



ASU TRAINING – FALL 2018

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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

WHEN DO YOU INVESTIGATE?



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

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ACTUAL NOTICE



- Individual files a Title IX complaint.
- Individual notifies the Title IX coordinator or other Responsible Employee.
- Individual reports to campus police or security official.
- Staff member witnesses harassment.
- Indirect notice from sources such as flyers posted on campus, media, online postings, or video.

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CONSTRUCTIVE NOTICE



- Pervasiveness of the harassment may be enough to conclude that the school should have known of the hostile environment.
- Harassment is widespread, openly visible, or well known to students and/or staff.
- OCR can conclude the institution should have known of incidents of harassment from a report to an employee who had a reporting duty to a supervisor, but failed to do so.

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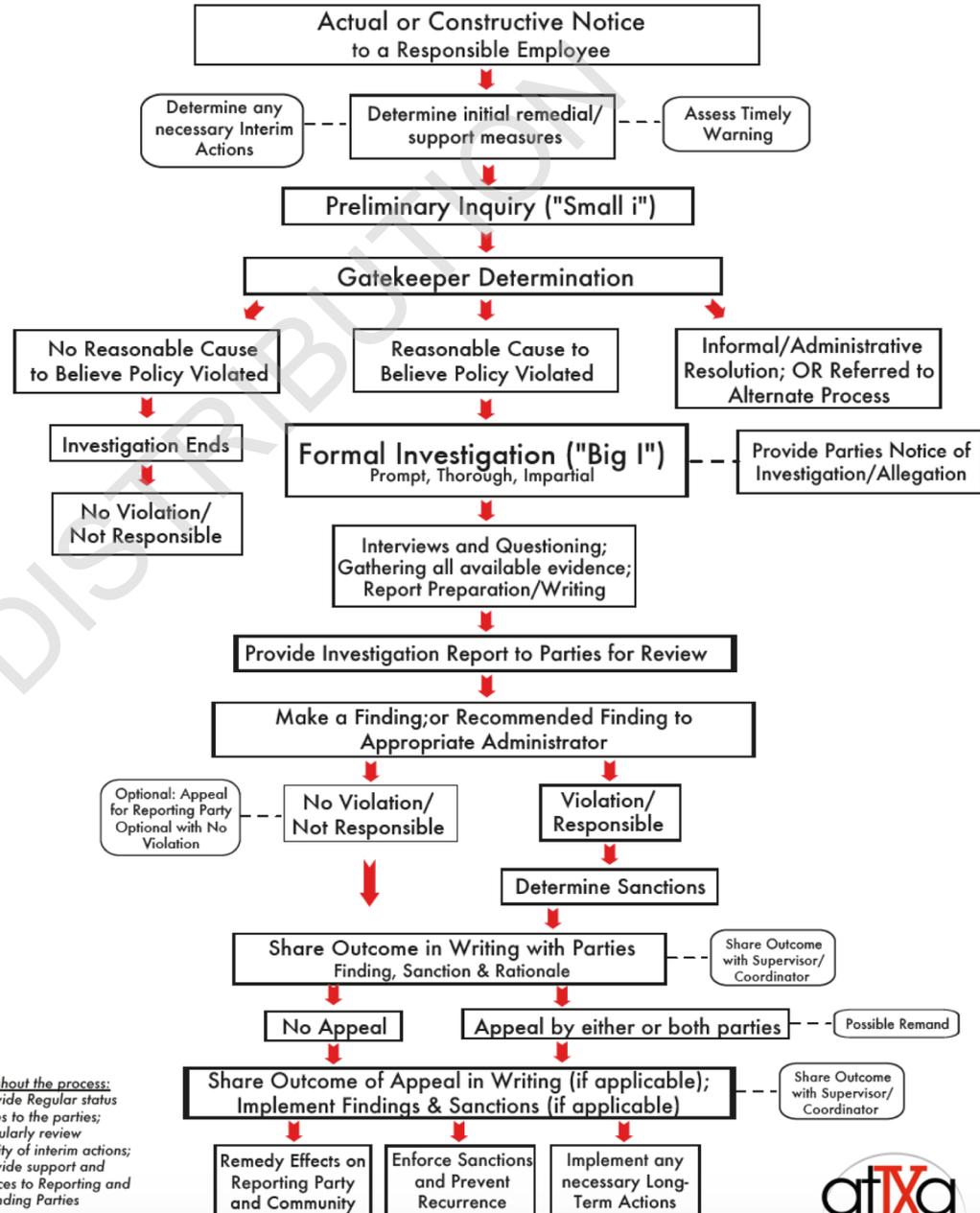
DO YOU HAVE JURISDICTION?



