



CIVIL RIGHTS INVESTIGATOR
TRAINING & CERTIFICATION LEVEL TWO COURSE

University of Alaska System

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LEVEL 2 INVESTIGATIONS TRAINING AGENDA



- I. Investigator Competencies
- II. Traits of an Effective Investigation
- III. Due Process: Legal Foundation
- IV. Overview of Title IX
- V. Intersection of Title IX & Other Laws
- VI. Understanding the Policies
- VII. Civil Rights Investigation & Resolution Model
- VIII. Issue Spotting
- IX. Case Study Discussion
- X. Strategy of Investigation

LEVEL 2 INVESTIGATIONS TRAINING AGENDA



- I. Case Study Discussion
- II. Note-Taking
- III. Best Practices for Interviewing
- IV. Trauma Informed Interviewing
- V. Case Study Discussion
- VI. Inclusive Investigations
- VII. Investigating Retaliation
- VIII. Consent Construct
- IX. Case Study Discussion
- X. Evaluation of Evidence and Decision-making Skills
- XI. The Investigation Report
- XII. Evidence, Credibility and Making a Finding
- XIII. Credibility Case Discussion
- XIV. Analysis of Evidence
- XV. Case Discussion
- XVI. The Investigation Report

INVESTIGATOR COMPETENCIES



- The Legal Landscape
 - History of Title IX
 - Significant case law
- How Title IX, VII, VAWA 304 interact
- Element of Institution's Policies
- Basic Elements of Investigation
- Investigation and Resolution Procedures
- Trauma Informed Interviewing
- Issue Spotting Skills
- Strategy Development
- Critical Thinking Skills
- Interview skills specific to each party and witnesses
- Standards of Proof
- SANE and Police Reports
- Bias/Prejudice/Impartiality
- Cultural competence
- Weighing Evidence
 - Factors
 - How to articulate in report
- Report writing
- Sanctioning/remedies
- The Appeals Process

***Remember, you have no
side other than the
integrity of the process***

WHY APPLY INVESTIGATION MODEL?

- Sex/gender based misconduct is not only a campus behavioral violation (i.e. student code of conduct or employee handbook), but also a violation of federal civil rights laws
- Requires Title IX response (for students and employees)
- Civil Rights Investigation Model is the most effective approach for victim-based violations
 - Investigation process involves strategic information gathering, comprehensive investigation, credibility information
- Investigation model can stand alone or be grafted onto and/or integrated into existing procedures

ELEMENTS OF CIVIL RIGHTS INVESTIGATION MODEL

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- Civil Rights Investigation Model Hallmarks
 - Brainstorming Session

CIVIL RIGHTS INVESTIGATION MODEL HALLMARKS



- Active identification and strategic gathering of evidence.
- Investigation is the center of the procedure for resolution.
- Grounded in the concepts of neutrality and equity.
- Most effective for victim-based violations.

TRAITS OF AN EFFECTIVE INVESTIGATION

- Active Accumulation of Evidence
- Consistent
- Planned/Strategic
- Documented
- Impartial



TRAITS OF AN EFFECTIVE INVESTIGATION



- Consistent
- Planned
- Documented



TRAITS OF AN EFFECTIVE INVESTIGATION

➤ **Consistent.**

- Consistency means dependability of a standardized process and procedures.
- Outcomes should be developed from a systematic review of the inputs associated with an incident, making a decision a product of consistency.
- Consistency should not determine the outcome of a situation; rather it should be the foundation for processing information.

TRAITS OF AN EFFECTIVE INVESTIGATION

➤ **Planned.**

- Timelines.
- Initial meetings.
- Coordination with other entities.
- Interviews.
- Witnesses.
- Standard report.

➤ **Documented.**

- Case file.
- Documents.
- Interactions.
- Communication.
- Results.

DUE PROCESS: LEGAL FOUNDATIONS

- *Dixon v. Alabama* (1961)
- *Esteban v. Central Missouri State College* (1969)
- *Goss v. Lopez* (1975)

DIXON V. ALABAMA STATE BD. OF ED.

294 F. 2D 150 (5TH CIR., 1961)



- In February of 1960, six black students sat in at a public (all white) lunch counter and were arrested
- Alabama State summarily expelled all of them without any notice of the charges or of a hearing, and no opportunity to provide evidence or defend themselves
- 5th Cir. Court decision established minimum due process (reiterated by U.S. Supreme Court in Goss v. Lopez (1975))
 - Students facing expulsion at public institutions must be provided with at least **notice of the charges** and an **opportunity to be heard**
 - Ushered in most campus disciplinary and hearing-based processes

DIXON V. ALABAMA STATE BD. OF ED.

294 F. 2D 150 (5TH CIR., 1961)



- Specifically, the court set forth a number of due process-based guidelines, including:
 - Notice, with an outline of specific charges
 - A fair and impartial hearing
 - Providing names of witnesses to accused
 - Providing the content of witnesses' statements
 - Providing the accused an opportunity to speak in own defense
 - The results and findings of the hearing presented in a report open to the student's inspection

GOSS V. LOPEZ

419 U.S. 565 (1975)



- Nine high school students were suspended for 10 days for non-academic misconduct
- The court held that since K–12 education is a fundamental right, students were entitled to at least a modicum of “due process”
- Reiterating the 5th Circuit, it noted that the minimum due process is notice and an opportunity for a hearing

GOSS V. LOPEZ

419 U.S. 565 (1975)



- The court further stated that the hearing could be informal and need not provide students with an opportunity to obtain private counsel, cross-examine witnesses, or present witnesses on their behalf
- Potential suspensions beyond 10 days or expulsions, however, require a more formal procedure to protect against unfair deprivations of liberty and property interests

DUE PROCESS

- What is Due Process?
- Due Process in Procedure
- Due Process in Decision
- Comparative Due Process

WHAT IS DUE PROCESS?



- Due Process (public institutions):
 - Federal and state constitutional and legal protections against a state institution taking or depriving someone of education or employment
- “Fundamental Fairness” (private institutions):
 - Contractual guarantee that to impose discipline, the institution will abide substantially by its policies and procedures

WHAT IS DUE PROCESS?



- **Due Process in Procedure** - A school's process should include (at a minimum):
 - Notice: of charges and of the hearing/resolution process
 - Right to present witnesses
 - Right to present evidence
 - Opportunity to be heard and address the allegations and evidence
 - Right to decision made based on substantial compliance and adherence to institutional policies and procedures
 - Right to appeal (recommended)
 - Right to cross-examine in the 6th circuit when the case involves credibility of the parties

WHAT IS DUE PROCESS?



- **Due Process in Decision** - A decision must:
 - Be based on a fundamentally fair rule or policy
 - Be made in good faith (i.e., without malice, ill-will, or bias)
 - Have a rational relationship to (be substantially based upon, and a reasonable conclusion from) the evidence
 - Not be arbitrary or capricious
- Sanctions must be reasonable and constitutionally permissible

OVERVIEW OF TITLE IX

- Text of the Law
- Notice: Actual & Constructive
- Title IX Essential Compliance Elements
- Responsible Employees
- The IX Commandments

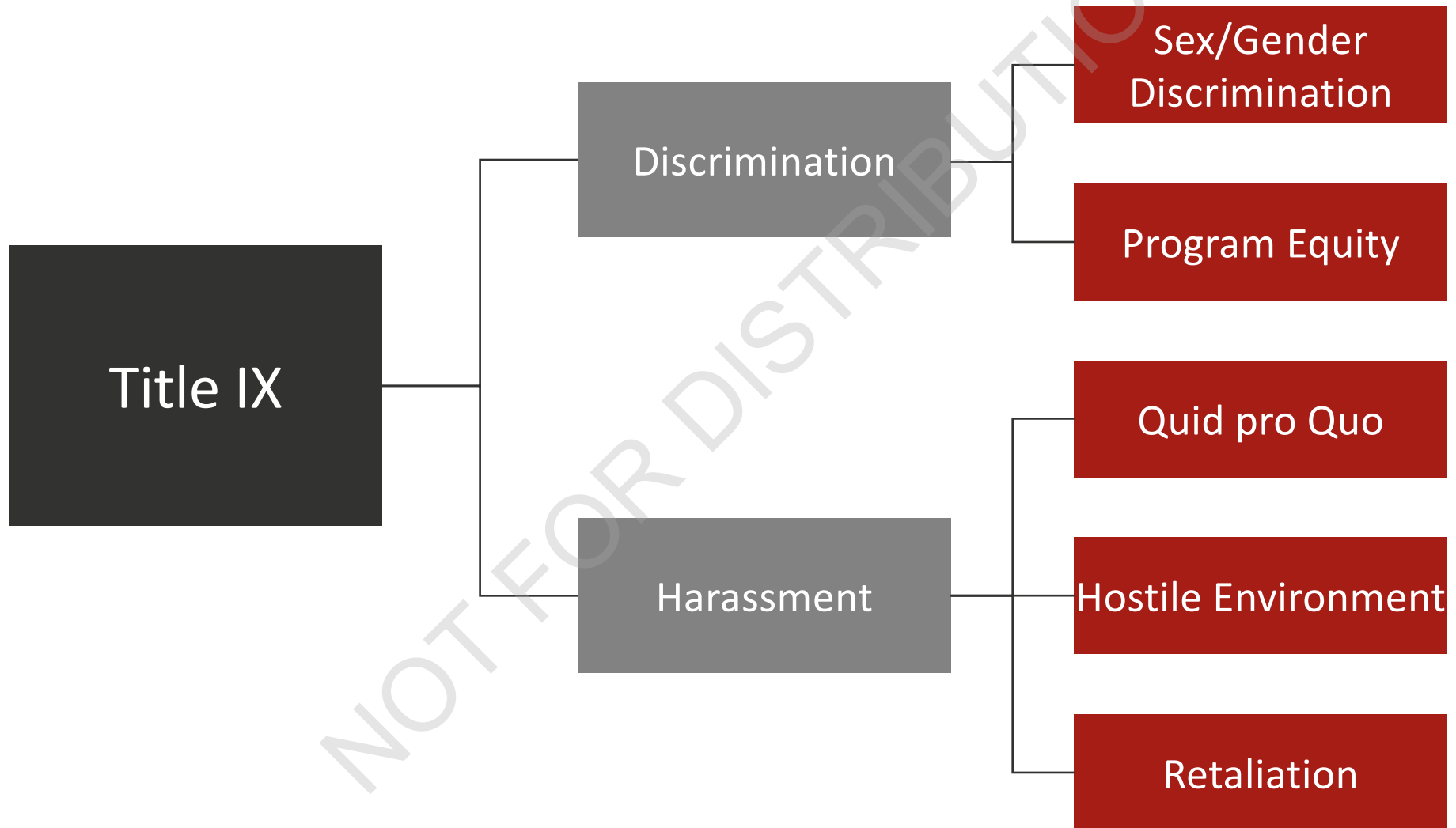
TITLE IX



20 U.S.C. § 1681 & 34 C.F.R. Part 106 (1972)

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

TITLE IX



TITLE IX ESSENTIAL COMPLIANCE ELEMENTS



- Once a “responsible employee” has either actual or constructive notice of sexual harassment/sexual misconduct, the school must:
 - Take immediate and appropriate steps to investigate what occurred
 - Take prompt and effective action to:
 - Stop the harassment
 - Remedy the effects
 - Prevent the recurrence

NOTE: This is regardless of whether or not the Reporting Party makes a complaint or asks the school to take action in circumstances involving threats, violence, pattern or perdition.

THE IX COMMANDMENTS



Thorough	Reliable	Impartial	Investigation (prompt & fair – VAWA Sec. 304)
Prompt	Effective	Equitable	Process
End the Discrimination	Prevent its Recurrence	Remedy the effects upon the victim & community	Remedies

INTERSECTION OF TITLE IX & OTHER LAWS

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INTERSECTION OF TITLE VII AND TITLE IX



- Title IX modeled on Title VI & Title VII of the Civil Rights Act of 1964.
- Courts generally apply standards established under Title VII for guidance in how to establish a Title IX violation because Title VII cases established the sexual harassment analysis framework for all sexual misconduct.
- Title IX prohibits against sex-based discrimination to the full range of activities related to the recruitment, evaluation, classification, payment, assignment, retention, or treatment of employees as well as students.
- Employees can use both statutes to pursue the same violations.



