



Lessons Learned from Conducting Sexual Misconduct Investigations During a Pandemic

ANN TODD
CATHY COCKS
D. STAFFORD & ASSOCIATES

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The Room Where It Happened

Some people will do their interview in the bathroom.

Wi-Fi issues

Lurkers

Roommates

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Fix your face.

Propaganda

Distractions

Living Situation

Other Policy Violations

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We have issues too.

Wi-Fi issues

Distractions

Equipment

Backgrounds

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COVID-19 Safety

Scheduling Flexibility

Resource management wins.

Individual Safety

Cost

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Waiting Rooms

Chat Function

Embrace the technology.

Whiteboards

Breakout Rooms

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Cameras On

Rapport

Break the virtual wall.

Line of Sight

Communication Cues

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Request Location Photos

Evidence Sharing - Parties & Witnesses

Get creative with evidence collection and sharing.

Google

Evidence Sharing - Investigators

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Helpful Meeting Notice Language

- Please be in a location with good Wi-Fi and have your camera on.
- For confidentiality purposes, please find a private location. Be sure no other persons, except for your advisor, are in the room (on or off camera) during the interview.
- As it can take a few minutes to log in, please begin the login process 10 minutes before the start time.
- If you are unable to secure a private location or you have Wi-Fi issues, please contact Dr. Roe's office and they will assist you in looking for an alternative space for the zoom interview.
- You will join a waiting room - please be patient - the investigators will join you into the meeting when the previous interview has finished.
- If you have evidence to share, please send it in advance of the interview to droe@college.edu

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Upcoming D. Stafford Classes

- Title IX Coordinator
 - February 22 - 26, 2021
 - May 3 - 7, 2021
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- Combined Sexual Misconduct and Domestic/Dating Violence and Stalking Investigation
 - April 12 - 16, 2021
 - August 23 - 27, 2021
- Advanced Investigations
 - March 8 - 12, 2021
 - June 7 - 11, 2021
 - November 8 - 12, 2021

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Intersection of Title IX and Threat Assessment Teams

CATHY COCKS
BETH DEVONSHIRE
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Agenda

- Title IX Regulations
- Figuring Out the Process

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What the Title IX regulations say...



- “(c) Emergency removal. Nothing in this part precludes a recipient from removing a respondent from the recipient’s education program or activity on an emergency basis, provided that the recipient undertakes an individualized safety and risk analysis, determines that an immediate threat to the physical health or safety of any student or other individual arising from the allegations of sexual harassment justifies removal, and provides the respondent with notice and an opportunity to challenge the decision immediately following the removal. This provision may not be construed to modify any rights under the Individuals with Disabilities Education Act, Section 504 of the Rehabilitation Act of 1973, or the Americans with Disabilities Act.”

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Criteria



Rising from the allegations

+

Immediate threat to physical health and safety

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Immediate vs. Imminent

Immediate	Poses a threat of instant harm or attack
Imminent	Poses a threat of impending or looming harm or attack

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Risk vs. Threat

Risk	Effect of an occurrence on objectives Focuses on particular incidents and the effects Risk Assessment - Potential event that may occur and its effect
Threat	An intention to cause harm Focuses on the person's intentions and the harm those intentions may cause Threat Assessment - A person of concern's intentions and their ability to carry out the intentions

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When do we do it?

Dating Violence/
Domestic Violence?

Stalking?

Sexual Assault?

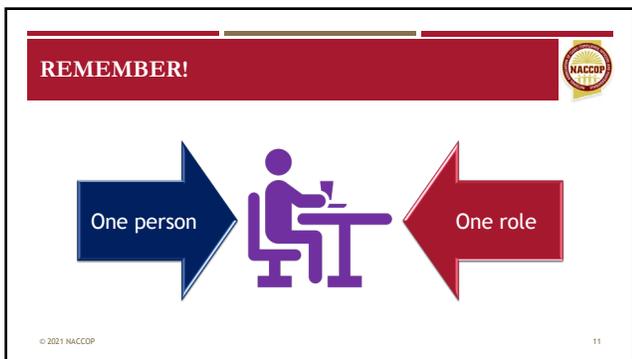
Sexual Harassment?