- Subject Matter Jurisdiction
 - Does our policy apply?
 - Title IX?
 - Code of Student Conduct
- Jurisdictional limitations:
 - Geographic and temporal.
- Personal Jurisdiction:
 - When is a student a “student?”
 - Application-Admission-Registration-Attendance-Breaks.
 - Control over the harasser and the context of the harassment.

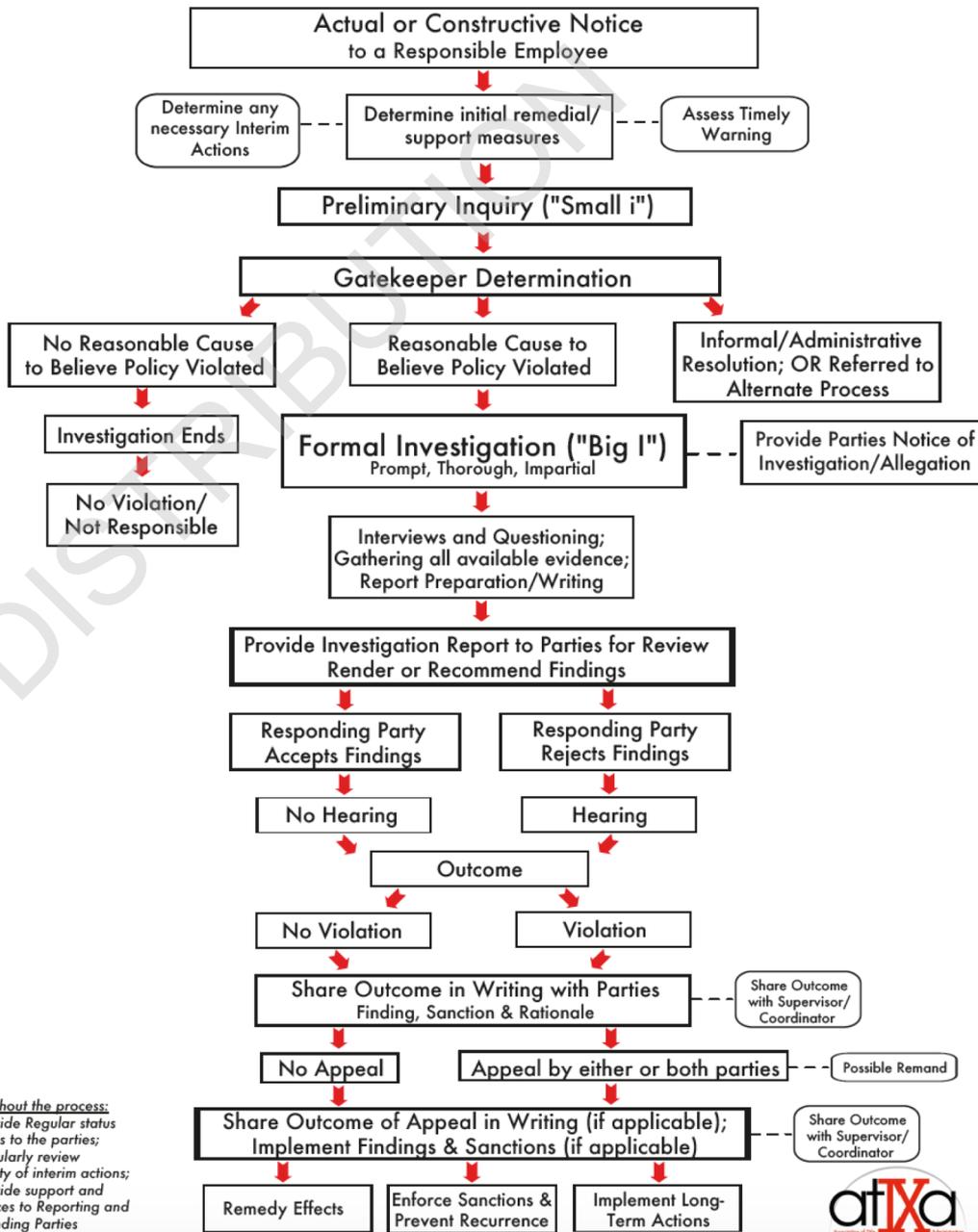
ATIXA CIVIL RIGHTS INVESTIGATION MODEL FLOWCHART