VAWA REAUTHORIZATION & SECTION 304

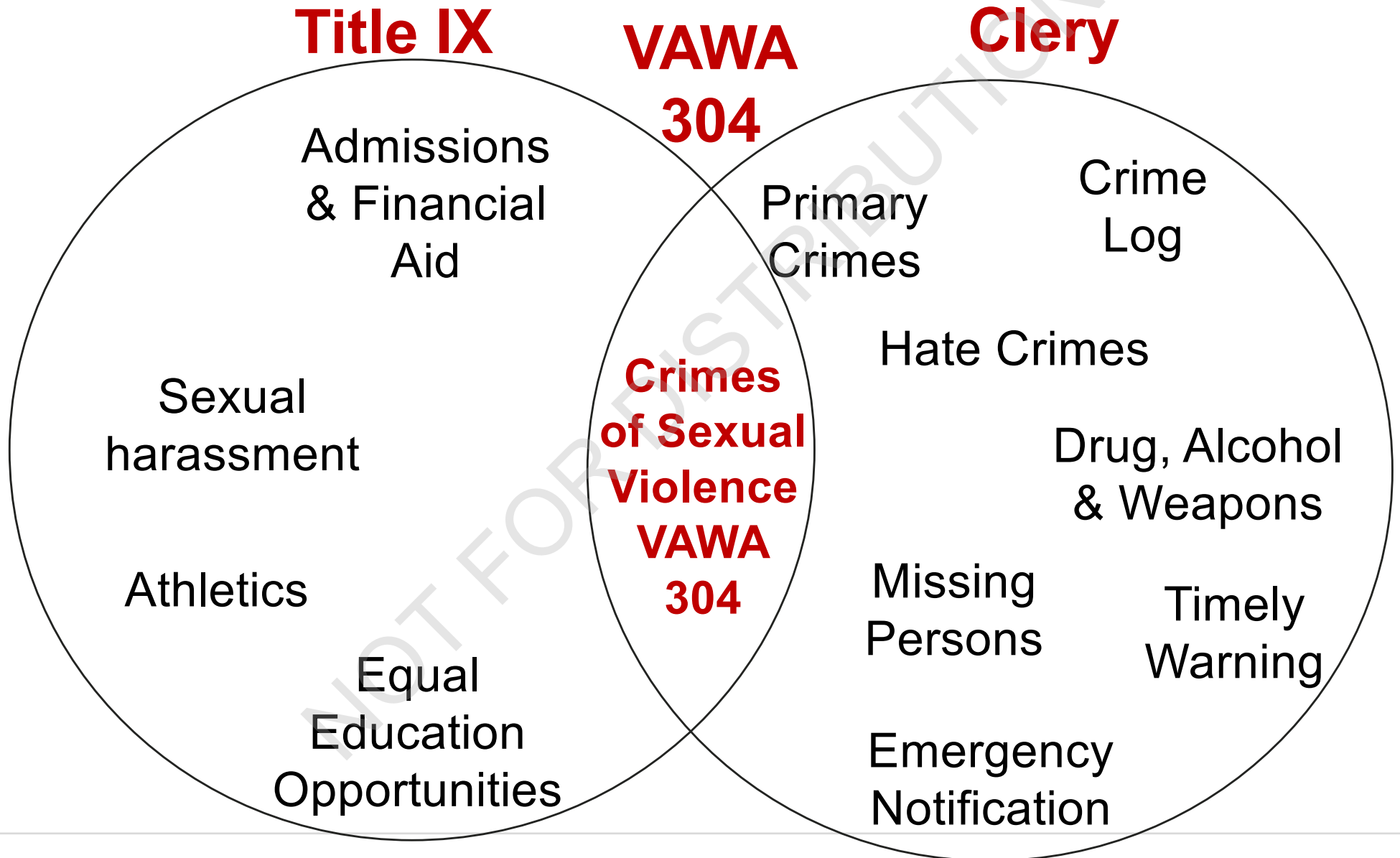


Section 304: “Campus SaVE”

- **Section 304** significantly amended the Clery Act.
- Final Regulations released October 15, 2014.
- **Extensive** new policy, procedure, training, education, and prevention requirements for:
 - Sexual assault.
 - Stalking.
 - Dating violence.
 - Domestic violence.
- Prohibits retaliation.

} The “Big 4”

TITLE IX, CLERY, VAWA 304



UNDERSTANDING THE POLICIES

- Sexual Harassment
- Non-Consensual Sexual Contact
- Non-Consensual Sexual Intercourse
- Sexual Exploitation
- Stalking
- Relationship Violence
- Bullying
- Hazing
- Other Misconduct Offenses



Policies

SEXUAL HARASSMENT



Sexual harassment is:

- Unwelcome,
- Sexual, sex-based, and/or gender-based verbal, written, online, and/or physical conduct.

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SEXUAL HARASSMENT DISCIPLINARY STANDARD



- Sexual harassment may be subject to discipline when it takes the form of:
 - Quid Pro Quo harassment;
 - Retaliatory harassment; and/or
 - Creates a hostile environment.

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Types of Sexual Harassment

QUID PRO QUO SEXUAL HARASSMENT



- Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature,
- By a person having power or authority over another, when
- Submission to or rejection of such conduct is made either explicitly or implicitly a term or condition of rating or evaluating an individual's educational [or employment] progress, development, or performance.

RETALIATORY HARASSMENT



- Any adverse employment or educational action taken against a person because of the person's participation in a complaint or investigation of discrimination or sexual misconduct.
- Also includes retaliation against a reporting party by the responding party or that person's friends or others who are sympathetic to the responding party.
- Also can include retaliation directed toward a third party because of that party's participation in a grievance process or for supporting a grievant.

HOSTILE ENVIRONMENT



- A hostile environment is created when sexual harassment is:
 - Sufficiently severe, or
 - Persistent or pervasive, and
 - Objectively offensive that it:
 - Unreasonably interferes with, denies, or limits someone's ability to participate in or benefit from the school's educational [and/or employment], social and/or residential program.

TOTALITY OF THE CIRCUMSTANCES TO CONSIDER FOR HOSTILE ENVIRONMENT



- The frequency (persistent or pervasive), nature, and severity of the conduct.
- Whether the conduct was physically threatening.
- Whether the conduct was humiliating.
- The effect on reporting party's mental or emotional state.
- Whether conduct was directed at more than one person.
- Whether the conduct unreasonably interfered with the reporting party's educational or work performance.
- Whether the statement is an utterance of an epithet which is offensive, or offends by discourtesy or rudeness.
- Whether the speech or conduct deserves the protection of academic freedom or of the First Amendment.

NON-CONSENSUAL SEXUAL CONTACT



- Non-consensual sexual contact is:
 - Any intentional sexual touching,
 - However slight,
 - With any object,
 - By a person upon another person,
 - That is without consent and/or by force.

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SEXUAL CONTACT DEFINED



- Sexual contact includes:
 - Intentional contact with the breasts, buttock, groin, or genitals, or touching another with any of these body parts, or making another touch you or themselves with or on any of these body parts; **OR** any other intentional bodily contact in a sexual manner.

NON-CONSENSUAL SEXUAL INTERCOURSE/PENETRATION



- Non-consensual sexual intercourse/penetration is:
 - Any sexual intercourse or penetration,
 - However slight,
 - With any object,
 - By a person upon another person,
 - That is without consent and/or by force.

INTERCOURSE DEFINED



- Non-consensual sexual intercourse or penetration includes:
 - Vaginal or anal penetration by a penis, object, tongue or finger, and oral copulation (mouth to genital contact), no matter how slight the penetration or contact.

SEXUAL EXPLOITATION



- Occurs when individuals take non-consensual or abusive sexual advantage of another for their own advantage or benefit, or to benefit or advantage anyone other than the one being exploited, and that behavior does not otherwise constitute one of the other sexual misconduct offenses. Examples of sexual exploitation include, but are not limited to...

SEXUAL EXPLOITATION (CONT.)



- Invasion of sexual privacy.
- Prostituting another person.
- Non-consensual digital, video, or audio recording of nudity or sexual activity.
- Unauthorized sharing or distribution of digital, video, or audio recording of nudity or sexual activity.
- Engaging in voyeurism.
- Going beyond boundaries of consent.
- Removing a condom during sex when use of a condom was a condition of the sex.

SEXUAL EXPLOITATION (CONT.)



- Knowingly exposing someone to or transmitting an STI, STD, or HIV to another person.
- Intentionally/recklessly exposing one's genitals in non-consensual circumstances; inducing others to expose theirs.
- Sexually-based stalking and/or bullying may also be forms of sexual exploitation.

- Stalking:
 - Repetitive and menacing,
 - Pursuit, following, harassing, and/or interfering with the peace and/or safety of another.
- This definition of stalking also allows campuses to distinguish stalking from lurking, which is often fixation without menacing or harmful intent, and which is often steady state, whereas stalking often becomes more intrusive over time.

STALKING (CONT.)



- May be a series of legal actions, but campus policy is not required to mirror criminal standards in most jurisdictions.
- Can be a form of sexual harassment, too.
- We distinguish the ATIXA model definition of stalking (as we do with Domestic Violence/Dating Violence) from the VAWA definitions which do not reflect best practices, and are used only for the reporting of crime statistics.

INTIMATE PARTNER VIOLENCE (IPV)



- Violence or emotional abuse between those who are in or have been in an intimate or romantic relationship to each other.
 - Examples include:
 - Physical abuse by a spouse or partner such as hitting, slapping, pushing, or strangling.
 - Sexual violence by a spouse or partner.
 - Extreme verbal abuse by a spouse or partner.
- Other terms include interpersonal violence, relationship violence, dating violence, and domestic violence.
- Typically involves another code violation.
- If based on gender/sex, would fall within Title IX.
- Combines the VAWA offenses of domestic and dating violence.

OTHER MISCONDUCT OFFENSES



- Threatening or causing physical harm, extreme verbal abuse, or other conduct which threatens or endangers the health or safety of any person.
- Discrimination: actions that deprive other members of the community of educational or employment access, benefits, or opportunities on the basis of sex or gender.
- Intimidation, defined as implied threats or acts that cause an unreasonable fear of harm in another.
- Any rule violated on the basis of the reporting party's sex/gender, which is severe enough to cause a discriminatory effect.

CIVIL RIGHTS INVESTIGATION AND RESOLUTION MODEL: AN OVERVIEW

- Civil Rights Investigation Model
- Traditional Student Conduct/Hearing Panel Model
- The Process
- Ten Steps
- Notice – Actual and Constructive
- Responsible Employee
- When Do You Investigate? Preliminary Inquiry
- Reluctance to Report
- Gatekeeping
- Allegation

STEPS OF A CIVIL RIGHTS INVESTIGATION



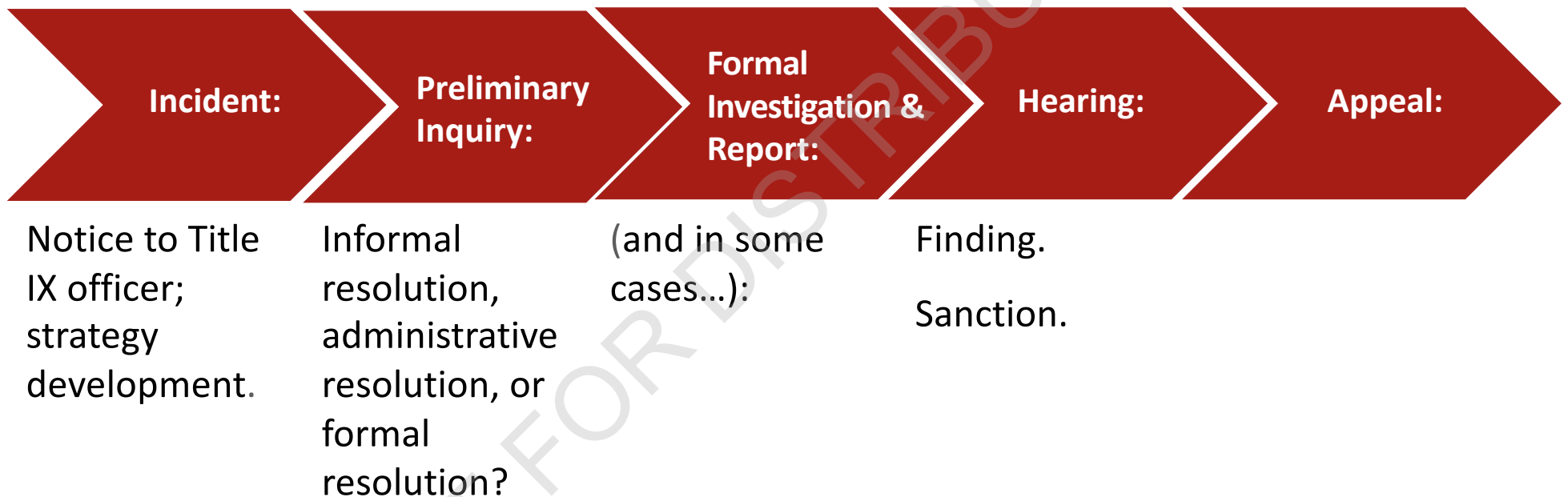
1. Receive Notice or Allegation
2. Preliminary Investigation (issue spotting)(PPTV)
3. Gatekeeper Determination (by Title IX Officer)
4. Issue Spotting by Investigators
5. Preliminary Strategy of the Investigation
(Will continue throughout process)
6. Notice of Investigation to Responding Party and Notice of Formal Allegation (“Charge”)
7. Formal Comprehensive Investigation
Witness Interviews
Evidence Gathering
8. Meet with Parties to Review Evidence
9. Analysis of Evidence
10. Finding

CONFIDENTIALITY (PRIVACY)



- It is critical that proceedings and cases remain private.
 - Do not discuss with anyone who is not involved
 - Only discuss cases in a private setting
 - Failure to maintain confidentiality should be grounds for dismissal from Hearing Pool or Appellate role
- FERPA
 - Education Records
 - Student has a right to review their Record
 - Exercise caution with what you put in writing or in your notes

THE PROCESS



WHEN DO YOU INVESTIGATE?