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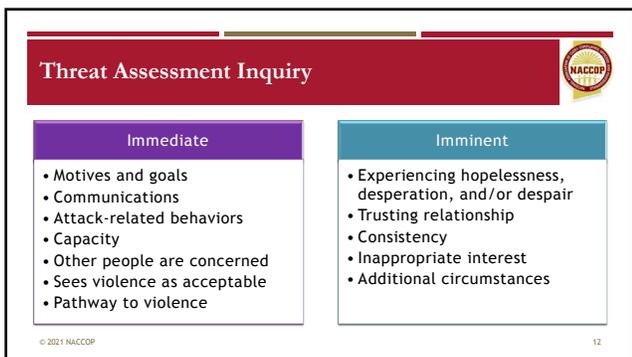
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2021 NACCOP Title IX Webinar

Where We Are, Where We Are Going - An Overview of the Biden Administration's Higher Education Plan



- This session will cover compliance related topics that are currently being discussed by the Biden administration, including Title IX, intersectional issues between Title IX and the Clery Act, institutional funding, student loan forgiveness, and other compliance-related issues.
- **Thursday, April 29, 2021 from 2:00 PM - 3:30 PM (Eastern Time)**
- **Individual Cost:** \$49.00 (Member) \$99.00 (Non-Member)
- **Group Rate:** \$129.00 (NACCOP Member) \$249.00 (Non-Member)

Visit www.naccop.org and select the "Trainings & Webinars" tab

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2021 NACCOP Title IX Webinar

Student and Employee Conduct Policies in 2021 and Beyond: Updating for Compliance and the Times



- NACCOP is offering a comprehensive webinar presented by experts with practical experience analyzing and updating student conduct and employee policies and procedures to ensure Title IX and Clery Act compliance, fair and equitable processes, and the ability to manage an evolving higher education landscape.
- **Tuesday, May 13, 2021 from 2:00 PM - 3:30 PM (Eastern Time)**
- **Individual Cost:** \$49.00 (Member) \$99.00 (Non-Member)
- **Group Rate:** \$129.00 (NACCOP Member) \$249.00 (Non-Member)

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Appeals (Process and Pitfalls)

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Agenda

- Regulations Review
- Appeal Realities
- Appeal Scenarios

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REGULATIONS REVIEW

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Two Appeal Opportunities



Determination regarding responsibility



Dismissal of a formal complainant or any allegations

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Required Bases for Appeal



<p>Procedural irregularity that affected the outcome of the matter</p>	<p>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</p>	<p>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</p>
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“As to all appeals, the recipient must...”



		
<p>Notify other party in writing</p>	<p>Appeal decision-maker has no other role</p>	<p>No conflict of interest of bias</p>

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“As to all appeals, the recipient must...”



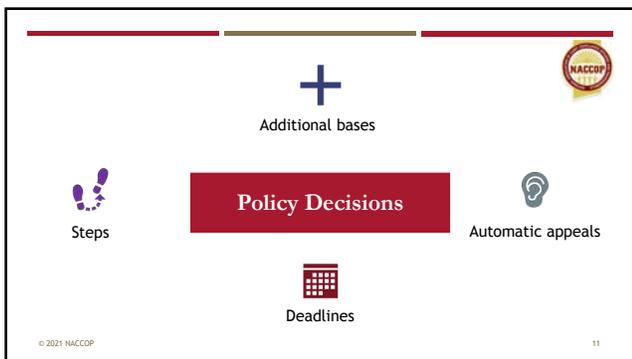
		
<p>Both parties have an opportunity to submit a written statement</p>	<p>Issue a written decision describing result and rationale</p>	<p>Issue simultaneously</p>

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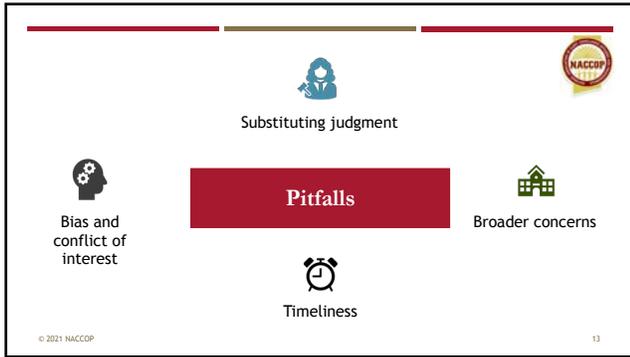
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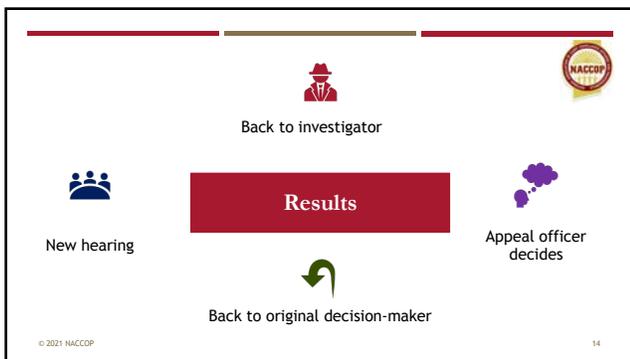
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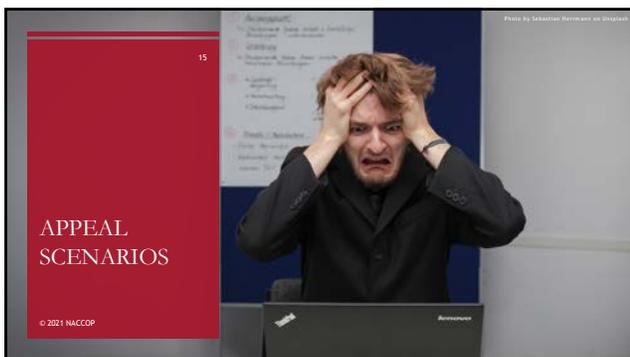
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Case Study: The Order