CIVIL RIGHTS INVESTIGATION MODEL



INVESTIGATION AND HEARING PANEL HYBRID MODEL FLOWCHART

INVESTIGATION AND HEARING PANEL HYBRID MODEL



Throughout the process:
 1: Provide Regular status updates to the parties;
 2: Regularly review necessity of interim actions;
 3: Provide support and resources to Reporting and Responding Parties

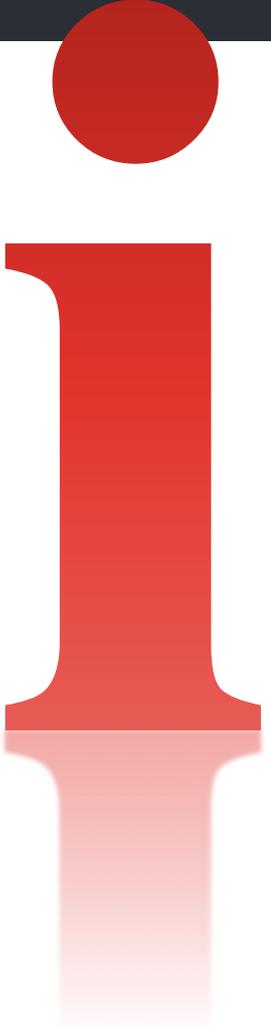


TEN STEPS

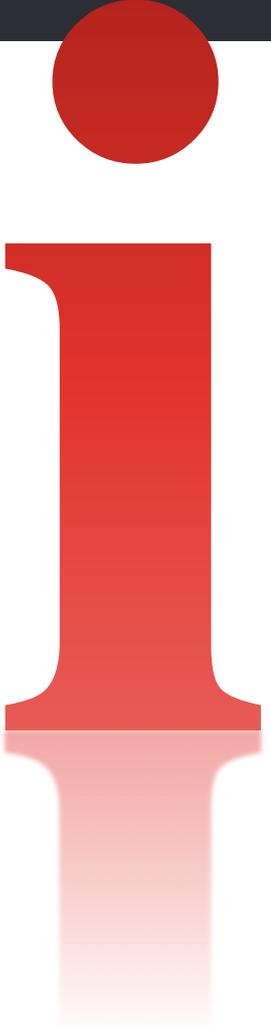


1. Notice is given, usually through filed report (complaint).
2. Preliminary inquiry (initial strategy).
3. Gatekeeper determination (earliest point).
 1. Done throughout the investigation to determine if the investigation should continue.
4. Strategize the formal investigation.
5. Notice of investigation and/or allegation (earliest point).
6. Formal comprehensive investigation.
 - a) Witness interviews.
 - b) Evidence gathering.
7. Analysis and Final Findings of Fact are written into the Report
 - a) Report is shared with the parties
 - b) Early resolution an option throughout the investigation.
8. Adjudication (Hearing – Informal or Formal and Appeal)

PRELIMINARY INQUIRY

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

PRELIMINARY INQUIRY (CONT.)

