• Reasonable steps to identify respondent
Complainant withdraws allegation(s)	• Must consider initiating the complaint
Allegation if proven not discrimination?	• Prior to dismissing, must clarify with the complainant

BASES FOR APPEAL OF DISMISSAL



Procedural Irregularity



New Evidence



Bias or Conflict of
Interest

CASE STUDY - WHERE ARE WE AT?



NOTICE



NOTICE

Requirements	2020 §106.45(b)(2) required to be in writing
Grievance Procedures	YES
“Sufficient information” (parties, conduct, date, location)	YES
Statement that retaliation prohibited	NO (prohibited but not required in notice)
Access to relevant evidence	YES (any evidence)
Respondent is presumed not responsible	YES
Right to advisor of choice	YES
Prohibition on false statements	YES

LETTERS



Who sends the letters?

Notice of report/request for intake

Notice of case closure

Notice to the complainant of Title IX-initiated complaint

Notice of allegations/investigation

Notice of any meeting or proceeding

Outcome letter

Appeals

- Appeal submission
- Appeal decision
- No appeal submitted

Alternative resolution

- Notice of option
- Agreement

Dismissal

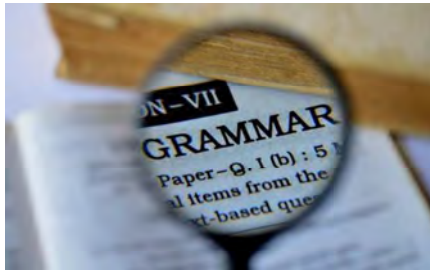
- Notice of dismissal
- Notice of appeal
- Notice of result

Investigation status

- Additional allegations
- Temporary delay
- Periodic updates

Witness notifications

- Interview
- Meeting hearing



COMMON PITFALLS WITH NOTICES OF ALLEGATION & INVESTIGATION

- Dates - incorrect or not broad enough
- Description of behaviors is too specific or too narrow
- Typos
- Poor grammar