The respondent has filed an appeal claiming a procedural irregularity. On the hearing agenda, it indicated that the respondent should have been cross-examined first; however, the complainant went first.

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Case Study: The Missing Pages

The respondent has filed an appeal claiming a procedural irregularity and new evidence. They received the final report without the complainant's written response to the report. It seems that those pages were omitted. The respondent claims that they were unaware of the missing pages because there were no page numbers. The respondent stated that they were not able to prepare accurately for the hearing.

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Case Study: The Witness

The complainant has filed an appeal claiming new evidence. The complainant stated that they just learned of a witness to the incident (alleged sexual assault at a fraternity party). A fraternity brother of the respondent walked into the room as the respondent was penetrating the complainant. The witness had not come forward earlier for fear of retaliation.

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Case Study: The Fan

A recent student sexual harassment case resulted in a finding of “not responsible.” The complainant has submitted an appeal claiming investigator bias. The appeal states that the investigator was biased against her because the investigator favored the respondent, a football player. The complainant referenced being interviewed in the investigator’s office which had school football paraphernalia displayed, including a signed football with the respondent’s signature.

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Upcoming D. Stafford Virtual Classes

- Behavioral Intervention Team/Threat Assessment Team Training (10:00 AM - 5:30 PM Eastern)
 - June 22 - 24, 2021
 - December 1 - 3, 2021

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**8TH ANNUAL NACCOP CONFERENCE:
A Live, Virtual Event**

Conference - July 21-23, 2021
Pre-Conferences - July 20, 2021

- **Pre-Con #1 for CCOs** - Addressing VAWA Policy Statements for Non-Title IX Procedures in the Annual Security Report
- **Pre-Con #2 for CCOs** - Developing Internal Memorandums of Understanding (MOUs) with Key Departments to Facilitate a Higher Level of Institutional Cooperation with Clery Act Compliance
- **2021 ADVANCED TRACK OPTION - Case Reviews**: These sessions include a Case Review where attendees will participate in reviewing a sample incident report narrative to determine the correct classification and count for each report and to practice adding entries to the Daily Crime Log. This session will provide practitioners with an opportunity to apply their knowledge to real-world scenarios.
- The finalized agenda will be released in the late Spring of 2021.

Register at www.naccop.org

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NACCO White Paper



- Incident Report Writing and Records Management Systems for Clery Act Compliance: Considerations for Campus Police and Public Safety Agencies
- To access, visit: <https://go.omnigo.com/reporting-campus-crimes-accurately>

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Adrienne Meador Murray



- Director of Training and Compliance Activities for
 - D. Stafford & Associates and NACCO
- 17-year law enforcement veteran
 - University of Richmond (Operations Lieutenant)
 - Davidson College (Chief of Police)
 - Trinity Washington University (Chief of Police)
- Executive Director, Equity Compliance and Civil Rights Services with D. Stafford & Associates since 2012.
- Author and lead instructor of DSA training programs, including:
 - Sex Crimes Investigations for Campus Police & Public Safety Officers
 - Title IX Coordinator/Investigator Training
 - Investigation of Domestic Violence, Dating Violence and Stalking for Campus Police, Public Safety and Civil Rights (Title IX/Conduct) Investigations

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Clery Act Crime Categories



- Primary Crimes (UCR Part 1)
- Hate Crimes
- Arrests and Referrals for Drug, Liquor and Weapon Violations
- Dating Violence, Domestic Violence and Stalking Incidents (VAWA Crimes)