- 
- Establish a preliminary timeline for the investigation.
 - Investigate all allegations to determine:
 - The extent of the harassment.
 - The acuity of the threat it represents to students or employees.
 - What might be necessary to put an end to it.
 - Be able to show that a comprehensive civil rights investigation was completed and documented.
 - Responding to anonymous reports:
 - Determine if a trend or pattern may be apparent.
 - You may have a duty to attempt some form of remedial response, even to an anonymous report.

STRATEGIZING WITNESS INTERVIEWS



- Strategize contacting witnesses, ordering witness interviews, and preventing contact between witnesses, where necessary.
- Constantly solicit witness lists from the parties. Identify them as “witnesses,” not “his” or “her” witnesses
- Determine when you are going to question responding party.
- Option 1: Reporting party → Reporting party’s witnesses → Neutral witnesses → Responding party’s witnesses → Responding party → Any additional witnesses identified by either party → Round 2 → Round 3.
- Option 2: Reporting party → Responding party → Reporting party’s witnesses → Responding party’s witnesses → Neutral witnesses → Any additional witnesses identified by either party → Round 2 → Round 3.

INTERVIEWING – GENERAL SKILLS

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INTERVIEW SKILLS



- Outline your interview questions but be flexible.
- Most beneficial to conduct interviews in person.
- Interviews should be conducted in a neutral, quiet, and private setting with a minimal or no likelihood of interruptions.
- 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.
- Be professional: gather the facts, make no judgments, and make no statements about the parties.

INTERVIEW SCHEDULING



- Try to anticipate how long each interview will take (e.g., How many times will you interview the witness? How much time can the witness give you?).
- Back-to-back interviews should be avoided, if possible. Interviews often take longer than expected and may require you to reschedule interviews.
- Leave open an amount of time roughly equivalent to the length of the interview for post-interview teamwork, review of notes with your co-investigator and prepare for the next interview.

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ESTABLISH PRE-INTERVIEW GROUND RULES



- Who will attend?
- Recording v. Note-taking (written v. electronic)
- How will records be kept?
- Role of Advisors.
- Role of Attorneys.
- Involvement Roommates, Parents, etc.
- FERPA/confidentiality.

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- Each party should receive a copy of:
 - The policies alleged to have been violated.
 - The procedures that will be used to resolve the complaint, including the rights that extend to the parties.
- Consider providing parties with your non-retaliation provision.
- The file should contain all policies and procedures currently applicable.

DEMEANOR OF INVESTIGATOR(S)



- Work to establish a baseline of relaxed conversation.
- Maintain good eye contact.
- Listen carefully to the answers to your questions.
 - Avoid writing while party/witness is talking, if possible.
 - Do not be thinking about your next question while party/witness is talking.
- Ask questions in a straightforward, non-accusatory manner.
- Nod affirmatively to keep party/witness talking.

GENERAL QUESTIONING SKILLS



- What are the goals of questioning?
 - Learn the facts.
 - Establish a timeline.
 - Understand each party's perception:
 - Of the event and of the process.
 - Try to learn the what is more likely than not what happened (is that the truth?).
 - Three sides to every story (or more).
- What are NOT the goals of questioning?
 - Curiosity.
 - Chasing the rabbit into Wonderland.

- Understand the goals of an “interview” versus an “interrogation.”
 - An interview is a conversation designed to elicit information in a non-accusatory manner.
 - Shifting to an interrogation approach should not be done lightly; you cannot go back – not recommended.
- Is person comfortable that you will handle the investigation fairly and objectively?
 - Team or peer-led investigations can help create a rapport much easier.

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."

INTERVIEWING THE PARTIES

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THE PROCESS



Notice to Title IX officer or Institutional Notice; Strategy development

Findings of Fact

Gatekeeping

Outcomes:

- Early resolution,
- Informal administrative resolution, or
- Formal resolution

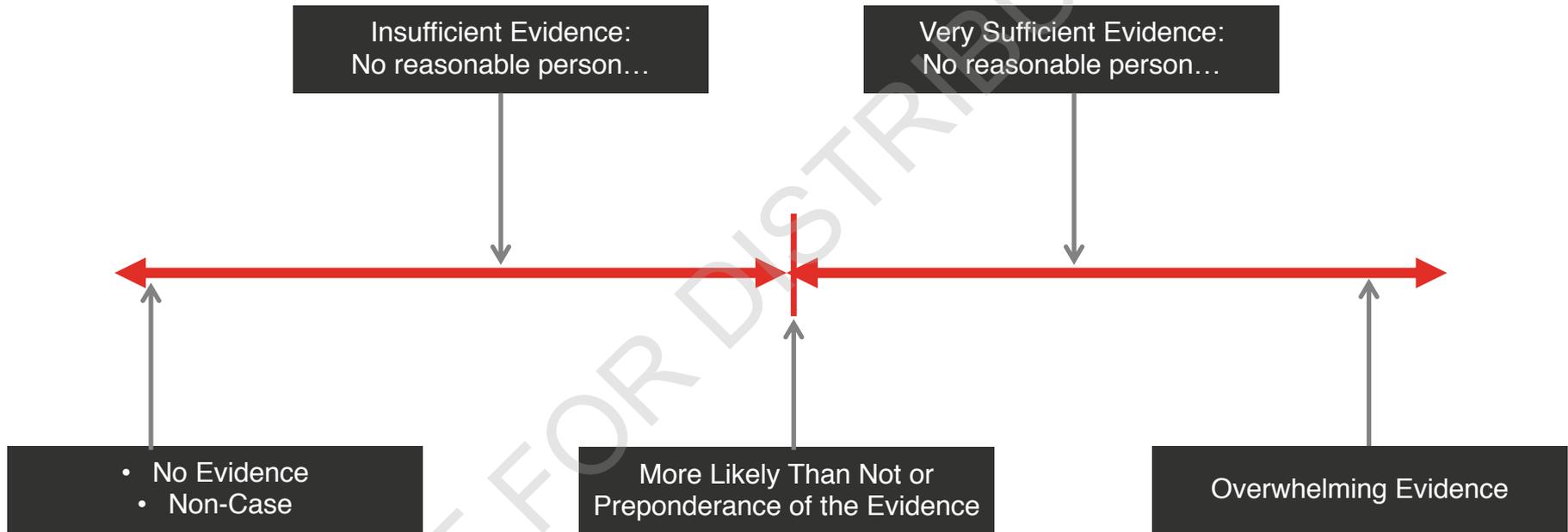
Determination.

Sanction.

UNDERSTANDING EVIDENCE THRESHOLDS



EVIDENTIARY STANDARDS Use words they can understand



INTERVIEWING THE REPORTING PARTY

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CONFIDENTIALITY FOR 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.

INTERVIEWING THE REPORTING PARTY



- Acknowledge difficulty of reporting and thank them.
- Acknowledge that they may have told this story multiple times already.
- 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 REPORTING PARTY (CONT.)



- Ask whom they spoke to and told about the incident.
- Ask what the reporting party's motivation is for reporting and what that individual hopes to see as a result.
- Find out if the individual's academics and/or work have been affected.
- Ask how this has affected the reporting party emotionally and/or physically.
- Advise that the allegations will be discussed with the responding party and witnesses.
- Let the reporting party know next steps and when you will be in touch.

- Remedies Issues:
 - Notify 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.

RELUCTANCE TO REPORT



When a reporting party is reluctant to make formal allegations, or returns to withdraw a formal allegation, investigators should honor that request and determine the reason for reconsideration.

- Those reasons involving investigation or hearing process should be addressed by the investigator. Those involving other issues should be addressed by a support person.
- A comprehensive investigation and/or resolution should not automatically involve the reporting party, as it may, in many circumstances, be conducted without that person's involvement, if sufficient independent evidence allows.

RELUCTANCE TO REPORT (CONT.)



- The reporting party should be notified as to their options:
 - That the process will still be available to them, regardless of how long they wait.
 - That the institution will support them in any way it can (e.g., housing, classes, no contact orders, etc.).
 - That, if information is brought to attention of the institution that may involve a threat to community, the school may be forced to proceed with an investigation, but that reporting party will be notified of process.