CASE STUDY - THE NOTICE OF INVESTIGATION LETTERS

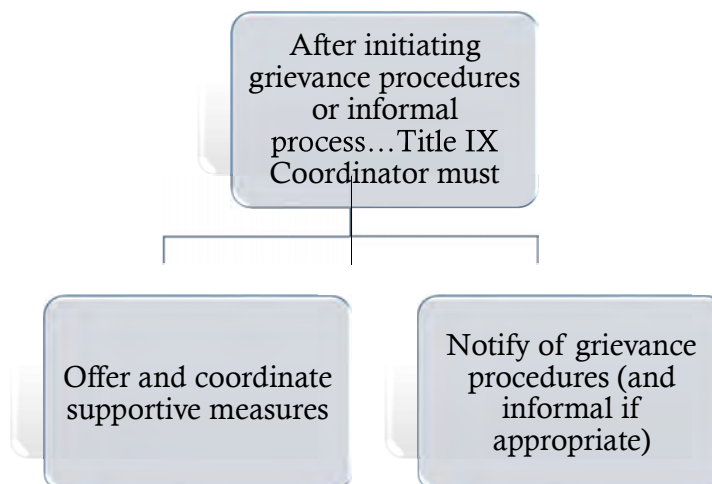


INFORMING THE RESPONDENT

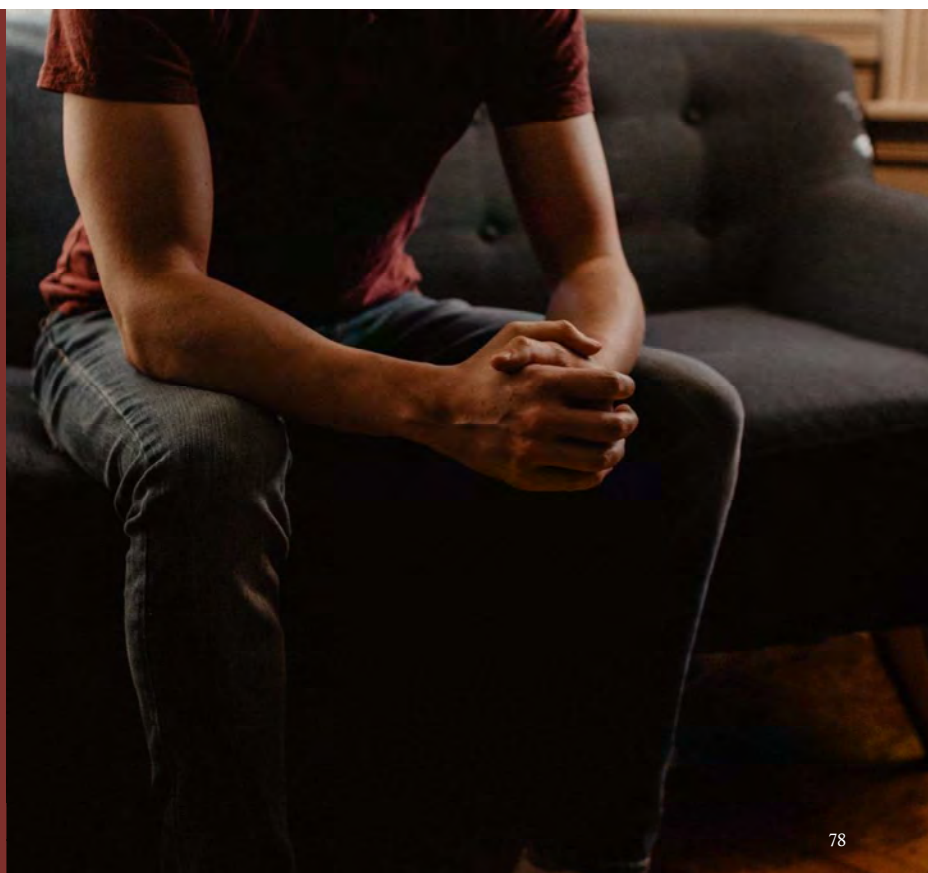


What does your first
outreach to the
respondent look like?

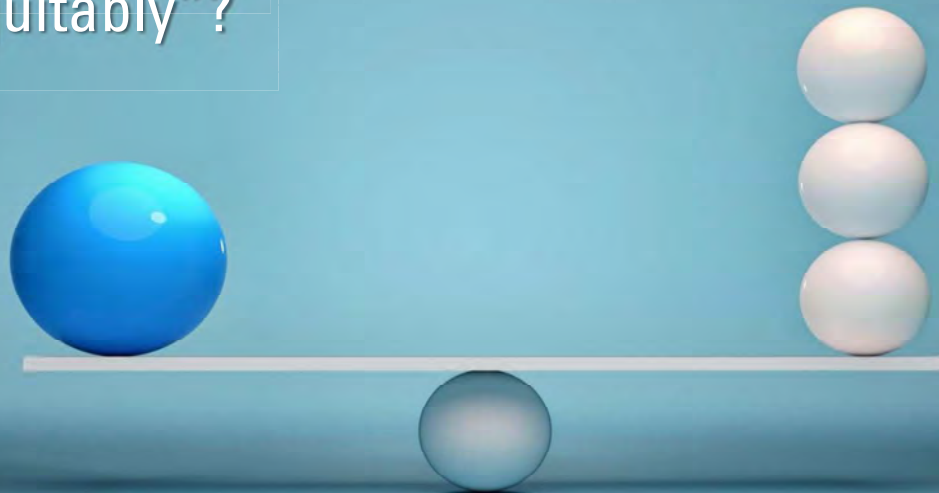
TITLE IX COORDINATOR OUTREACH DUTIES TO RESPONDENT



CASE STUDY - MEETING WITH THE RESPONDENT

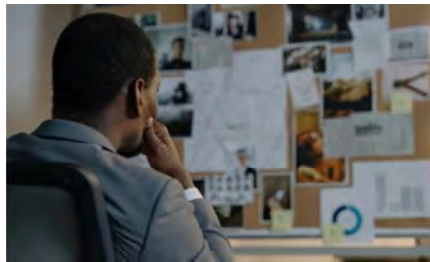


How do we treat
the parties
“equitably”?