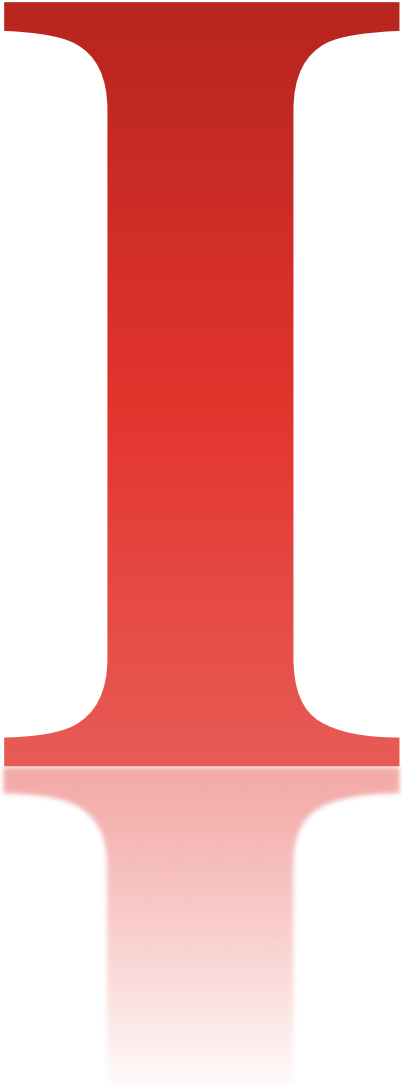


- Receive allegations (complaint).
- Actual notice or constructive notice.
- Rumors, gossip, social media, etc. can be notice.
- Once notice exists, the duty to investigate is absolute.
 - Small “i” preliminary inquiry.
 - Big “I” comprehensive investigation.

PRELIMINARY INQUIRY



- This is an initial inquiry to determine if a comprehensive investigation is desired or necessary.
- Checking background, obvious patterns, indicators of predatory, violent, or threatening behavior.
- Push one Domino over at a time.
- Consider how much involvement does reporting party want?
- Determine, can we remedy informally or without discipline?
- May help to determine if there is reasonable cause to move process forward, and what policy violations should the responding party be noticed on.

- 
- A large, stylized red letter 'I' that serves as a decorative element on the left side of the slide.
- When the case is referred to investigators the investigator(s) must conduct a thorough, reliable, impartial, prompt and fair investigation.
 - Determine the issues
 - Develop the strategy for the investigation which will include:
 - Witness interviews.
 - Evidence gathering.
 - Intended timeframe to complete the investigation.
 - Finding, or recommendation of a finding.
 - Presentation of finding.

ISSUE SPOTTING



CASE STUDY: COUTNEY & SHAWN



CASE STUDY: COURTNEY AND SHAWN



- For the last two years, Shawn, a member of the men's baseball team, has been dating Courtney, a member of the women's lacrosse team.
- Last Friday, Courtney and Shawn got into a very loud and public argument at breakfast in the athletes' dining hall. At the end of the argument, Courtney told Shawn she was cancelling their plans for that night and that they both needed some time to calm down; Shawn agreed.
- That night, Shawn and some of his teammates played X-box at Shawn's apartment and began drinking a few beers. Shawn made himself a very strong whiskey and coke. His friends left for a party and Shawn, who told his friends he was just going to bed, continued drinking. As he became very drunk, he began to get worried, frustrated and angry about the state of his relationship with Courtney. He felt he really needed to talk to her.

CASE STUDY: COURTNEY AND SHAWN



- At about 1:00am, Shawn made his way over to the off-campus apartment Courtney and her roommate were renting nearby, banged on the living room window and yelled that he wanted to talk to Courtney.
- Courtney refused to let him in because he was both drunk and angry. Shawn threatened to break down the door if she did not let him in. Courtney told him to go home, go to bed and they could talk in the morning. Shawn yelled and cursed, then started to cry saying he couldn't live without Courtney and he just needed to talk. Courtney still refused to let him into the house and Shawn became very angry, punching a window near the door and breaking it. Courtney told Shawn he was out of control and she was going to call the police.

CASE STUDY: COURTNEY AND SHAWN



- She pulled out her phone, but before she could dial, Shawn broke the rest of the window near the front door, reached in, unlocked the door, threw it open and charged at Courtney screaming at her to “put the f-ing phone down!” Courtney screamed and ran to her bedroom with Shawn chasing her. Courtney tried to close the door, but Shawn managed to wedge himself between the door and the jam and forced the door back open, calling her a “crazy bitch.”
- Courtney backed away and Shawn charged at her, reaching for the phone, but Courtney kept her arm extended and away from him. The two wrestled a bit as Shawn tried to reach the phone and when he couldn't, Shawn reached for Courtney's neck, and put his hand around the front of it, still trying to get to the phone.

CASE STUDY: COURTNEY AND SHAWN

- The two hit and toppled onto the bed, with Shawn on top, his hand still on her neck, reaching for the phone with his other hand. Shawn tightened his grip and Courtney could not breathe well. Courtney slapped/punched Shawn's face and kicked him with her legs, which seemed to bring Shawn back to his senses.
- He quickly released Courtney, got off the bed and said he was so sorry, that he did not know what came over him. He told her that a phone call to the police would end his baseball career and his time at the school. Courtney, sobbing, screamed at Shawn that he needed help and he could not keep doing this. Shawn, also sobbing, apologized again and left.

CASE STUDY: COURTNEY AND SHAWN

- Courtney's roommate, Jenna, who had barricaded herself into her own bedroom when Shawn burst through the door told Courtney to call the police. Courtney, however, called the person she trusted the most – her beloved psychology professor, who is also a licensed counselor.
- Her professor came over to the apartment and convinced Courtney that Shawn needed help and Courtney gave her professor permission to call the police.

CASE STUDY: COURTNEY AND SHAWN

- The police arrived, took statements, photos of the damage to the house, the bruising and marks on Courtney's body and arrested Shawn. The next day in conversation with the school's Deputy Title IX Coordinator/Investigator, Courtney's professor indicated, to the obvious surprise of the Deputy Coordinator, that this was the third time Shawn has done something like this; the previous two times the professor said she simply "worked the situation out" using the professor as a mediator.
- Is this a Title IX matter?
- Why or why not?
- Identify the issues posed here

STRATEGY OF INVESTIGATION

Weighing Evidence

- Formal Comprehensive Investigation
- Witness Interviews
- Strategize When to Interview Parties and Witnesses
- Evidence Gathering
- Analysis and Finding



- The investigation team, in consultation with the Title IX Coordinator or designated Deputy strategizes throughout the entire investigation. This includes:
 - What are the issues presented?
 - Are there undisputed facts? Which ones are significant to the investigation?
 - Are there facts in dispute? Which ones are significant to the investigation?
 - What Policy(s) elements may have been violated?
 - Who do you need to interview?
 - What should be the order of the interviews?

STRATEGIZE WHEN TO INTERVIEW PARTIES AND WITNESSES



- Parties and witnesses should be interviewed as soon as possible:
 - So that recollections are as fresh and accurate as possible.
 - To secure necessary remedies in a timely manner.
 - May have strategy on the order of the interviews
- Strategize contacting witnesses, ordering witness interviews, and preventing contact between witnesses, where necessary.
- Determine when you are going to question responding party.

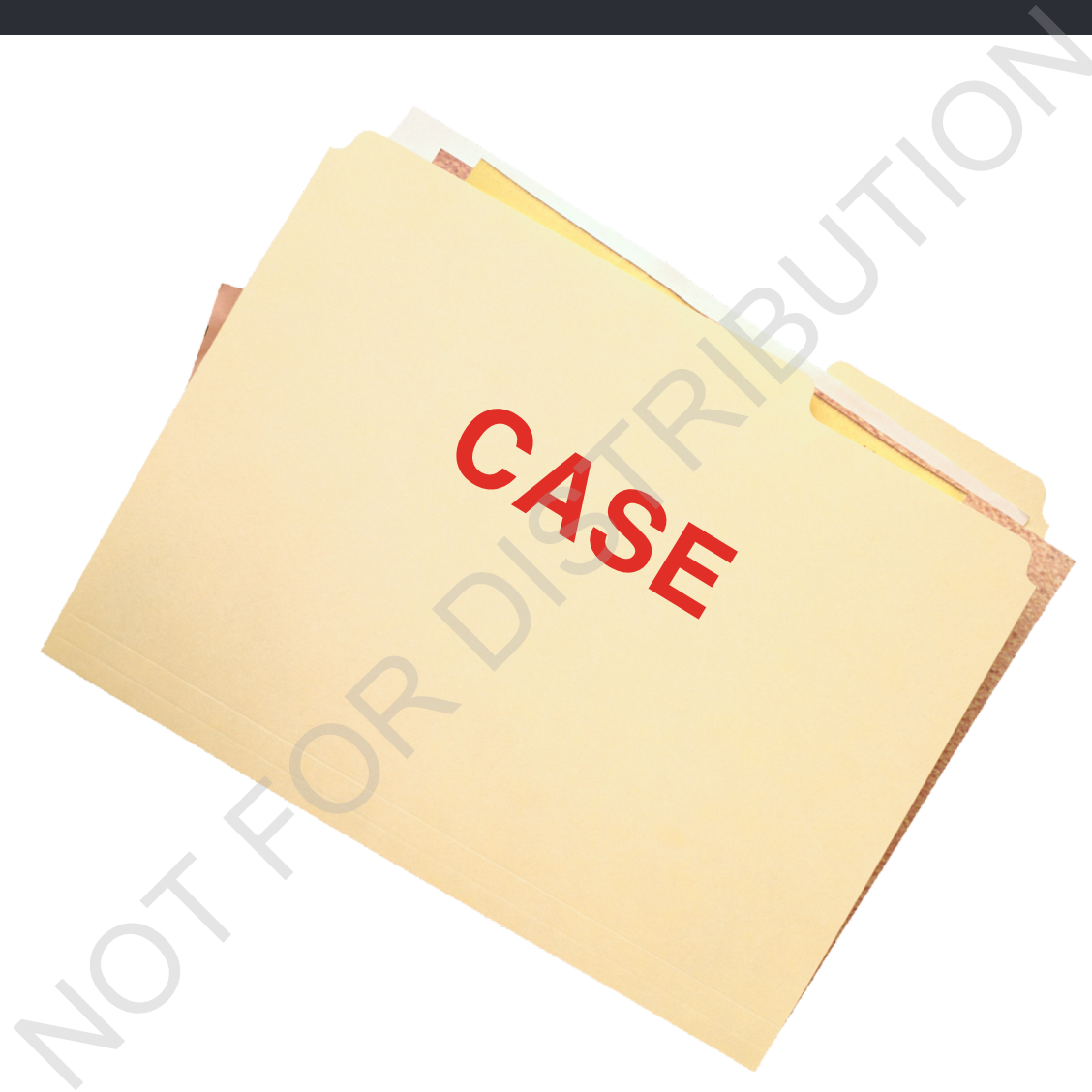
EVIDENCE GATHERING



- Engage in the active accumulation of evidence.
- Timeliness is important.
- Document receipt of information and other materials as they are obtained in the course of the investigation.
- Consider verification of evidence (reliability).
- Be thorough in your examination of factual, circumstantial, and hearsay evidence, and ensure that all evidence has been examined, and all leads exhausted.



STRATEGY EXERCISE: TIFFANY & JASON



CASE STUDY: TIFFANY LAKE & JASON BEST



- Tiffany Lake met Jason Best at Tessera University when she came to campus for freshman orientation. Jason was a senior tour guide for the university. Over the remainder of the summer, they texted each other daily, and Tiffany was excited to come to campus to begin her college career and hopefully develop a stronger friendship with Jason. Jason was very good-looking and popular, a member of a campus fraternity, and captain of the ice hockey team. Tiffany was flattered when he texted her to see if she would meet him to study, and she enthusiastically agreed. She was surprised when after only an hour of studying, he wanted to go back to his fraternity house to “chill out” and have a few beers.

CASE STUDY: TIFFANY LAKE & JASON BEST



- When they arrived at the house and went to his room, Jason rolled a joint and offered one to Tiffany. Feeling somewhat out of her element, she accepted the cigarette, although she had never smoked weed before. They ordered a pizza and Jason brought out some beers. They enjoyed the evening just relaxing and talking and drinking beer. Tiffany had an early class and told Jason that she needed to go back to her dorm. Jason said it was customary for the college women to end a lovely evening by engaging in “mutual satisfaction.” Tiffany again felt awkward and asked what he meant. Jason explained that the cool girls who date guys in his fraternity always ended the evening by providing some form of sexual gratification to their dates. She responded that although they had texted for a few months, this was the first time they had actually been together, so she didn’t feel comfortable engaging in sexual activity with him so soon.