NEUROBIOLOGY OF TRAUMA

- Introduction to Trauma
- Neurobiological Impact of Trauma
- Considerations for Interviewing

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WHAT IS TRAUMA?



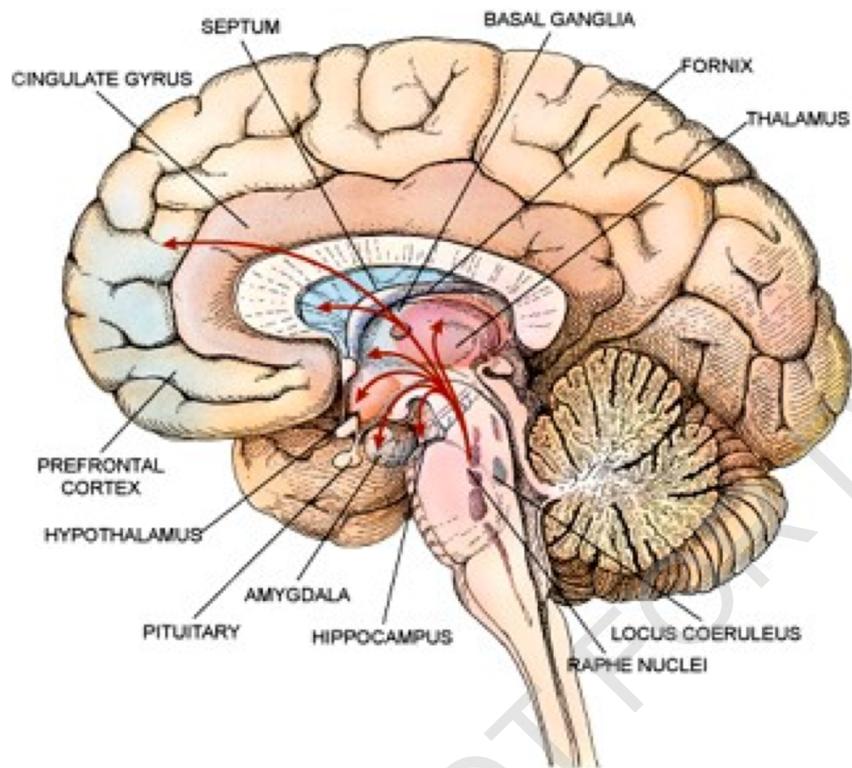
Exposure to an event or events that creates a real or perceived threat to life, safety, or sense of well being and bodily integrity.

May result from:

- War.
- Natural disasters.
- Severely distressing events
- Violence
 - Including Intimate Partner Violence, Sexual Violence, Stalking, etc.

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HOW THE BRAIN AND BODY RESPOND TO TRAUMA



- Hypothalamus
- Pituitary
- Hippocampus
- Amygdala

PERCEIVED THREAT



- When the amygdala senses a threat in the form of sexual assault, it signals to the hypothalamus, which signals to the pituitary gland, which signals to the adrenal gland, which releases hormones or chemicals throughout the body to help react to the threat and likely trauma.
- ‘The amygdala does not distinguish between “types” of sexual assault,
 - E.g., stranger or acquaintance, but interprets them equally as threats to survival.
- The amygdala also does not typically differentiate between an actual threat and a perceived or subjective threat.
 - Sometimes also a function of prior experiences, rather than the immediate situation.

HORMONAL FLOOD



- A release of a number hormones into the body to prompt survival and coping – can occur during an event perceived as traumatic
 - Catecholamine (adrenaline): responsible for fight or flight; creates mobilization, but impairs rational thought and decision-making.
 - Opioids: to deal with pain; creates flattening affect.
 - Cortisol: increases energy production during stressful situations; impairs blood sugar levels, immune system, and other bodily systems.
 - Oxytocin: promotes good feelings to counterbalance sensation of pain.

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Some reporting parties may also experience tonic immobility; like being awake during surgery.

- Hormonal flood and dysregulation of the autonomic nervous system can cause the body to shut down.
- “Rape-induced paralysis.”
- Know what is happening, but can’t fight.
- Biological response based on survival; think of the animal world.