THE INVESTIGATION





INVESTIGATIONS

- Burden of information gathering rests on the institution
- Cannot restrict parties from discussing the allegations with others
- Cannot restrict parties from gathering and presenting relevant evidence

INVESTIGATIONS "MUSTS"



Provide notice of meetings, time to prepare



Provide an opportunity for the parties to present evidence, including fact witnesses



Allow advisor of choice



Allow reasonable extensions of time



Provide party and advisor access to evidence



Create an investigative report that summarizes relevant evidence

ADVISOR OF CHOICE



May be but is not required to be an attorney



May accompany to any meeting or proceeding



Institution may restrict participation



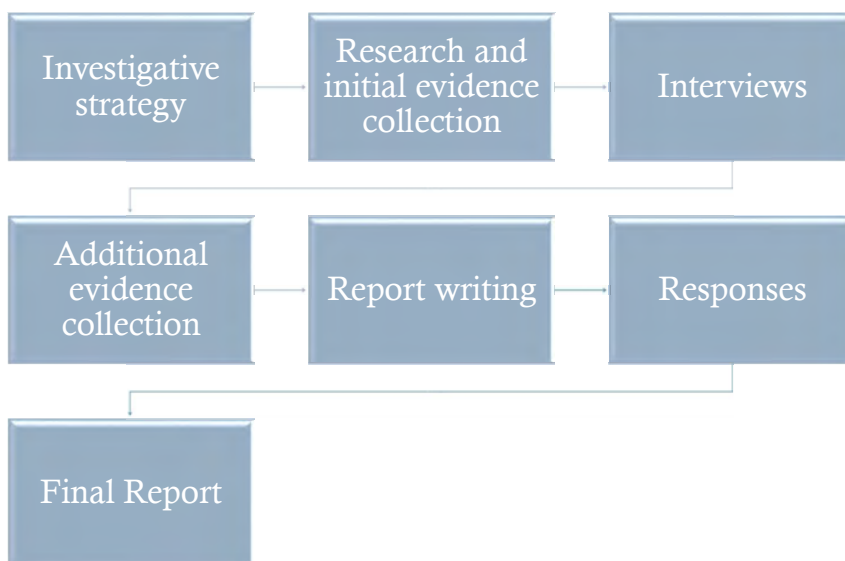
Receives access to evidence and report



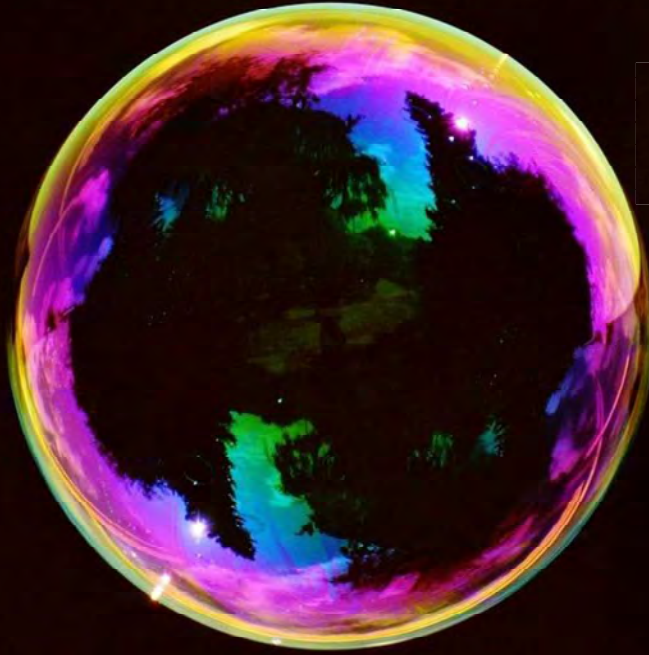
Must conduct cross-examination at hearing