CASE STUDY: TIFFANY LAKE & JASON BEST



- Jason laughed and told her that she really needed to get on board with being in college now, and that all the girls provided their dates with a “satisfactory ending” to the evening. Still Tiffany resisted. Jason told her that, “Clearly, he had misjudged her,” and that, “She probably wasn’t cut out to be a part of the inner crowd at his fraternity.” He offered to take her home. Tiffany noticed a significant shift in Jason’s attitude toward her, and she was very anxious to fit in with the cool people on campus. Besides, Jason told her that all the college girls did this, and what did she know about the college culture as a freshman student? Tiffany offered to give Jason oral sex, and he agreed that for a first date, that would be acceptable and would give him an opportunity to see how skilled Tiffany was in providing pleasure.

CASE STUDY: TIFFANY LAKE & JASON BEST



- Jason walked Tiffany to her residence hall gave her a kiss goodnight, and Tiffany went to her room. She wanted to talk about the evening with her roommate, but she had just met her and felt that it may be too soon to share these types of details. She decided to pay attention and listen carefully to what other girls were saying so that she could learn more about the college culture. Tiffany was desperate to fit in and really had a crush on Jason. She shared later with the Title IX Coordinator that she didn't want to appear to be the small-town girl who was the prude in the college environment.

CASE STUDY: TIFFANY LAKE & JASON BEST



- Jason didn't call Tiffany for over a week, and she worried during that time that her lack of sophistication and hesitation to pleasure him on their first date turned him off, and that he wouldn't want to go out with her again. She was so excited when he finally called and invited her to a party at the fraternity house the coming weekend. As the weekend approached, she worried about what she would wear and what she could do to show Jason a good time so that he would think she was cool and want to go out with her again. After they arrived at the party, Jason handed her a glass of some kind of punch. Tiffany assumed it contained alcohol.
- Over the course of the next two hours, he filled her glass several times. They danced and kissed, and Tiffany commented that she was feeling really relaxed but a little dizzy.

CASE STUDY: TIFFANY LAKE & JASON BEST



- Jason offered to take her to the “secret room,” where she could lay down and they could cuddle for a while. He led her to a basement room, and when they entered, she realized it was very dark, but there were many mattresses on the floor, mostly occupied by couples. Jason led her to a mattress, and they lay down. He put his arms around her. She shared that she felt so safe and close to Jason, but she was concerned by some of the sounds that she was hearing, which sounded like some of the women in the room were not enjoying their time there. She asked Jason about it and he replied that some of the couples liked to role-play and play “fake rape” just as a turn on. He said the girls who were there were the most popular ones on campus, and that Tiffany should get to know them because those were the type of girls to whom his fraternity would give the honor of being “little sisters” of the fraternity.

CASE STUDY: TIFFANY LAKE & JASON BEST



- Tiffany was anxious to be a part of this group, so she unbuttoned Jason's shirt and began kissing his chest. Then she unzipped his pants and began fondling him. Jason responded by taking off her shirt and bra and slipping down her pants. Jason produced a condom from beside the mattress and asked Tiffany to put it on him. She hesitated, silently asking herself, "What was she thinking?" She had never gone this far with a guy. Yet here she was naked with a guy asking her to put a condom on him. She shared her hesitation with Jason. He laughed and told her that she had a lot of learning to do if she was going to be a part of the in crowd at the college for the next four years, and that she needed to get with the culture.

CASE STUDY: TIFFANY LAKE & JASON BEST



- Reluctantly, she agreed and they had sexual intercourse. During sex, Tiffany felt so scared that she just froze and stopped touching Jason and responding. Jason didn't seem to notice and continued until he climaxed. Afterward, Jason took her back to her dorm and kissed her goodnight. Tiffany went to her room and again wanted to talk about what she had just experienced, but didn't know who to talk to. Who would understand? Was this really what college was all about? If she told someone, would Jason get in trouble? What about the girls in the secret room, who sounded like they were not consenting? If she told someone, would she get in trouble for drinking the punch, since she was under age? Would they tell her parents? Would they send her home? Would she have to talk about it a lot? She said that she was scared and confused.

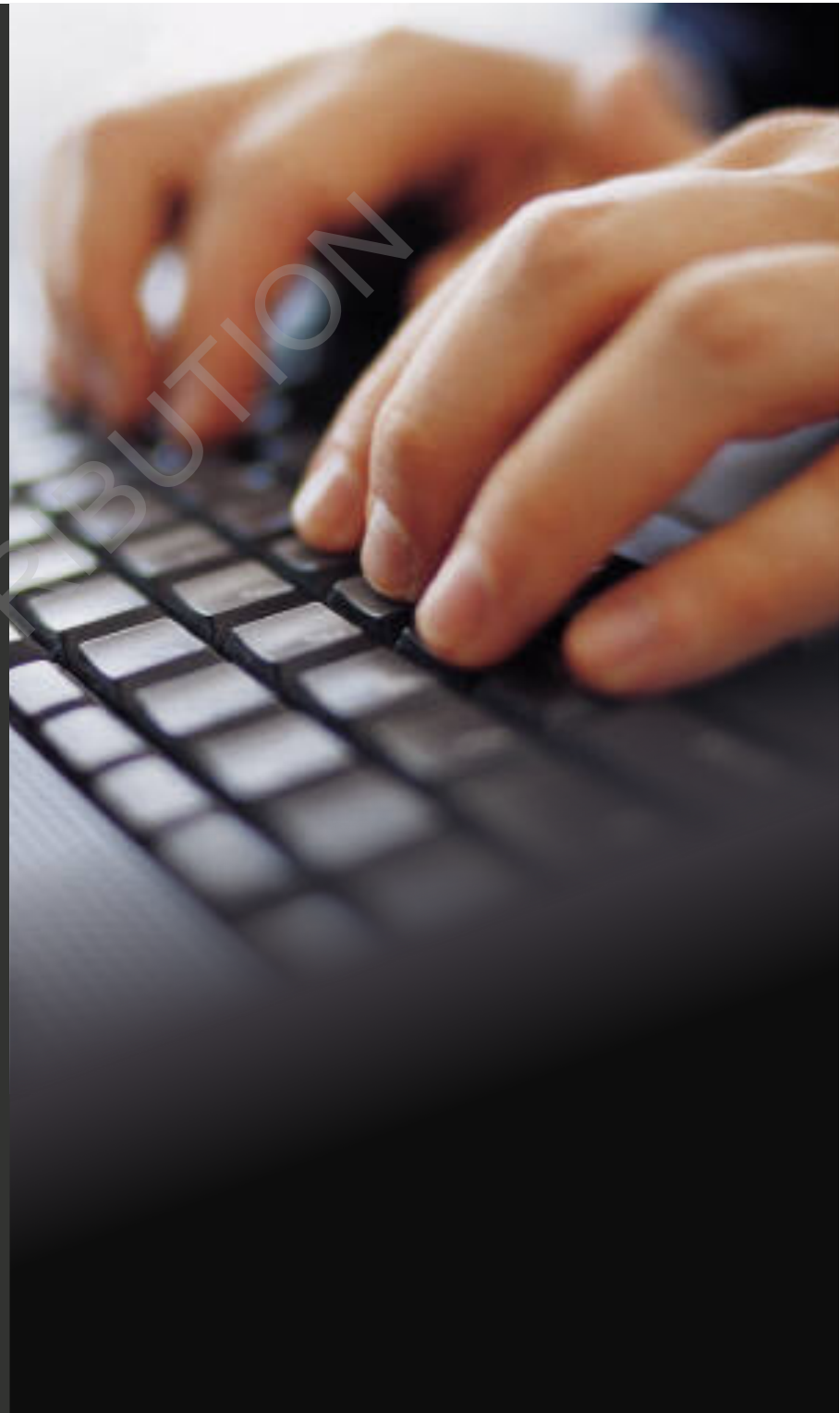
CASE STUDY: TIFFANY LAKE & JASON BEST



- Identify the issues posed here
- Strategy Development
 - What potential violations of your policy would apply?
 - Are there any key issues that aren't policy violations?
 - Who do you want to talk with (order of interviews?)
 - What represents your next steps?

NOTE-TAKING,

- What Kinds Of Notes Should Be Kept?
- Note-Taking



NOTE-TAKING



- Taking notes may slow down the interview in a good way – may help detect deception.
- Use pre-prepared numbered questions as a framework, but be flexible.
- Note-taking should occur throughout the entire interview, not just when the responding party makes a pertinent disclosure or an “incriminating” remark.
- Documentation is critical: you are creating the record of the complaint.
- Remember that students have the right to inspect their education record under FERPA.

NOTE-TAKING (CONT.)



- Notes should be complete and detailed.
 - Important for assessing credibility.
 - Decision may turn on small details.
- Where possible, include verbatim statements on critical issues – Use their words, not yours.
- Keep notes on what is told to the reporting party, responding party, and witnesses.
- Summarize perceptions of credibility, honesty, etc.

NOTE-TAKING (CONT.)



- Remember that “sole possession” FERPA exception is very limited.
- Date all records and include who was present at any meetings; number pages.
- Review your notes before the interview concludes.
- Clarify anything you are unclear about.
- Document any refusal to answer, evasion, or refusal to participate.
- Capture key quotes.
- Review and finalize notes immediately upon completion of interview.

CIVIL RIGHTS BEST PRACTICES FOR INTERVIEWING

—

NOT FOR DISTRIBUTION

DEMEANOR DURING QUESTIONING



- Work to establish a baseline of relaxed conversation and establish rapport.
- Maintain good eye contact.
- Listen carefully to the answers to your questions.
 - Avoid writing while party/witness is talking, if possible.
- Ask questions in a straightforward, non-accusatory manner.
- Nod affirmatively to keep party/witness talking.

THE ART OF QUESTIONING



- Listen carefully and adapt follow-up questions.
- Avoid evaluative responses to a person's answers.
 - E.g.: that's too bad, I'm glad you said that.
- Do not moralize.
- Do not blame the reporting party (often called "victim-blaming").
 - E.g.: Why didn't you hit him? Why didn't you leave? Why did you get so drunk?
 - Reporting parties' responses to trauma are quite varied.
- Seek to clarify terms and conditions that can have multiple meanings or a spectrum of meanings such as "hooked up," "drunk," "sex," "fooled around," and "had a few drinks."

QUESTIONING



- Have a purpose for asking every question
- Try to frame questions neutrally
- Don't make questions too long or confusing
- Don't suggest an answer in your question
- Note discrepancies and ask questions based on them
- Be on the lookout for “cued” responses or rehearsed or memorized answers
- Handle emotions sensitively and tactfully
- Observe body language of the person you're interviewing
 - But don't read too much into it
- Be cognizant of your own body language

INTERVIEW GUIDELINES

- Work from your outline of your interview questions but be flexible
- Discuss thoroughness and the need for completeness; make sure parties don't leave facts out because they are afraid of getting into trouble for alcohol/drug use etc.
- Create comfort with language and sensitive subjects.
- Ascertain who the individual is and their relation to the other parties in the case.
- Note (to yourself) whether individual is cooperative or resistant.
- Make no evaluative statements about the other party.

QUESTIONING



- Try to frame questions neutrally
- Don't make questions too long or confusing
- Don't suggest an answer in your question
- Note discrepancies and ask questions based on them
- Be on the lookout for “cued” responses or rehearsed or memorized answers
- Handle emotions sensitively and tactfully
- Observe body language of the person you're interviewing
 - But don't read too much into it
- Be cognizant of your own body language

INTERVIEWING THE PARTIES



- Acknowledge difficulty of reporting and thank them.
- Ask if they have told this story multiple times already. If so, acknowledge and go easy
- Explain why you are taking notes and/or ask for permission to record if applicable.
- Provide a copy of your policies and procedures.
- Ask them to share a complete account of what occurred.
 - Have them give full story without asking questions, then drill down on details.
- Ask about outcry witnesses and possible documentation such as blogs or journals.

INTERVIEWING THE PARTIES



- Ask whom they spoke to and told about the incident.
- Try to determine what the reporting party's motivation is for reporting and what that individual hopes to see as a result. Determine if responding party knows why allegation was made.
- Ask if remedial measures are helping or need to be modified.
- Advise that the allegations will be discussed with the other party and witnesses.
- Discuss non-retaliation.
- Encourage the person to maintain privacy of the investigation.
- Let the party know next steps and when you will be in touch.

INTERVIEWING THE PARTIES



- Remedies Issues to Review with each Party:
 - Notify reporting party of their option to report to police; institution will help facilitate report.
 - Emotional, academic, and/or physical impact.
 - Counseling and advocacy options (on and off-campus).
 - Retaliation – prohibition and to whom to report.
 - Interim Remedies:
 - No-contact orders.
 - Course adjustments.
 - Housing adjustments.