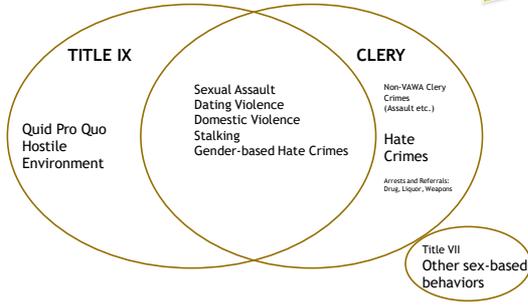
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Overlapping Conduct Violations



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Title IX Specific Prohibited Conduct



- Sexual Harassment**
 - Quid pro quo
 - Hostile Environment
- Sexual Assault**
 - Rape (including sodomy, sexual assault with an object)
 - Fondling
- Dating Violence**
- Domestic Violence**
- Stalking**

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New Definition of 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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Domestic Violence



A felony or misdemeanor crime 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,
- by 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 in which the crime of violence occurred 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 in which the crime of violence occurred.

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Dating Violence



Violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim.

- The existence of such a relationship shall be based on the reporting party's statement and with consideration of the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship.
- For the purposes of this definition—
 - Dating Violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse.
 - Dating violence does not include acts covered under the definition of domestic violence.

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Distinguishing Between Dating and Domestic Violence



Per the Help Desk:

- **Domestic Violence** is intended to include situations where the victim and perpetrator currently have, or have had in the past, a relationship of a domestic nature. This means that they are currently or formerly married, have cohabitated as intimate partners, or have had an intimate relationship of a similar domestic nature.
- **Dating Violence** is intended to include situations where the victim and perpetrator have, or have had, a social relationship of an intimate nature, but have not entered into a domestic relationship as described above. The most common example is a dating relationship where the two parties do not live together, have never been married, and do not share a child in common.



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Sexual Assault



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



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Mandatory Dismissal



For it to be covered under Title IX, it must meet:

- New Definitions
- Jurisdiction of person
- Jurisdiction of activity



If it does NOT meet these requirements...

- Mandatory dismissal
- Can go to a different resolution process

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Likely outside of Title IX

Title VII

- Hostile environment harassment below Title IX bar

VAWA Requirements

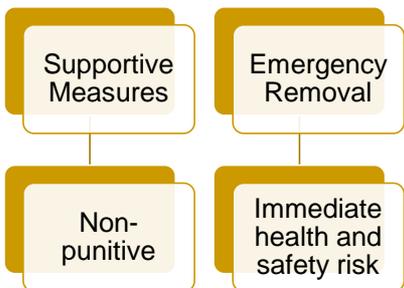
- Non-Sex-based Stalking
- Domestic violence involving family member

Other Sex-based behaviors

- Gender-based discrimination
- *Sexual Exploitation*

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Limitations on Interim Action



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Advisors

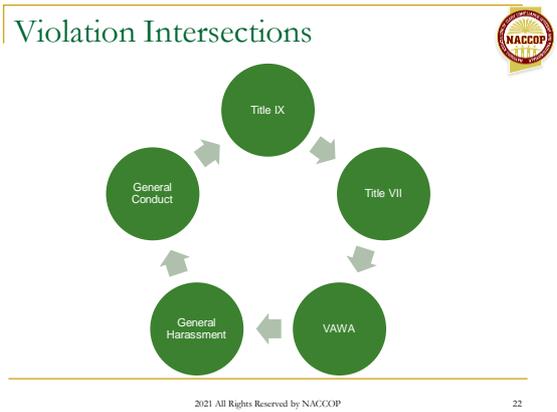


Throughout investigation

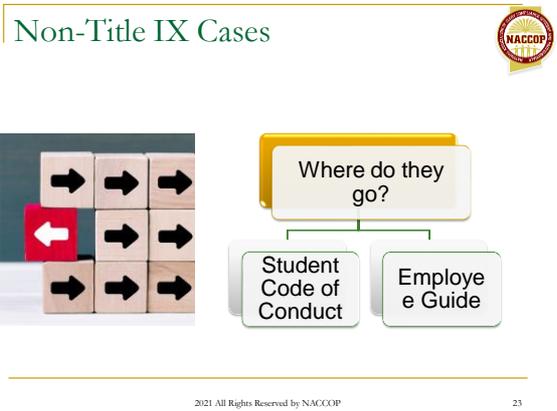


Role at hearing

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Response Requirements for VAWA Offenses



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Written Explanation of Student or Employee's Rights



(b)(11)(vii) "When a student or employee reports to the institution that the student or employee has been a victim of dating violence, domestic violence, sexual assault, or stalking, whether the offense occurred on or off campus, the institution will provide the student or employee a written explanation of the student's or employee's rights and options, as described in paragraphs (b)(11)(ii) through (vi) of this section. . . ."