INVESTIGATION ROAD MAP



The Investigation Bubble



EVIDENCE



EVIDENCE REQUIREMENTS

1

Provide an equal opportunity to present fact witnesses and evidence

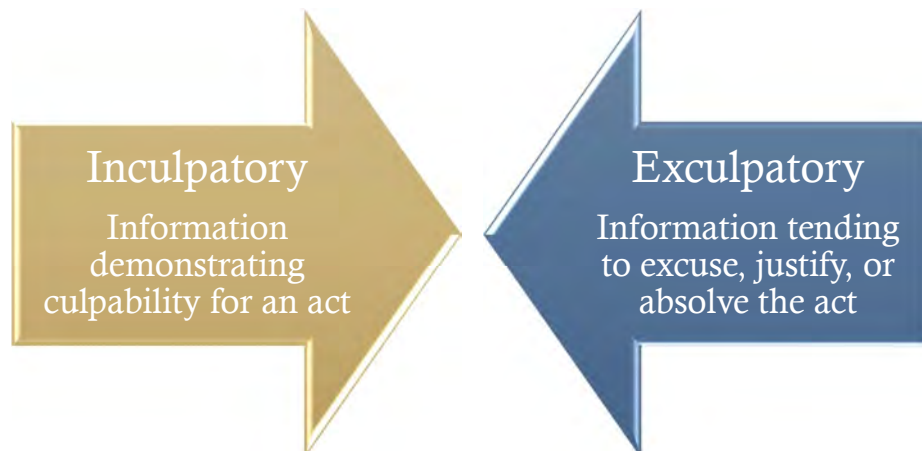
2

Provide an equal opportunity for each party to inspect and review the evidence and respond

3

Investigator must determine relevant and permissible evidence

EVIDENCE



RELEVANT AND NOT OTHERWISE IMPERMISSIBLE EVIDENCE



Privileged information



Physician/psychologist records



Complainant's sexual interest or prior sexual conduct

TYPES OF EVIDENCE



Real evidence



Demonstrative



Documentary



Testimonial

Managing Evidence Requests

Shopping List

1. Milk
2. Eggs
3. Cheese
4. Butter

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91

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EVIDENCE REVIEW & THE FINAL REPORT



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92



EVIDENCE REVIEW

- Each party and advisor will receive all evidence obtained that is directly related to the allegations, including evidence that may not be relied on to make a decision.
 - The parties have 10 calendar days to submit a written response to the investigator.
 - In writing the report, the investigator will consider the responses and the evidence obtained.
-

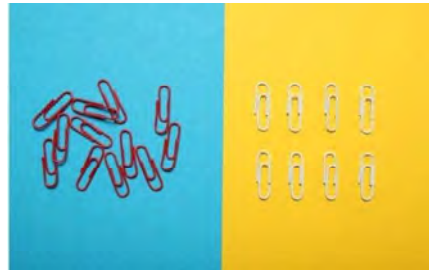
93

REPORT PURPOSES

Documentation
of Process

Compilation of
Evidence

Summary of
Facts



ELEMENTS OF A GOOD REPORT

PROOFREAD

☒ SPELLING

☒ GRAMMAR

☒ ACCURACY

CASE STUDY - THE REPORT



EVIDENCE EVALUATION



EVALUATORS OF EVIDENCE

Investigators

- Develop lines of questioning
- Determine additional witnesses and evidence needed
- Identify relevant evidence
- Identify evidence related to credibility

Decision-makers

- Review the investigator's summary of relevant evidence
- Assess the credibility of the parties and witnesses to the extent credibility is in dispute and relevant