RESPONDING TO CONFIDENTIALITY REQUESTS BY REPORTING PARTY



- If a reporting party requests that their name not be used:
 - The institution should take all reasonable steps to respond and investigate consistent with that request,
 - So long as doing so does not prevent the school from responding effectively and preventing the harassment of other students/employees or the reporting party.
- The school should explain to the reporting party that:
 - Responsive action may be limited.
 - It cannot guarantee privacy if doing so would jeopardize the safety of the reporting party or others.
- Emphasize that only those with a need to know will be informed.
 - Train those who will be informed about confidentiality expectations.

CONFIDENTIALITY OF THE PROCESS



- Privacy of all parties, including witnesses names and the allegations, should be maintained to the greatest extent possible.
- Should you furnish the parties with a copy of the report without redaction or summarizing?
- What advice do we give a reporting party who wants to “share” their story?
- Gag orders and confidentiality conditions (typically not allowed).

INTERVIEWING WITNESSES



- It may be helpful to not label the allegations as “sexual misconduct” or “sexual harassment” but to describe the behavior.
- Address the need for complete truthfulness.
- Ascertain relation to the other parties in the case.
 - Ask If/how they know each of the parties
 - Ask witness to tell you about each of the parties
- Ask for opinions about the situation.
- Ask if either party spoke about the incidents after they happened.
 - Did they see any change in behavior?

INTERVIEWING WITNESSES (CONT.)



- Ask if they have been contacted already by one of the parties about the investigation.
- Ask if they have made any previous statements, such as to private investigators.
- Ask if there is anything you should know that has not been covered or if there is anyone else they think should be contacted.
- Discuss non-retaliation and give examples.
- Discuss privacy and FERPA guidelines.
- Ask all interviewees to contact you if they remember anything else or want to add to their interview.

OTHER CONSIDERATIONS



- Consider who should conduct the interview.
- Ask open-ended questions first.
- Allow time.
- Utilize breaks.
- Remain calm and professional.
- If you ask a bad question, simply apologize, restate, correct, etc.

When Asking Questions



Determine:

1. What do I need to know?
2. Why do I need to know it?
3. What is the best way to ask the question?

DOCUMENTS TO CREATE POST-INTERVIEW



1. Interview narrative in final form (to be verified by witness).
2. Bulleted Key Takeaways from the Interview.
3. Opinions & Perceptions.
4. The “Drips” Document.
5. Future Pointers document.
 - New Witnesses.
 - New Evidence.
 - Future Questions to Ask.
 - Witnesses to Go Back to With New Information.

TRAUMA INFORMED INTERVIEWING



THE BRAIN'S RESPONSE TO TRAUMA



- In response to the anticipated trauma of sexual assault, hormones are released into body which impact:
 - Ability to react physically
 - Ability to think rationally
 - Ability to consolidate or group memories

This is a neurobiological response, not a choice.

A TRAUMA INFORMED RESPONSE



- Recognizes the impact of trauma on a cognitive, physical, psychological, emotional, and neurobiological level.
- Victims' responses to trauma are quite varied.
- The accused individual may be experiencing significant stress that requires a trauma based response as well.
- Understands how trauma can impact one's academics/work/social life.
- Is respectful; considers boundaries and privacy.
- Avoids evaluative responses to a person's answers.
- Isn't accusatory or victim blaming in your questioning.

WHAT MIGHT SHUT A VICTIM DOWN



Unsupportive responses.

- Avoid:
 - Taking control any more than you have to.
 - Escalating the situation.
 - Defining or labeling a victim's experience.
 - Asking why questions.
 - “Why did you . . . ?” or “Why didn't you.....”
 - Verbalizing judgment in the moment.

A TRAUMA INFORMED RESPONSE



- Prioritize developing rapport and building trust.
- Avoid evaluative responses to a person's answers.
 - E.g.: “that should never have happened to you”.
- Do not moralize.
- Do not victim-blame.
 - E.g.: Why didn't you leave? Do you get that drunk often?

CASE STUDY: IVAN AND JUANITA



INTRODUCTION



- Your office was contacted by a female student, Juanita Morales. She was extremely upset. Apparently she had received a picture, via email, which had her face attached to a body with exaggerated breasts. This picture was sent to her at her sorority house by email. A large number of the sorority members also saw the picture. Juanita was very worried that the picture had been distributed campus wide via the campus computer network. Ms. Morales stated that she thought another student, Ivan Petrovich, was responsible.

PRELIMINARY INVESTIGATION



- Your office then contacted John Wang, Assistant Director of Computer Services, to investigate who originated the picture. We supplied Mr. Wang with the IP address from the originating email. Mr. Wang reported that he was able to determine that the picture was indeed sent from the port in the community recreation room from the fraternity house of Lambda, Lambda, Lambda, but that he could not positively identify who actually sent the picture.

JUANITA'S STORY



- On September 4 I was sitting in the common room of the sorority house studying for a quiz with my Big Sis Alice. Another sister came into the room to check her email on the common room computer, every sorority and fraternity has one. All of a sudden she started to yell for all of us to come over to the computer and look at what was sent to her from the fraternity next door, Lambda, Lambda, Lambda. The email said, “Greeting’s new freshman, meet the girl next door”. Everyone in the room walked over to the computer as she opened up the picture. When I looked at the screen, I was horrified! It was a picture of me and I was totally naked. Except it really wasn’t me! I mean, it looked like me, it was my face pasted on this body that had these really huge breasts. It was amazing how everyone in the room knew it wasn’t me

JUANITA'S STORY (CON'T)



But they were all laughing at the picture. I was so embarrassed that I ran out of the room in tears. All I could think of was that everyone on campus was going to see this picture and think it was really me and that I posed for a picture naked. I called this boy named Ivan, because I just knew that the email came from him. At first he said that it was only a joke, and I couldn't take a joke, and then he said that he didn't send it. The next day, as I walked out the front door on my way to a class, several of the brothers from Tri Lambda were standing outside their house and started pointing at me and laughing. I just started crying and ran back to my room. After that, I went to the Dean of Students to file this complaint. I am so upset about this whole thing. Last term Ivan asked me out several times, but I didn't want to go out with him. I know that I wasn't very nice calling him a total loser in front of his friends, but he was really annoying and he wouldn't stop bothering me. I never really considered him to be my friend, but I can't imagine why he would hurt me or embarrass me like that when he doesn't even know me that well.

IVAN'S STORY



- Juanita is totally blowing this out of proportion! I have never harassed her. Last term I asked her out a few times and she told me no. Actually she called me a loser, but hey I was cool with that. I told her that she didn't know what she was missing but as far as I know, that is not harassment. I moved on.
- I still can't believe that she is going to the Dean with this. When she was at parties at our house and when she was drinking she always used to tell everyone and me in the room that she wanted to get a boob job. I just helped her out a little bit. I had this project to do for my media design class where you had to morph two objects together that did not belong together. I figured that this was the perfect opportunity to give her the boob job she wanted. Besides, she has flashed her boobs in public to many of the brothers when she was drinking. It was only meant to be a joke. I never put her name on it so what's the big deal? This is a work of art that I created for my class, not a porn picture or anything.

IVAN'S STORY



- I only showed my artwork to a few of my friends, which by the way is protected by my First Amendment Rights. I know my rights very well since I am a criminal justice major, in fact, the first amendment states: **That Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.**
- I never sent that picture out to anyone, and I have no idea who did. It wasn't meant to hurt anyone, and besides, it's my property and my artwork.

QUESTIONING ACTIVITY FOR CASE STUDY



- Each person in the group should identify a question you want to ask Juanita
- CONSIDER:
 - What do I want to know?
 - Why do I want to know it?
 - What is the best way to ask the question?
- Pose the question to the group-get feedback
- Engage in the same set of questioning exercises for Ivan
- Who else would you like to interview?

INCLUSIVE INVESTIGATIONS

- Working with Gender Non-Conforming Individuals
- Working with LGBTQ Individuals
- Same-Sex Sexual Violence
- Hate-Based Misconduct

CHECK YOUR BIAS: DEVELOPING CULTURAL COMPETENCE



STEREOTYPES GENERAL AND SEXUAL



EXPLORING THE IMPACT OF CULTURE



“Culture” comes in many variations

- Consider the culture related to:
 - Race
 - Ethnicity
 - National Origin
- But also:
 - Sexual orientation
 - Gender identity
- Don't forget “Closed Communities” have a culture too
 - Sports Clubs
 - Organizations
 - Band

“BIAS” DEFINED



- Tendency to believe that some people, ideas, etc., are better than others that usually results in treating some people unfairly.
- Strong interest in something or ability to do something.
- Inclination of temperament or outlook; especially a personal and sometimes unreasoned judgment (*merriam-webster.com*).

“PREJUDICE” DEFINED



- Unfair feeling of dislike for a person or group because of race, sex, religion, national origin, etc..
- Feeling of like or dislike for someone or something especially when it is not reasonable or logical (*merriam-webster.com*).
- Any preconceived opinion or feeling, either favorable or unfavorable (*dictionary.com*).

BIAS AND PREJUDICE



- Multi-Partiality: You can never be truly “neutral” or “impartial”, but you can work to neutralize your biases
- Common hot-button areas of bias
 - Sexual orientation
 - Gender and Gender Identity
 - Race
 - Ethnicity
 - Religion or religious beliefs
 - Politics
 - Alcohol or drug use
 - Sexual freedom

TIPS ON CULTURAL COMPETENCE



- Recognize that culture plays a significant role in the impact of the trauma and the risk for continuing trauma
- Violence and trauma have different meanings across cultures and healing takes place within one's own cultural and meaning-making system
- Be aware of your own cultural assumptions and attitudes as well as those of the individual with whom you are meeting

TIPS RELATED TO CULTURAL COMPETENCE



- Avoid stereotypical assumptions about the either party based on
 - Physical appearance
 - Cultural assimilation
- While safety planning is important to all survivors, there may be unique implications related to an individual's culture – be sensitive. There is no one size fits all

TERMINOLOGY



- **Biological Sex:** References chromosomes, hormones, reproductive organs, and genitalia.
- **Gender:** Refers to the attitudes, feelings, and behaviors that a given culture associates with biological sex.
- **Gender Identity:** Internal sense of gender.
- **Gender Expression:** Outward expression of gender, often through clothing, behavior, posture, mannerisms, speech patterns, and activities.
- **Transgender:** Umbrella term referring to a wide range of persons whose gender identity or expression may not match the gender assigned at birth.

TERMINOLOGY (CONT.)



- **Sexual Orientation:** Who a person is attracted to sexually or romantically, on a continuum (e.g., gay, lesbian, bisexual, heterosexual, asexual, and pansexual).
- **Queer:** An umbrella term referring to all LGBT persons.
- Transgender people may have any sexual orientation.

VIOLENCE AND SEXUAL ORIENTATION



Sexual Violence and Intimate
Partner Violence Can Happen
to Anyone...

- regardless of gender identity and expression, and
- regardless of sexual orientation.

Hate-Based Misconduct



Targeting persons based on their real or perceived membership in an historically oppressed group.

- When sex or gender is the basis, it's a TIX.
- Be aware that trauma may be especially severe for the reporting party.
- Reporting party may have heightened concerns about safety and retaliation.
- Investigations may focus on identification of responding party or parties.

VIOLENCE AND SEXUAL ORIENTATION



- Lesbians and gay men reported IPV and sexual violence over their lifetimes at levels equal to or higher than heterosexuals:
- 44% of lesbian women, 61% of bisexual women, and 35% of heterosexual women experienced rape, physical violence, and/or stalking by an intimate partner in their lifetime.
- 26% of gay men, 37% of bisexual men, and 29% of heterosexual men experienced rape, physical violence, and/or stalking by an intimate partner at some point.
- Approximately one in five bisexual women (22%) and nearly one in 10 heterosexual women (9%) have been raped by an intimate partner in their lifetime.

Source: The Centers for Disease Control and Prevention's (CDC) National Intimate Partner and Sexual Violence Survey (NISVS): 2010 Findings on Victimization by Sexual Orientation.

RELUCTANCE TO REPORT



- Concern about a homophobic response.
- Concern about preconception that sexual assault cannot occur between same sex partners.
- Fear of exposing LGBT community to negative stereotypes.
- Fear of the impact a report may have on a small, sometimes close-knit community on campus.
- Fear of being outed and implications for medical treatment.
- Concern about how “systems” will respond, especially law enforcement.
- Previous negative experiences with school staff, the law, or community members.
- Fear that male-on-male sexual violence in connection with hazing/bullying will be reduced to “boys being boys.”

CONSIDERATIONS FOR INVESTIGATIONS



- Assume nothing and allow for self-identification.
- Provide a safe, non-judgmental, and respectful environment.
- A visible reaction may negatively impact rapport.
- Use inclusive language; reflect language used by the parties during interviews and in all communication.
- Be mindful of how power dynamics and targeting can come into play.
- Don't expect parties to "educate you." Stick to the facts.
- Anticipate heightened confidentiality concerns.
- Use your campus or community-based experts.
- Ask for additional education or training if needed.
- Be aware of your biases.