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Written Explanation of Rights and Options



- The importance of preserving evidence** that may assist in proving that the alleged criminal offense occurred or may be helpful in obtaining a protection order
 - Not required but recommended: Where to obtain forensic exams, contact info, does not require police report and can have exam now, decide later
- How and to whom the alleged offense should be reported**
 - List any person or organization that can assist the victim
 - Recommended: Also include community organizations

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Advisor Requirement



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Standard of Evidence

- **2020 Title IX Regulations**
 - Either the preponderance of the evidence standard or the clear and convincing standard but must be the same for all sexual misconduct
- **Clery Act**
 - Any standard of evidence ... must include in policy
 - Would not prohibit using different standards for different groups



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Informal Resolutions

2020 Title IX Regulations

- Can offer, but may not require
- Not allowed for "employee on student" sexual harassment
- Party may withdraw up to a point

Clery Act

- Written information about procedures the institution will follow for VAWA offense (does not differentiate between formal vs informal)



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Clery Requirements for Officials



- Training must be described in ASR
- Annual
- Should include (at a minimum):
 - Relevant evidence and how it should be used
 - Proper interview techniques
 - Basic procedural rules for conducting a proceeding
 - Avoiding actual/perceived conflicts
- Can be in person or electronic (webinar or video)

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Bias Free and Training for "Officials"



Title IX ("Title IX Personnel")

- Annual training on
 - the issues related to dating violence, domestic violence, sexual assault and stalking and on
 - how to conduct an investigation and hearing process that protects the safety of the victims and promotes accountability

Clery ("Officials")

- Training for all on...**
 - definition of sexual harassment in § 106.30
 - the scope of the recipient's education program or activity
 - how to conduct an investigation and grievance process
 - how to serve impartially, including by avoiding prejudgment of the facts
- Decision Makers**
 - training on any technology and on issues of relevance
- Investigators**
 - relevance to create an investigative report that fairly summarizes
- Training materials must not rely on sex stereotypes**

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Appeals



2020 Title IX Regulations

- Must offer both parties an appeal
- Based on specific grounds

Clery Act

- Not required (but must provide notice if allowed along with appeal procedures)
- Simultaneous written decision describing result, sanction, any changes to the result, when it becomes final

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Recordkeeping



2020 Title IX Regulations

- 7 years

Clery Act

- Retain all records used in compiling ASR for three years from the latest publication of the report to which they apply (in effect 7 years)

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VAWA Education Requirements



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Education and Prevention under Clery



Annual training for conducting "officials" (Investigators, Adjudicators, Appeals)

Primary Prevention and Awareness Programs for all incoming students and new employees

Ongoing Prevention and Awareness Campaigns for ALL students and employees

CSA Training and "Super" CSA Training

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DSA Advanced Clery Act Training Academy: Practical Application



The ADVANCED Clery Act Compliance Training Academy is a 3 ½ day training program that provides an opportunity for attendees to build upon the foundation provided in the D. Stafford & Associates Clery Act Compliance Training Academy through a combination of instruction, discussion, and group-based learning activities that explore how to practically apply relevant laws and ED guidance to some of the most vexing issues facing practitioners. This experience is designed to be interactive, with attendees participating in group analysis and exercises throughout the 3 ½ days. Participants will be able to assess their ability to competently apply the law to specific scenarios and problems while evaluating pertinent operating procedures and practices that relate to complying with the Clery Act.

VISIT OUR WEBSITE FOR MORE INFORMATION ABOUT IN-PERSON CLASSES IN 2021

www.dstaffordandassociates.com

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Title IX/Investigation of Sexual Misconduct : Live, Virtual Classes



Combined Sexual Misconduct and Dating/Domestic Violence and Stalking Investigation Training Class

11:00 am to 5:00 pm each day

- April 12-16, 2021
- August 23-27, 2021

Title IX Coordinator/Investigator Training

11:00 am to 5:00 pm each day

- February 22-26, 2021
- May 3-7, 2021
- October 4-8, 2021

Advanced Investigations Course: Investigations of Sexual Misconduct— Conducting Trauma Informed Investigations

Designed for Campus Police/Public Safety/Title IX & Conduct Officers

9:00 am to 5:00 pm each day

- March 8-12, 2021
- June 7-11, 2021
- November 8-12, 2021

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Questions ?



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