RELEVANCY



RELEVANCY

Makes a fact more
or less probable than
it would be without
the evidence

The fact is of
consequence in
determining the
action

KEY RELEVANCY POINTS

1

The evidence does not need to be conclusive

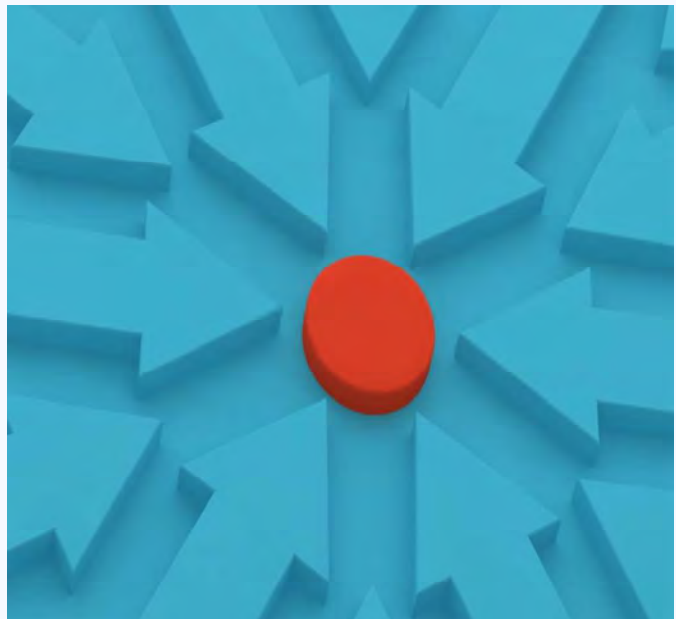
2

Is sufficient if it constitutes a link in the chain

3

Enough if in connection with other evidence, helps “*a little*”

DECISION- MAKING



LOGISTICS

Scheduling

Sharing of evidence with decisionmaker

Meeting/Hearing notification letters

Post-investigation meeting

Advisors

Recording

Written determination

Sanctions/Remedies

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103

PRE-HEARING ACTIVITY



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104

RECOMMENDED HEARING NOTICE



Date, time, location, and names of decision-makers



Reiterate details from notice (parties, alleged behavior and allegations)



Investigative report

INVESTIGATIVE REPORT



Must accurately summarize the relevant evidence



Parties must be provided an opportunity to respond prior to the final determination

HEARING DECISION- MAKER PREPARATION



PRE-HEARING PREP



Review notice of
allegation and
complaint



Review policy and
procedures



Review final
investigative
report



Review party
responses

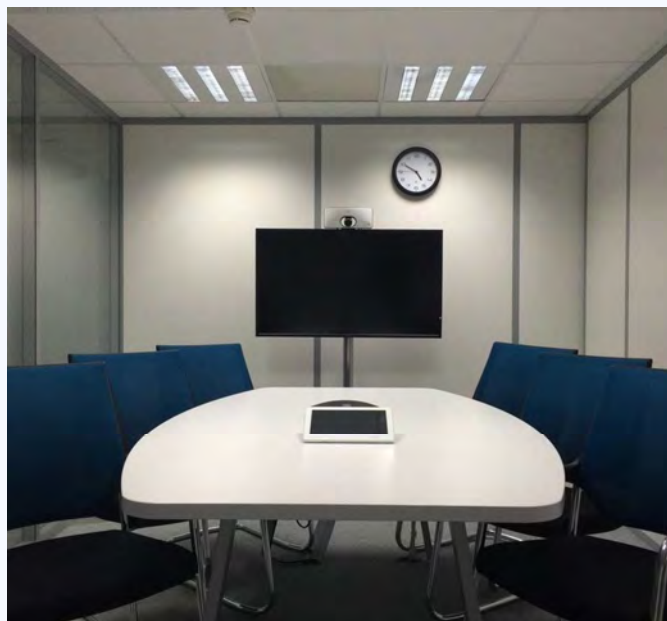


Develop clarifying
questions related
to relevant
evidence summary



Identify potential
challenges and
responses

THE HEARING



Let's take a moment...



SAMPLE AGENDA



SAMPLE AGENDA

1. Opening (Chair)

2. Purpose of the Hearing (Chair)

3. Review of the Hearing Process (Chair)

4. Questioning

5. Concluding Remarks (Chair)

CASE STUDY - DECISION- MAKER QUESTIONS

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113



CROSS-EXAMINATION BY ADVISORS

Question by advisor

Relevancy determination by decision-maker

Answer by party or witness

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114



IRRELEVANT QUESTIONS

- Past sexual history
- Privileged information
- Repetitive question
- Not probative of material fact

RELEVANCY DETERMINATIONS



Use logic and common sense



Maintain a neutral, objective position



A lengthy or complicated explanation is not needed

HEARING MANAGEMENT ISSUES



What could go wrong?