EXAMPLE'S



Joe is a student who is gay and a member of the school cheer team. A group of football players repeatedly ridicules Joe about his effeminate mannerisms and clothing, and threatens to harm him if they run into him off campus. Joe starts skipping cheer practice and eventually quits the team rather than face the continued harassment.

Ty, a student and RA who is biologically female but dresses and lives as a male, repeatedly catches a group of three students writing comments on the whiteboard on his door referring to him as “it.” The same group of students drunkenly confronts Ty in the hallway one night and starts pulling at his pajamas to “see what’s under there.” Ty moves off campus and gives up his job as an RA as a result.

INVESTIGATING RETALIATION CLAIMS

- Basic Legal Principles
- Investigating Retaliation Claims



RETALIATION

BASIC LEGAL PRINCIPLES



The Title IX regulations prohibit recipients from intimidating, coercing, or retaliating against individuals because they engage in activities protected by Title IX.

- Protected activity under Title IX:
 - Reporting sex discrimination, including sexual harassment and assault.
 - Filing a discrimination complaint.
 - Assisting someone in reporting discrimination or filing a complaint.
 - Participating in any manner in an investigation of discrimination, for example as a witness.
 - Protesting any form of sex discrimination (e.g. lack of equity in athletics).

INVESTIGATING RETALIATION CLAIMS: KEYS TO UNDERSTANDING



- Establishing retaliation, unlike establishing sexual harassment, requires proving motive – the intent to retaliate.
- Since someone's intention is rarely displayed openly, the legal framework is about whether a retaliatory motive can be inferred from the evidence.
- Gathering details of what occurred is critical.

PRELIMINARY ELEMENTS OF A RETALIATION CLAIM



- The following elements establish an *inference of retaliation*:
 - Did the reporting party engage in protected activity?
 - Usually straightforward,
 - Unless there is a question of reasonableness of belief or manner.
 - Was reporting party subsequently subjected to adverse action?
 - Do the circumstances suggest a connection between the protected activity and adverse action?
 - Did individual accused of retaliation know about activity?
 - How soon after the protected activity did the adverse action occur?
 - If these three elements are not shown, the claim fails.

RETALIATION AND ADVERSE ACTION



- Common definition of **adverse action**:
 - Significantly disadvantages or restricts the reporting parties as to their status as students or employees, or their ability to gain the benefits or opportunities of the program; or
 - Precluded from their discrimination claims; or
 - Reasonably acted or could act as a deterrent to further protected activity.
 - The U.S. Supreme Court and the federal courts have defined adverse action **very broadly**.

INVESTIGATING RETALIATION CLAIMS: REBUTTING THE INFERENCE



- What is the stated non-retaliatory reason for the adverse action?
 - Is the explanation for the action legitimate on its face?
- Is there evidence that the stated legitimate reason is a pretext?
 - This is the heart of the case – is the explanation the true reason?
- The preponderance of the evidence must establish that the adverse action was motivated by retaliation.

INVESTIGATING RETALIATION CLAIMS: IS THE EXPLANATION LEGITIMATE?



- Factors to consider:
 - The explanation makes sense.
 - The action was consistent with established policy or practice.
 - No adverse action was taken against others who engaged in protected activity.
 - Reporting party was treated the same as other individuals.

INVESTIGATING RETALIATION CLAIMS

IS THERE EVIDENCE OF PRETEXT?



- Factors to consider:
 - The explanation given is not credible.
 - Other actions by the same individual are inconsistent with the explanation.
 - The explanation is not consistent with past policy or practice.
 - There is evidence of other individuals treated differently in similar situations.

CONSENT CONSTRUCT

-
- Force
 - Incapacity
 - Consent

OVERVIEW OF THE 3 CONSENT QUESTIONS



1. Was force used by the accused individual to obtain sexual access?
2. Was the reporting party incapacitated?
 - a. Did the accused individual know, or
 - b. Should s/he have known that the alleged victim was incapacitated (e.g., by alcohol, other drugs, sleep, etc.)?
3. What clear words or actions by the reporting party gave the accused individual permission for the specific sexual activity that took place?

FORCE



There are four types of force to consider:

- **Physical violence** -- hitting, restraint, pushing, kicking, etc.
- **Threats** -- anything that gets the other person to do something they wouldn't ordinarily have done absent the threat
- **Intimidation** -- an implied threat that menaces and/or causes reasonable fear
- **Coercion** – the application of an unreasonable amount of pressure for sexual access.
 - Consider:
 - Isolation
 - Frequency
 - Intensity
 - Duration
 - Because consent must be voluntary (an act of free will), consent cannot be obtained through any type of force

TYPES OF INCAPACITY



- What was the form of incapacity?
 - Alcohol or other drugs
 - Incapacity ≠ Impaired, drunk, intoxicated, blacked out, or under the influence
 - Incapacity = an extreme form of intoxication (alcohol)
 - Administered voluntarily or without reporting party's knowledge
 - Rape drugs
 - Mental/cognitive impairment
 - Injury
 - Asleep or unconscious

- Incapacitation is a state where individuals cannot make rational, reasonable decisions because they lack the capacity to give knowing consent
- Incapacitation is a determination that will be made after the incident in light of all the facts available
- Assessing incapacitation is very fact-dependent
- Blackouts are frequent issues
 - Blackout \neq incapacitation, automatically
 - Blackout = no working (form of short-term) memory for a consistent period, thus unable to understand who, what, when, where, why, or how
 - Partial blackout must be assessed as well
- What if the responding party was drunk too?

INCAPACITATION

- To better understand and determine the relationship between the use of alcohol and capacity it's important to understand there are multiple levels of effect of alcohol, along a continuum
 - The lowest level is impairment, which occurs with the ingestion of any alcohol. A synonym for impairment is “under the influence”
 - The next level is intoxication, also called drunkenness, similar to the state's drunk driving limit
 - A person can be drunk but still have the capacity to give consent

INCAPACITATION



- Incapacity is a level of alcohol consumption in which an individual is incapable of understanding information presented, appreciating the consequences of acting or not acting on that information and making an informed choice
- Incapacitation is a state beyond drunkenness or intoxication, where decision-making faculties are dysfunctional.
- “Too intoxicated to consent” or “unable to consent as a result of AOD” are too limiting as policy standards, because they cannot cover the blackout situation where **someone does consent to sex, but does not know that they are.**

INCAPACITATION



- In order to consent effectively to sexual activity, you must be able to understand Who, What, When, Where, Why and How with respect to that sexual activity.
- This is another way of stating the law's expectation that consent be knowing or informed, and any time it is not, consent cannot be effective.
- To be more precise, an incapacitated person cannot give a valid consent.

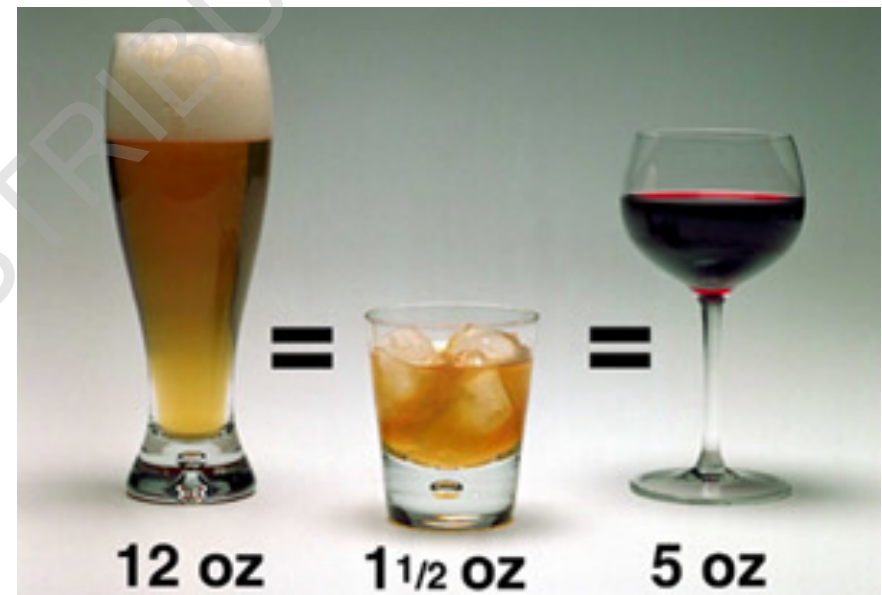
COMMON INTOXICATION FACTORS



- Rate of consumption
- Strength of drink
- Food in the stomach
- Body weight
- Body type – body fat percentage
- Gender:
 - E.g.: enzymes, hormones, body fat, and water in body
- Functional tolerance
- Medications
- Illness and dehydration
- Fatigue
- Caffeine
- Genetics
- Ethnicity

BAC/BAL

- One “drink” \approx .025 BAL
 - 12 oz.
 - 5 oz. wine
 - 1 5 oz. liquor (a typical “shot”)
- Metabolic rate – one drink per hour
 - .015/hr. (avg.).
 - Dependent on age, gender, height, weight, medications, genetics, experience with drinking, etc.



CREATE A TIMELINE



- First must determine by a “more likely than not” standard if the reporting party was incapacitated
 - This inquiry will likely be triggered by statements such as: “The next thing I remembered was.....”
“I woke up and.....”
“I don’t remember anything after.....”
 - That is your cue to start a timeline of the events during the incident to make the first-level analysis of whether the reporting party was incapacitated (using a preponderance of the evidence standard)

TIMELINE CONSTRUCT



- Begin the timeline at the time the incident began, starting at the time the reporting party began consuming alcohol/engaging in recreational drug use. Ask:
 - What were you drinking (e.g., wine, beer, or hard liquor)?
 - How much were you drinking (e.g., shot, 12 oz., or large cup)?
 - How many drinks did you have?
 - Were you using any recreational drugs?
 - When did you eat? What did you eat?
 - Are you on any personal medications?

TIMELINE CONSTRUCT



- Continue the first five questions up until the point in time that reporting party indicates he/she cannot remember anything
- **Note:** If reporting party did not have anything to drink, or only had a small amount, you need to consider if the individual was drugged. You will need to ask:
 - Where were you when you were drinking?
 - Did you leave your drink at any time then resume consuming?
 - Did anyone provide drinks for you?

TIMELINE CONSTRUCT



You need to determine whether it was reasonable that the responding party knew the reporting party was incapacitated.

- Determine if responding party knew reporting party previously
- If so, ask if reporting party was acting differently from previous similar situations
- Review what the responding party observed the reporting party consuming (via your timeline)
- Determine if responding party provided any of the alcohol / drugs for the reporting party

BEHAVIOR CUES

- Evidence of incapacity will come from context clues, such as:
 - Did the accused may know how much the other party has consumed?
 - Slurred speech
 - The smell of alcohol on the breath in combination with other factors
 - Shaky equilibrium; stumbling
 - Outrageous or unusual behavior (not making sense, appearing drunk)
 - Falling asleep
 - Throwing up
 - Disoriented
 - Unconsciousness (including Blackout)
 - Although memory is absent in a blackout verbal and motor skills are still functioning.

YOU WILL NEED TO DETERMINE



- First, **was the reporting party incapacitated** at the time of sex?
 - Could the person make rational, reasonable decisions?
 - Could the reporting party appreciate the situation and address it consciously such that any consent was informed –
 - **Knowing who, what, when, where, why, and how**
- Second, **did the responding party know** of the incapacity (fact)?
- Or, **should the responding party have known** from all the circumstances (reasonable person)?

INCAPACITY ANALYSIS



- If the reporting party **was not** incapacitated, move on to the Consent analysis
- If the reporting party **was** incapacitated, but:
 - The responding party did not know it, **AND**
 - The responding party would not have reasonably known it = policy not violated. Move to Consent analysis
- If the reporting party **was** incapacitated, and:
 - The responding party **knew it or caused it** = policy violation. Sanction accordingly
 - The responding party **should have known it** = policy violation. Sanction accordingly

Question 3 is the Consent question:

- What clear words or actions by the complainant gave the accused individual permission for the specific sexual activity that took place?
- Equity demands a “pure” consent-based policy, defining what consent is rather than defining it by what it is not (e.g., force, resistance, against someone’s will, unwanted, someone unable to consent, etc.).
- The definition of consent does not vary based upon a participant's sex, sexual orientation, gender identity, or gender expression."

CONSENT IS...