MEMORY AND TRAUMA



- Memory is formed in two steps:
 - Encoding: organizing sensory information coming into brain.
 - Consolidation: grouping into memories and storing the stimulus.
- Trauma can interfere with the encoding and/or the consolidation of memory.
- May create fragmented memories.
- Recall can be slow and difficult.
- Alcohol may interfere further with memory.
- However, sensory information (smell, sound, etc.), may still function properly

RESPONSES TO TRAUMA ALSO IMPACTED BY:



- Personality.
- Coping strategies.
- Available support systems and resources.
- General resilience.
- Past history of traumatic experiences.
- Cultural differences in the perception and expression of trauma.
- Normalization/adaptation.

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- Expecting a reporting party to give a linear account in the days after an incident, or after having been triggered, is not always realistic.
- Memory fragmentation can occur.
- Having “inconsistent” memory, pausing, and stumbling to provide an account are not outside the bounds of what one could expect from a person who has experienced trauma.
- Considerations for credibility assessment?

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QUESTIONING AND TRAUMA



- Empathy is critical.
 - However, remember to remain impartial.
- Tell me more about...
- Help me understand your thoughts when...
- What was going through your mind when...
- What are you able to remember about...?
 - 5 senses
- What were your reactions to this experience?
 - Physically
 - Emotionally
- What, if anything, can't you forget about this experience?

Source: Partially drawn from Russell Strand, Forensic Experiential Trauma Interview: A Trauma Informed Experience.

- Trauma can negatively impact a reporting party's credibility.
- Trauma may help explain:
 - Inconsistencies in a reporting party's statement.
 - Lack of linearity in a reporting party's account or statement.
 - Reporting party's lack of memory about an incident.
 - Memory errors by the reporting party.
 - Reporting party's demeanor or affect.
 - Reporting party's brief answers, or answers lacking in detail.

- However, while trauma may help explain issues that impact credibility, it typically does NOT excuse them.
 - An assessment of credibility must focus on issues such as the reliability, consistency and believability of the parties.
 - If, for example, a reporting party's account is inconsistent or variable, lacking in detail, or has material memory gaps, it typically lacks credibility.
 - An understanding of trauma and its impact will provide insight as to why some credibility deficits exist, but a trauma-informed understanding should not materially impact a credibility assessment.
- Use caution because actual or perceived trauma may have little or nothing to do with consent.

INTERVIEWING THE RESPONDING PARTY

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INTERVIEWING THE RESPONDING PARTY



- Acknowledge difficulty of the situation and thank the responding party for meeting with you.
- Provide a copy of your policies and procedures.
- Ask the person to share a complete account of what occurred.
- Question the responding party as to the allegations – ask a combination of open and closed ended questions.
- Get detailed – do not leave a question unanswered.
- Ask about witnesses and any other relevant information.
- Ask about possible motivation for complaint.

INTERVIEWING THE RESPONDING PARTY (CONT.)



- Let the responding party know next steps and when you will be in touch.
- Discuss counseling options if the individual is not already connected.
- Discuss non-retaliation and any intermediary steps such as no-contact orders, housing moves, and exclusions.
- If interim suspension/action is employed, review the terms and provide a timeframe.
- Encourage the person to maintain privacy of the investigation.

INTERVIEWING WITNESSES

- Witness Lists and Flowcharting
- Feedback to Witnesses/Anticipating Questions
- Interviewing Witnesses

FEEDBACK TO WITNESSES



- Witnesses may ask or say:
 - Am I being investigated?
 - What are you really investigating?
 - How will you use the information you are given?
 - Is it confidential?
 - Will I get into trouble by giving you this information?
 - I don't want to cooperate.
 - Do I need my parents/lawyer present during interview?
- Anticipating these questions and/or covering them in advance can help ensure that you get complete truthfulness.

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INTERVIEWING WITNESSES (CONT.)



- Ask if they have been contacted already by one of the parties.
- 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.

INCLUSIVE INVESTIGATIONS

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

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.

QUESTIONS?

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