PARTICIPATION

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119



ABSENCE OR REFUSAL TO ANSWER CROSS

“The 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.”

§ 106.45(b)(6)(i)

DISRUPTIONS

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121



DISRUPTION EXAMPLES

Emotions

Intimidation

Technical issues

Not following
instructions

Lateness

Unpreparedness

ADVISORS

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123



POTENTIAL ADVISOR ISSUES

Relationship with
party

Relationship with
case

Disruptive

Inappropriate
cross-examination

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124

NEW EVIDENCE

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125



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WHAT IS NEW EVIDENCE?

Evidence that was not reasonably available at the time that could have affected the outcome

126

DECISION-MAKER CONSIDERATIONS

What does the policy state?

- Review your policy!

Is it truly new evidence?

- Evidence that has recently become known
- Evidence that has recently come into existence
- New is not withheld evidence

Why was it not available?

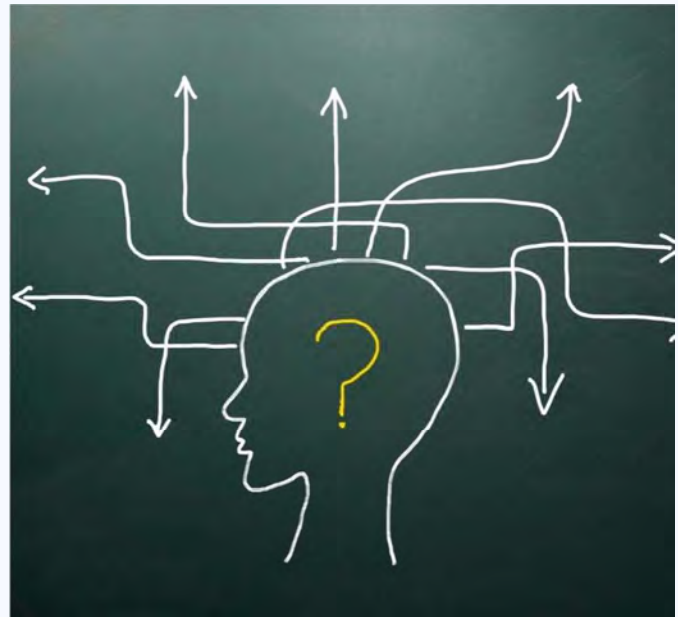
- Example: Requested by the party during the investigation but not produced (e.g., logs, records)
- Example: Witness's identity not previously known

Could it affect the outcome?

- Relevancy - Does it help to prove or disprove the allegation(s)?



THE DELIBERATION



Let's take a look back
at evidence
evaluation.

The investigator
identifies relevant
evidence. The
decision-maker puts it
together in the context
of the allegation.

Beware of “standard creep”!