- Informed, knowing, and voluntary (freely given)
- Active (not passive)
- Affirmative action through clear words or actions
- That create mutually understandable permission regarding the conditions of sexual activity
- Cannot be obtained by use of:
 - Physical force, compelling threats, intimidating behavior, or coercion
- Cannot be given by someone known to be — or who should be known to be — mentally or physically incapacitated

RULES TO REMEMBER



- No means no, but nothing also means no. Silence and passivity do not equal consent
- To be valid, consent must be given prior to or contemporaneously with the sexual activity
- Consent can be withdrawn at any time, as long as that withdrawal is clearly communicated by the person withdrawing it

QUESTIONING EXERCISE



Kyle & Bob



- Kyle O'Neil, the Complainant/Reporting Party, a first-year student;
- Bob Thompson, the Respondent/Responding Party, a second-year student;

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Kyle O'Neil's Statement



It was Friday night and man it had been a long week. I was invited to an off-campus party and was ready to blow off steam. My adjustment to college has been a challenging one. Frankly, I'm struggling with feelings that I had not recognized before and it's scaring me. I just wanted to forget all the stress of school and my personal life and have a good time.

I was dancing and doing some drinking and a guy came up to me and started dancing. I'd seen him on campus and thought he was really good looking. No one seemed to be paring off so it didn't feel awkward.

Kyle O'Neil's Statement



Over the next couple hours I had a blast, Bob got me some more beers and then they started passing out Jello shots. I'd never had them before and they were great. I think I had a bunch.

I started feeling really nauseous and hit the can cause I knew I was going to be sick. I got sick and decided it was time to head home. I only made it as far as the outside door and got sick again, right there in the bushes. I didn't realize anyone was around, but Bob came up to me and asked if I needed help. I was so glad for someone to help me get back to my dorm.

Kyle O'Neil's Statement



I remember us coming in my room and I remember hugging Bob (I don't know why-I think I was just so glad to be back). Then I got sick again. Bob was still there when I came back from the bathroom and he encouraged me to lay down. I must have. The rest of the night is a blur. I remember someone rubbing my back, it must have been Bob.

Kyle O'Neil's Statement



When I woke up I was naked and had a terrible hangover and then I saw a note from Bob. I didn't realize he left me one. I also saw a used condom in the trash. I was so confused and didn't know what had happened. I called him to find out just what went on last night and he asked me out! I'm so upset! What did I do? What did he do? I don't know if I want to find out, but I know it's bad. He did this to me and I want him held responsible. This whole thing is messing with my mind.

Bob Thompson's Statement



STATEMENT OF BOB THOMPSON

On the night of Friday, September 13th, I went to an off-campus party. There was a band, and a lot of alcohol. I got to the party at about 11:00 pm, and slammed about three beers in the first hour I was there. It was very crowded, and people were dancing. A lot of people already seemed to be drunk. I hung out around the dance floor with my friend Jami Warren for a while, until I noticed Kyle O'Neil dancing. He was really hot, and I had noticed him on campus a few times. I didn't know if he was into guys but I was willing to find out. I went up to him and we started talking

Bob Thompson's Statement



He seemed a little tipsy and in a pretty loose mood. We talked for a while, and he asked me to get us some more drinks I think I got him about two or three beers over the next hour.

I didn't have anything more to drink because the three beers I slammed were doing the trick just fine. Around 1:00 am, somebody started passing out Jell-O shots spiked with grain alcohol. I didn't want to mix beer and liquor, but Kyle had a few shots.

We danced a lot, and he had a few more Jell-O shots. He went off to the bathroom, and after that I couldn't find him, and that really bummed me out. I waited around to see if he would show up again, but he didn't. I took off and started to walk back to my residence hall.

Bob Thompson's Statement



As I left the party, I heard someone vomiting. I looked over and saw Kyle in the bushes, throwing up. I went over to help him, and he seemed to be in pretty bad shape. I offered to take him home, and he told me where his dorm was and leaned on my arm. When we got to his dorm, I helped him inside, and was about to leave, but he asked me to come up to his room, just to make sure he got there. I took him upstairs, opened the door for him, and let him in.

He asked me to get him a glass of water, and I did. I started to take off again, but he asked me not to go. When I turned around, he hugged me. We hugged for a while, but he wasn't feeling well, and went into the bathroom. When he came out, he said he felt better, but tired.

Bob Thompson's Statement



We crashed on the couch and then started kissing. I started to massage his back, and he fell asleep. He woke up about 20 minutes later, and he started to kiss me, and fondle me. He took off my shirt, and I took off his, eventually we were both naked. I started to give him oral sex, and he said he needed some rest. I asked him if this was OK and if he was OK, and he said he was, he just needed to rest some more. I asked him if he had a condom, and he said he had one in his dresser. I went to get it, and when I got back to the couch, he was asleep again. He woke up after about 20-30 minutes, and I suggested that he just go to sleep. But, he said he felt much better, and started to give me oral sex.

Bob Thompson's Statement



After a while, he put the condom on and we had sex. It was great. Afterward I gave him my number and left. The next day, he called me to ask me why my name and number was on the pad by his sofa. I told him about meeting him at the party, and about our evening together. He seemed to get upset, and said he remembered meeting me at the party, and me helping him back to his dorm but almost nothing else. I asked if he wanted to go out sometime, and he said “I’m not gay” and hung up on me. Two days later, I was notified by the Dean that Kyle filed a complaint against me, and here I am.

EVIDENCE, CREDIBILITY & MAKING A FINDING

- Understanding Evidence
- Credibility
- Analyzing the Information
- Making a Finding

UNDERSTANDING EVIDENCE



- Formal rules of evidence do not apply. If the information is considered relevant to prove or disprove a fact at issue, it should be admitted. If credible, it should be considered
 - Evidence is any kind of information presented with the intent to prove what took place
 - Certain types of evidence may be relevant to the credibility of the witness, but not to the charges
- Consider if drugs or alcohol played a role
 - If so, do you know what you need to know about the role of alcohol on behavior? Timing? Incapacitation?
 - Look for evidence of prior planning

- Credible is not synonymous with truthful.
- Memory errors do not necessarily destroy witness credibility, nor does some evasion or misleading.
- Refrain from focusing on irrelevant inaccuracies and inconsistencies.
- Pay attention to the following factors...

FACTORS TO CONSIDER FOR CREDIBILITY



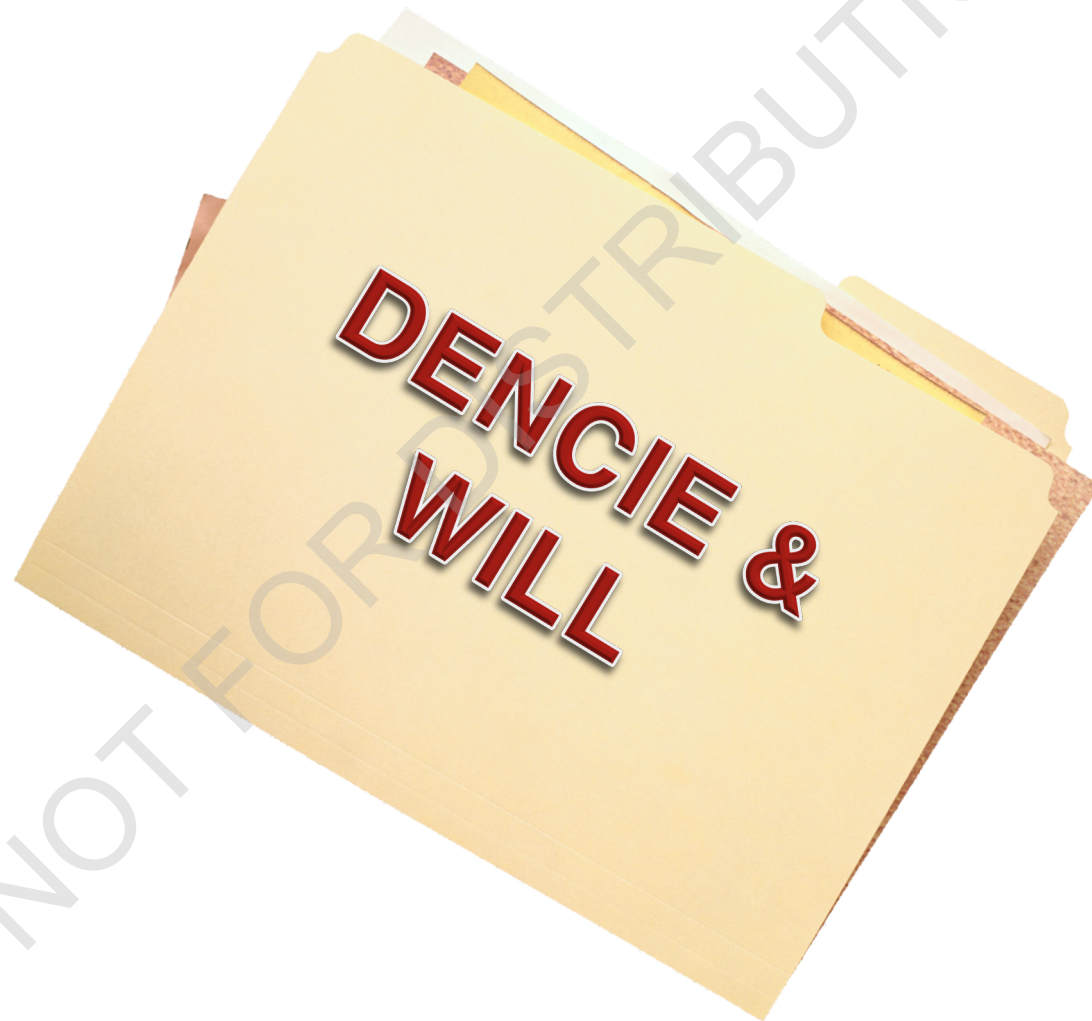
- Demeanor.
 - Nonverbal language.
 - Demeanor issues should be cue to ask more questions.
- Non-cooperation.
 - Look for short, abrupt answers or refusal to answer.
 - OK to ask, “You seem reluctant to answer these questions –can you tell me why?”
- Logic/consistency.
 - Ask yourself, “Does this make sense?”
- Corroborating evidence.
- Inherent plausibility – is the evidence more likely than the alternative?

MAKING CREDIBILITY DETERMINATIONS



- Look at consistency of story – substance and chronology of statements.
- Consider inherent plausibility of all information given.
- Look for the amount of detail (facts) provided. Factual detail should be assessed against general allegations, accusations, excuses, or denials that have no supporting detail.
- Pay attention to non-verbal behavior, but don't read too much into it...this isn't Lie to Me.

EXPLORING CREDIBILITY EXERCISE



Dencie's Statement



- I met Will Washington in February at the campus bus stop and on March 15th, he raped me in his room. I knew Will was on the football team and he seemed nice enough, so I gave him my number. He started coming over to my room, just hanging out with me and my roommate, Kim and some of his friends from the team.
- I liked Will as a friend, but I knew he was a player. I kissed him a few times and we made out a little, but I kept telling him that was as far as it was going to go. I usually made sure there were a lot of people around like my roommate Kim and some of his teammates. I was a little afraid of him because he is such a big guy and I heard he has a pretty bad temper.

Dencie's Statement



- The last time we were together before the rape, we were in my room watching videos. It was getting late and everyone had left except Will and Kim. Will was getting pissed that Kim was still there, so I asked her if she would step out for a bit, but not to go too far or for too long. So after Kim left, Will turned out the lights and started taking his clothes off. I kept telling him not to, but he wasn't listening to me. He said he wasn't going to bother me, but since it was late, he was staying over and he wanted to get comfortable. I had been sitting up in my bed, when he got onto the bed, and he wanted me to lay down with him. I said no, but he began to raise his voice and insist, so I did lay down.

Dencie's Statement



- I felt him reach over and try to touch me, but I kept moving away. I kept telling him not to, but he kept on trying to touch my breasts. He told me he didn't want to have sex, that he just wanted to rub against me. I was scared to death, so I just lay there. He got on top of me and pinned me down and started rubbing against me; but just then, Kim came back in the room. He got off me, but stayed in bed and went to sleep. The next day, he was gone when I woke up.

Dencie's Statement



- A couple days later, he called to invite me to his room to watch Stranger Things. I wanted to see his dorm since I wanted to live there next year. I told him nothing was going to happen between us if I came over and he swore that he wouldn't touch me if I didn't want him to. I took the campus bus, and went over to his place. No one else was in the suite. He offered me a drink and gave me a pair of his boxers to change into..."to get more comfy." His voice was raised when he told me he wanted me to change clothes, so I did, but I felt really uncomfortable.

Dencie's Statement



- We started to watch the show and he was good for about an hour, then he started to bite my neck. I told him to stop, that nothing was going to happen; he said ok, but he kept trying. Then he penetrated me with his finger and even though I tried, I couldn't stop him. Eventually he wanted to have intercourse.
- I kept saying no....many times, but he kept going on. I was hitting him and saying no, but he kept on 'til he was done. Then he rolled over and went to sleep. I cried a little and went to sleep too because it was too late to catch the bus.

Dencie's Statement



- When his alarm went off at 5:30, I woke up too. Will said he had to go to practice, so I had to leave. The buses weren't running yet and it was cold outside, so I asked if I could stay there 'til 7, but he said no. He said he didn't know me well enough to leave me in his room with all his stuff. That's also when he told me that we could never do this again because he had a serious girlfriend at home.
- I left when he did and waited until the bus came. I went back to my room, cried a little and took a shower. I felt so ashamed about what happened and I needed to wash this whole thing away.

Dencie's Statement



- I called my sister the next day and told her what happened, and she told me to call the police. I just couldn't do it. I knew Will was in school on an athletic scholarship. He's one of the best players on the team and I thought everyone would know what happened if he got suspended from the team. I was also scared about what he might do to me or my friends if I reported this. I just wanted to forget the whole thing.
- Eventually I connected with the Sexual Assault Office because everything went pretty bad for me for the rest of the term. It was only after I had been working with the SAO for a while that I got my confidence back and reported this. That's why I am here today.

Will's Statement



- I really don't know what this is all about. I got called into the Title IX office just as school started. The person there asked me if I knew Dencie Smith and at first I said I didn't. Her name didn't mean anything to me because I date a lot of women and it had been a long time since I had been with her.
- I didn't realize who she was until the Title IX person showed me her picture. Then the Title IX person told me that Dencie said I raped her sometime last semester! That bitch is crazy, because nothing happened between us that she didn't want to happen. I'm telling you the truth! We had sex only one time, but it didn't happen the way she said. I met her at the campus bus stop and we talked and she gave me her number. The first time I went to her room, she even pulled out this album of pictures of her posing in sexy lingerie.

Will's Statement



- I asked her for one of the pictures and she gave it to me. We made out and she was into it as much as I was, but we didn't have sex that night. The next time I came over to Dencie's room to watch videos, I stayed overnight because she asked me to. Her roommate was in the room working on the computer and Dencie asked her to leave, I guess so we could be alone. She was laying on her bed, so I took most of my clothes off, except my boxers and got into bed with her. We were fooling around and I could tell, she was into it. I started to rub up against her, and the only reason we didn't "do it" was because her damn roommate came back into the room. She wouldn't have sex with me with her roommate in the next bed, so I just rolled over and went to sleep.

Will's Statement



- On the night she says I raped her, she called me at my apartment and said she was bored and asked if she could come over to watch TV. It was late, but I said ok. I figured maybe this was her way of picking up where we left off last time without her roommate being around. She got here and was all dressed up and I offered her a pair of my boxers and a tee shirt to get comfortable. She changed and got onto my bed to watch TV. We were cuddling the whole time, so when the show was over, we started kissing; one thing led to another and we had sex that night. I didn't do anything to her she didn't want me to do.

Will's Statement



- I think she's just pissed with me because, the next morning, I told her we couldn't do that again, because I have a girl friend at home I'm real serious with. Also, I asked her to leave the room when I did, because I had practice to go to and I didn't know her well enough to leave her in my apartment with all my stuff. I didn't have time to drive her back across campus, so she had to wait for the bus or walk back and it was pretty cold outside. I think I saw her maybe one more time after that. I think she's just pissed and is trying to get back at me. I have no idea why she waited so long to do this; but I'm telling you, she's making this stuff up.

QUESTIONING ACTIVITY FOR CASE STUDY



- As a group identify all the issues that may impact credibility of each of the parties.
- Discuss how you will ask questions to help make credibility assessments.

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UNDERSTANDING EVIDENCE (CONT.)



- You may **assign weight** to evidence based on:
 - Direct or testimonial evidence (e.g., personal observation or experience).
 - Documentary evidence (e.g., supportive writings or documents).
 - Electronic evidence (e.g., photos, text messages, and videos).
 - Real evidence (i.e., physical object).
 - Circumstantial evidence (i.e., not eyewitness – but compelling)
 - Hearsay evidence (i.e., statement made outside the hearing but presented as important information).
 - Character evidence (generally not relevant or acceptable).
 - Impact statements (should only be reviewed after a finding).

ANALYZING THE INFORMATION



- Examine only actions that have a direct relation to the situation under review or a pattern of incidents.
- Explore motivation, attitude, and behavior of reporting party, responding party, and witnesses.
- Apply relevant standards:
 - Force, incapacity, and consent.
 - Unwelcomeness, reasonable person, and discriminatory effect.
- Analyze the broadest, most serious violations first and make a determination of each and every violation alleged, element by element.

ANALYZING THE INFORMATION (CONT.)



- Assessing each answer: for each piece of information you have as a result of your analysis and matching your need to assess its evidentiary value. Measure with the following questions:
 - Is the question answered with fact(s)?
 - Is the question answered with opinion(s)?
 - Is the question answered with circumstantial evidence?

! Withhold judgment until all the evidence has been considered.

FOCUS ON WHAT YOU DON'T KNOW, RATHER THAN WHAT YOU DO



- Find an opportunity to let your subconscious work on the gaps in information (e.g., yoga, meditation, etc.).
- If you are too busy analyzing what you know, you won't focus on the need to identify what is missing, what is yet to be obtained, or why certain witnesses have not told you things that it would have been logical or expected to hear from them.
- Look for evidence that should be there that is not, for some reason.

ANALYSIS OF EVIDENCE



ANALYZING THE INFORMATION



Withhold judgment until all the evidence has been considered.

ANALYZING THE INFORMATION



- Use your Policies in play to begin your analysis.
- Examine only actions that have a direct relation to the situation under review or a pattern of incidents.
- Explore motivation, attitude, and behavior of reporting party, responding party, and witnesses.
- Apply relevant standards:
 - Force, incapacity, and consent.
 - Unwelcomeness, reasonable person, and discriminatory effect.
- Analyze the most serious violations first and make a determination of each and every violation alleged, element by element.

DETAILS OF ANALYSIS PROCESS

1. Assess evidence carefully. For each piece of information you have as a result of your analysis and matching process you need to assess its evidentiary value:
 - What are the facts? They carry the most evidentiary weight.
 - What is the circumstantial evidence?
 - What are the opinions or hearsay information? They're less valuable than facts, but are probably the bulk of what you're being told. Potentially are valuable when witnesses share similar opinions. Not worthless, but only suggestive rather than probative (proving).
2. Put a + or – next to each element of evidence
3. How does the evidence add up?

EXAMPLE: PARSING THE POLICY SEXUAL HARASSMENT



- Sexual Harassment is:
 - *Unwelcome,*
 - *Sexual, sex-based and/or gender-based,*
 - *Verbal, written, online and/or physical conduct.*

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EXAMPLE: PARSING THE POLICY SEXUAL HARASSMENT MODEL OF PROOF



- SEXUAL HARASSMENT IS:

- Unwelcome
AND

- Sexual, AND/OR

- Sex-based, AND/OR

- Gender-based,
AND

- Verbal, AND/OR

- Written, AND/OR

- Online, AND/OR

- Physical conduct

EXAMPLE: APPLYING THE RUBRIC SEXUAL HARASSMENT



- Does evidence show unwelcome conduct? If so,
- Was the conduct sex/gender-based or of a sexual* nature (*or was there conduct targeted toward any member of a protected class)? If so,
- Was the expression severe or persistent or pervasive? If so,
- Was the conduct or expression also objectively offensive; and if so,
- Did the individual(s) impacted experience a limitation or deprivation of their educational or employment participation or benefits?

EXAMPLE: APPLYING THE RUBRIC SEXUAL HARASSMENT



- If the answer is yes to each question, find a policy violation. If the answer to any question is no, there is no policy violation.
- Similarly, with the checklist model of proof, are all the AND boxes checked? If so, find a policy violation. If not, find there is no violation.

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CASE STUDY: Maria Torres



CASE

THE CASE OF MARIA



Maria Torres is a second year student at your institution. She transferred to your school this year from a two-year college near her hometown in Texas. She selected your school because of the institution's values and mission and creative culture.

Maria is a first-generation college student and she is under a lot of pressure to make her family proud of her. She is working as a research assistant for a couple of professors to earn money for school and trying to become involved at the institution while keeping her grades up.

THE CASE OF MARIA



- Following class last month her professor asked her if she was fluent in Spanish. Maria responded, “Si”, laughingly. Her professor said he wanted to hire a student to accompany a study abroad group from the institution to provide interpretation services for the participants and he thinks she would be perfect. He told her she would have all her travel expenses paid and earn a stipend as well. Maria was thrilled.

THE CASE OF MARIA



- Bob, another student in the class, overheard the conversation between Maria and her professor. He was angry because, as a Spanish major, he had hoped to be selected as the group interpreter.
- Bob stopped Maria outside the classroom. He said the only reason the professor offered her the job was because she was “hot”. He said, “I’m going to start calling you the “hot tamale”.”
- Bob’s nickname for Maria caught on across campus and she would frequently hear people call out “Hey Hot Tamale”. Maria was very embarrassed, but was determined to ignore the taunts.
- Then last week at the volleyball game (Maria is on the women’s team), a group of male students sat on the sidelines wearing large sombreros and holding signs. The various signs said:

THE CASE OF MARIA



- “I like it hot”
- “Hot tamales are the best tamales”
- “Aren’t you on the wrong side of the Rio Grande?”
- “Don’t come here and take our jobs”
- Maria was devastated and left the floor in the middle of the game.
- She came to the Equity Compliance Office to make a complaint.

- Is this a Title IX matter?
- Why/why not?
- If she came to you and not the Compliance Office, what would you tell her?

REVIEWING THE ANALYSIS & FINDING PROCESS



- Review the institutional policies in play.
- Parse the policy.
 - Specific findings for each policy and each responding party.
- Pose key questions.
- Review the evidence and what it shows (relevance).
- Assess credibility of evidence and statements as factual, opinion-based, or circumstantial.
- Determine whether it is more likely than not policy has been violated.
- Cite concretely the reasons for your conclusions.

THE INVESTIGATION REPORT



SAMPLE TEMPLATE FOR INVESTIGATIVE REPORTS

This is just one example that may be useful. You should consult with a licensed attorney in your own jurisdiction before adopting this template.

University of Knowledge

Date of Report:

This report addresses alleged violations of the Policy Name(s) of the University of Knowledge. Names of Investigators conducted the investigation into these allegations. This report will determine whether it is more likely than not that there has been a violation of the relevant university policy or policies.

Executive Summary:

(Summarize findings here.)

Procedural History:

Include the date of the incident, the date on which it was reported, how and to whom (generally) it was reported, the date on which investigators were assigned to it, and the date on which the investigation closed.

On Month XX, 20XX, Reporting Party met with Name Here in the Office of Victim Assistance at University of Knowledge along with Name Other Present Parties. Reporting Party reported that General Allegations occurred on Month XX, 20XX. Reporting Party has not reported this matter to law enforcement at this time, although she is aware of this option.

This report was referred to Investigators Name Here and Name Here on Month XX, 20XX. Both investigators were present in person for each interview. They alternated questioning and note-taking roles. This investigation was completed on Month XX, 20XX.

Involved Parties:

Reporting Party is (e.g., a first-year undergraduate female residing in the residence halls).

1. Responding Party is (e.g., a male graduate student and a residence advisor in the residence halls).
2. Witness 1 is (e.g., a freshman female residing in the residence halls and Reporting Party's roommate).
3. Witness 2 is (e.g., a male undergrad living off-campus and a classmate and friend of Reporting Party).
4. Witness 3 is (e.g., an employee of Nearby Bar; employee is not affiliated with the university).

THE INVESTIGATION REPORT (CONT.)



- The investigation report is the one comprehensive document summarizing the investigation, including:
 - Results of interviews with parties and witnesses.
 - Results of interviews with experts.
 - Summary of other information collected (i.e., information from police reports including pretext calls, medical exams, video surveillance and photographs, copies of texts, emails, and social networking messages, etc.).

THE INVESTIGATION REPORT



- Helpful to have a “skeleton” outline of what report will include.
- The report should:
 - Detail the allegations and how they were brought forward.
 - Explain the role of the parties and witnesses, and any relations between them.
 - Summarize information collected.
 - Address evidence collected (e.g., direct, circumstantial, documentary, and expert).

EXAMPLES OF INFORMATION TO INCLUDE IN AN INVESTIGATION REPORT



- Investigation interview:
 - Name/title of the interviewer(s).
 - Name of the persons interviewed and their role in the investigation – reporting party, responding party, witness, etc.
 - Names of any other people who sat in on the interview and their roles.
 - Location of the interview.
 - Interview date.
 - Detailed notes of interview.
- Incident log.
- Finding and action taken.

THE INVESTIGATION REPORT (CONT.)



- Assess weight, relevance, and credibility of information gathered.
- Assess credibility of parties.
- Explain unsuccessful attempts to collect information and/or interview witnesses.
- Highlight key factual findings for each allegation.
- The report should reference or contain all policies and procedures currently applicable.

THE INVESTIGATION REPORT (CONT.)



- Develop how prior, similar acts by the responding party are relevant and to what.
- Measure the information gathered against the policies alleged to have been violated, applying the standard of proof (analysis).
- Recommend a finding on whether the policy has been violated, or make the finding, depending on your process.

QUESTIONS?



CONTACT INFORMATION

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