This is not your standard -
Clear and convincing

This is your standard -
Preponderance of the evidence

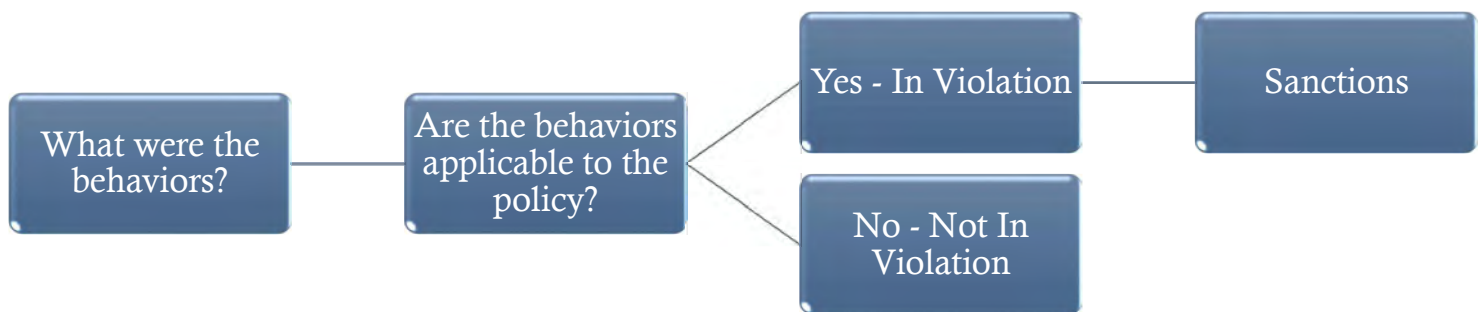


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131



DECISION-MAKING STEPS



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132

THE DECISION LETTER



NOTIFICATION



Parties must be notified
simultaneously



Becomes final on the date the
parties are notified of an appeal
decision

DETERMINATION REGARDING RESPONSIBILITY

Allegations

Procedural steps

Findings of fact

Conclusion/application

Rationale

Appeal procedures

THE DETERMINATION

Previously Shared Information

- Alleged allegations
- Procedural steps up to the hearing
 - Notifications
 - Interviews with parties and witnesses
 - Site visits
 - Methods used to gather other evidence

New Information

- Procedural steps from the actual hearing
- Findings of fact
- Conclusions regarding the application of the policy
- Statement regarding responsibility and rationale for each allegation
- Any sanctions imposed
- Any remedies for the Complainant imposed
- Appeal procedures, including the grounds

CASE STUDY - THE DECISION

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137

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THE APPEAL



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138

TYPES OF APPEALS*

Dismissal

Determination Regarding
Responsibility

*An emergency removal allows for a “challenge” by the respondent; it is not an appeal.

APPEAL GROUNDS



Procedural irregularity that
affected outcome



New evidence that **could**
affect the outcome



Conflict of interest or bias
that **affected the outcome**

APPEALS ARE NOT...



A substitute for another's
judgment



Political decisions

PROCEDURAL DETERMINATIONS

- Who is your decision-maker for appeals?
- Who is informing the parties of an appeal submission?
- Who is collecting the information and giving to the decision-maker for the appeal?
- Who is communicating with the parties?
- Timelines
 - Deadline for appeal
 - Submission of written statements
 - Written decision

CASE STUDY - THE APPEAL

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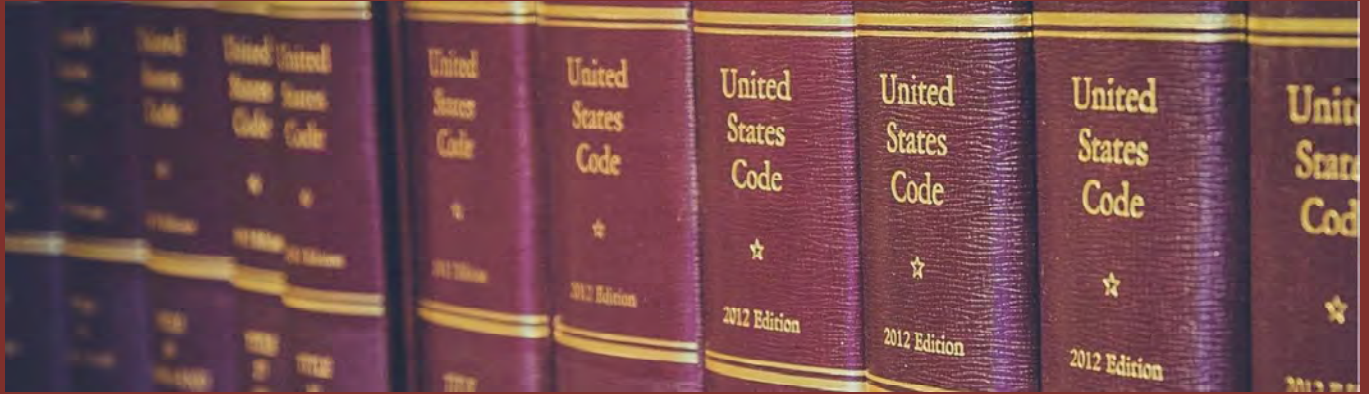


143



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144



THANK YOU





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